

## SERVICE CONTRACT

THIS SERVICE CONTRACT ("Contract") is entered into as of the date specified in Paragraph 1(d) by and between the Owner identified in Paragraph 1(a) and the Contractor identified in Paragraph 1(b).

1. **DEFINITIONS.** As used in this Contract, the following terms shall have the following meanings:

a. **Owner: County of San Mateo, as Owner, and Orchard Commercial, Inc., as Managing Agent, located at 2055 Laurelwood Road, Suite 130, Santa Clara, CA 95054.** "Owner" includes Owner's Authorized Representative, if any, and if Owner is a joint venture or partnership, any partner or joint venturer in such partnership or joint venture, and any and all owners, shareholders, directors, officers, managers, agents, and employees of Owner. "Owner" shall further mean and include Orchard Management Services or any other management company acting as agent for Owner.

b. **Contractor: Kone Inc., 15021 Wicks Blvd., San Leandro, CA 94577**

c. **Authorized Representative: Brian McLemore (925) 880-6692**

d. **Contract Date: March 5, 2013**

e. **Project: # 7700 - Circle Star (One Circle Star Way, San Carlos, CA 94070)**

f. **Work:** The "Work" shall mean the products and services set forth in Exhibit A. Contractor will provide and furnish all of the materials, equipment, tools, supplies, services, drawings, machinery, hoists, molds, appliances, cartage, ladders, fixed and moveable scaffolding, runways, staging, implements, power, other facilities of every kind and description, and labor necessary or incident to performance of the Work.

g. **Plans and Specifications:** The "Plans and Specifications" shall mean those plans, renderings, drawings, and lists of specifications which Owner supplies to Contractor to describe the Work, which are attached as Exhibit A.

h. **Contract Documents:** The "Contract Documents" means the Plans and Specifications, this Contract, all modifications or additions hereto, and all change orders executed in regard to the Work. All Exhibits attached hereto are incorporated in this Contract.

i. **Contract Term: March 1, 2013 through March 31, 2013, unless terminated earlier pursuant to Section 21 (Termination) described below.**

j. **Contract Price: Sixteen Thousand Two Hundred Fifty and 00/100 Dollars (\$16,250.00) for repair of all elevators at One Circle Star Way, San Carlos, CA 94070 as referenced on Exhibit A attached hereto.**

The Contract Price includes payment by Contractor of all sales and/or use taxes, as well as any other taxes imposed by any unit of government on the materials, services, and labor furnished by Contractor, as well as all permit fees and other governmental charges. In construction contracts, Owner shall withhold Ten Percent (10%) from each payment as a retention against defects and failures of performance hereunder, and shall make final payment of all sums due to Contractor, less any back charges and other liabilities of Contractor, sixty (60) days after recordation or waiver of the Notice of Completion as required by Section 2f. Contractor shall perform the Work at the Contract Price during the Term, and the Contract Price shall not be subject to increase for any reason whatsoever without the express written consent of Owner.

k. **Payment Terms: Net 30 days.**

### 2. PERFORMANCE OF WORK

a. Contractor shall perform and provide everything required to complete the Work in a first-class, diligent, efficient, expeditious, professional, and workmanlike manner, including, without limitation, all supervision, labor, materials, tools and transportation, all in strict accordance with the Plans and Specifications and applicable federal, state and local statutes and regulations, including, but not limited to, all statutes and rules relating to safety, immigration, fire prevention, toxic or hazardous materials, and discrimination, and to the satisfaction of Owner, Government inspectors, and inspectors for lenders, if any. No additional compensation shall be allowed to Contractor in the event that governmental directions require extra work. Any Work which does not meet these standards in all particulars is defective. Until approved by Owner, no part of the Work shall be deemed to have been completed.

b. Contractor shall be responsible for initiating, maintaining, and supervising all reasonable and necessary safety precautions and programs (including but not limited to all such matters required by law or any public entity) in connection with the Work, and provide necessary protection to prevent damage, loss, or injury to persons, the Work and related materials and tools, and property (including trees, shrubs, lawns, walks, pavement, roadways, structures, utilities and underground facilities on the Property). All damage caused by Contractor, any subcontractor, supplier or other person directly or indirectly employed by them, shall be the responsibility of and remedied by Contractor. Owner shall have no responsibility for safety of person or property in regard to the Work.

c. Except for employees who are qualified and certificated to do so, Contractor will not direct, suffer, or permit any of its employees to handle, use, manufacture, store, or dispose of any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, petroleum products or derivatives, or other similar substances, or any substances subject to regulation by state, federal, or local laws, rules, or regulations relating to protection of the environment or regulation of such materials ("Environmental Laws"), whether presently in effect or hereafter adopted (such materials are collectively referred to herein as "Hazardous Materials") in or about the Work or on the Project. Contractor shall not suffer or permit any Hazardous Materials to be used in any manner not fully in compliance with all Environmental Laws, nor shall Contractor suffer or permit the Project to become contaminated with Hazardous Materials. Further, Contractor and its subcontractors, agents, servants, and employees shall not use any Hazardous Materials in connection with the Work without full disclosure to and the express written consent of Owner, and in full compliance with all Environmental Laws, and without contaminating the Project with Hazardous Materials. Contractor shall indemnify Owner for any loss, damage or claim resulting from a violation of this provision. If, in the course of completing the Work, Contractor encounters any such Hazardous Materials, including asbestos and PCBs, which were not expressly identified as part of the Work in the Contract Documents, Contractor shall stop work on that portion of the Work and immediately notify Owner by phone (followed by written notice within three (3) days). Contractor shall not proceed with the Work in regard to the area of such a discovery until given written notice to do so by Owner.

d. Contractor assumes sole and complete responsibility for job site conditions during the performance of this project, at all time when Contractor is engaged upon the work, and shall make sure that the jobsite is safe for Contractor's workmen and others. Contractor shall indemnify Owner against any claims, demands, or liabilities for physical injury or property damage resulting from breach of this provision.

e. Contractor assumes full responsibility for the accuracy of all lines, levels, and measurements and their relation to benchmarks, property lines, reference lines, and the work of Owner or other trades. Where dimensions are governed by conditions already established, Contractor is responsible for correct knowledge of such conditions. No variation from specified lines, grades, or dimensions shall be made except with written permission of Owner. All work shall be made to conform to actual, final conditions as they develop in the course of construction.

f. Within ten (10) days after substantial completion of the Work, subject only to minor punch list items, Contractor shall record and provide Owner a copy of a Notice of Completion or obtain Owner's written waiver thereof. The cost of recording the Notice shall be a part of the Contract Price.

3. **MODIFICATIONS TO THE CONTRACT OR THE WORK.** Any changes or modifications regarding the Work or this Contract must be in writing and approved by Owner. The cost of approved changes or modifications shall be agreed upon between Owner and Contractor in writing before additional labor or materials are supplied. If the Contract is based on unit prices, the Contract Price shall be increased or decreased by the number of units affected. All work performed by Contractor shall be deemed to be part of the Work and provided pursuant to the Contract Price, unless a written change order is executed. A change order shall specify whether the change is an increase or decrease in the Work, specify any resulting increase or decrease in the Contract Price, and detail any related change in the schedule of performance. If no increase or decrease in price is specified in a change order, then the Work, as amended by the change order, shall be performed for the Contract Price specified herein. Unless the schedule of performance is changed in the change order, it shall remain as set forth herein. Owner may order extras at any time, and may omit from the Work any part thereof by so directing Contractor in writing, and in such event the Contract Price shall be proportionately adjusted.

4. **INSPECTION OF PLANS AND SPECIFICATIONS AND JOBSITE.** Contractor acknowledges that it has examined, and is familiar with, the Plans and Specifications for the Work, the job location, the jobsite, and any materials or construction adjacent to or underlying the Work, and that it has performed such investigation as it deemed reasonable in regard to such matters. Contractor has based its design, bid, and/or price solely on its own investigation and evaluation, and has not relied on any estimate, statement, representation, or other information provided by Owner, except for the Plans and Specifications. If in the course of performing the Work, Contractor becomes aware of any subsurface or previously covered condition of the jobsite which differs materially from that shown in the Contract Documents, then Contractor shall immediately notify Owner by phone and thereafter in writing. Contractor shall not proceed with the Work in this area until given written direction to do so by Owner. Contractor and Owner shall agree on a Change Order to accommodate any such conditions which could not reasonably have been discovered and/or anticipated by Contractor.

5. **CONDUCT OF WORK.** Contractor shall coordinate its Work with other contractors, vendors, and suppliers as directed by Owner and shall fully cooperate with Owner and all other persons to the end that the Work and the Project may be performed and completed in the most expeditious and efficient manner. In the event Owner notifies Contractor in writing that it is necessary for Contractor to delay its Work in order that other portions of the Project may proceed, Contractor shall be free of responsibility for such delay, and Owner shall have no liability to Contractor for any increased expense of Contractor's performance. Contractor must at all times exercise due care to protect all other portions of the Project from damage by its operations and delivery. In the event any portion of the Project is damaged by Contractor with or without fault, such damage shall be promptly repaired to the satisfaction of Owner at Contractor's expense.

6. **LICENSING.** If Contractor must be licensed to perform the Work, Contractor represents that it is, and will at all times during bidding and performance hereof, be licensed to perform the Work by the Contractor's State Licensing Board or other agency having jurisdiction over such licenses, and that all subcontractors will be licensed. Possession of a valid license shall be a condition of payment, and Owner shall not be required to pay for any

work performed by Contractor if it was unlicensed when the work was done or at the time payment is required or sought or if work was performed by an unlicensed subcontractor. Owner may declare this Agreement void and remove Contractor from the jobsite in the event that it is determined that Contractor or any subcontractor is unlicensed. Contractor shall supply to Owner a copy of its license at the start of performance, and at any time thereafter upon request, and shall advise Owner immediately, in writing, if its licensed status changes during the performance of this contract.

**7. RESPONSIBILITY FOR DESIGN DEFECTS AND WORK PERFORMED BY OTHERS.** If at any time, Contractor perceives that there are any design defects in regard to the Work (including the interplay of the Work with work performed by others), such that the final product produced by following the Plans and Specifications will not be of first quality, it is the responsibility of Contractor to notify Owner in writing, and if Contractor does not do so, then any defect in the Work resulting therefrom will be the responsibility of Contractor. Contractor shall examine the design, workmanship, and materials of all related, dependent, or adjacent work performed by any other persons, upon whose work Contractor must build or depend. Unless Contractor notifies Owner in writing of defects in such work, or that such work is not a suitable foundation for Contractor's Work, Contractor shall be deemed to have accepted all such work as a suitable foundation, free of defects, and shall be responsible for any defects in or additional expenses of Contractor's Work or the Project caused by any defects in or lack of suitability of such preceding work.

**8. USE AND CLEAN-UP.** Contractor shall not interfere with the business operation of Owner or its tenants. Contractor shall keep its Work and the jobsite cleaned up as it progresses and, upon completion, shall clean the same thoroughly and remove any and all rubbish and debris resulting from the Work from the Project.

**9. SCHEDULE OF WORK.** Time is of the essence of this Contract. Contractor has taken into consideration and made allowance for delays and hindrances incidental to the Work, whether arising out of delays in securing material or workmen, adverse weather conditions, strikes, minor omissions or alterations or otherwise. In the event Contractor shall fail to perform the Work as scheduled, or if in Owner's judgment insufficient men, tools, or materials are scheduled or on the job to insure timely completion and compliance with the schedule, Owner shall have the right to terminate this Contract and to contract said Work to other persons. In such event, or in the event Contractor abandons the Work or fails to begin the Work, Owner may finish the Work using its own forces or other subcontractors, at its discretion, and charge the cost thereof, in excess of what would have been paid to Contractor under the Agreement, as well as any resulting loss or damage, including damages because of delay or penalties paid by Owner, to Contractor, or against any available retention.

**10. INTERRUPTION OF WORK.** If, as a result of causes beyond the control of Owner, including labor problems, Owner considers it inadvisable to proceed with the Project, Contractor shall immediately cease work upon receipt of written notice to do so from Owner, until such time as Owner determines that work shall recommence, at which time Contractor shall promptly resume work upon notice from Owner. Contractor shall not be entitled to any damages or compensation on account of any such cessation or interruption of work.

**11. CONTINUOUS PERFORMANCE.** Upon notification from Owner, Contractor will begin work on the job within forty eight (48) hours, and will remain constantly and continuously on the job except as agreed in writing with Owner, supervising same by a competent foreman and performing same with competent and appropriately skilled workmen, until it is completed. Contractor shall at all times keep sufficient men on the job, and provide sufficient materials and tools, and schedule such additional shifts or overtime as necessary to insure timely completion.

**12. PERMITS.** The Contractor shall obtain and pay for (as part of the Contract Price) all permits required to complete the Work in accordance with all local, state and federal requirements. Contractor's performance hereunder constitutes a warranty that all of the Work has been performed pursuant to valid permits obtained after full disclosure to the permitting agency, that all inspections have been performed by inspecting agencies, that in the course of such inspections, Contractor showed all Work to the inspectors, and that all governmental approvals were honestly obtained after inspections in which the inspectors had the opportunity to view all matters being approved or inspected.

**13. MATERIALS.** Unless otherwise specified, all materials used by Contractor in the performance of the Work shall be as specified in the Plans and Specifications, shall be furnished, delivered, and installed at Contractor's expense, and shall be new and of first quality and subject to approval of Owner. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Any deviations from specified materials must be approved in writing in advance by Owner.

**14. EQUIPMENT.** In the event that Contractor rents or leases equipment to complete and/or perform the Work, Contractor agrees that it shall be solely responsible for such equipment until it is returned to its source. Such responsibility shall include, but not be limited to, liability, fire, theft, vandalism and use by any unauthorized persons. Contractor shall indemnify Owner, and anyone directly or indirectly employed by Owner, from and against any and all claims relating to or arising from the possession, use or presence on the job site of equipment. Any use of Owner's tools or equipment shall be at the sole risk of Contractor, and Contractor takes same "AS IS" and after satisfying itself that the equipment is in safe and usable condition. Contractor will assume responsibility for, and indemnify Owner against, any claims resulting from such use. Contractor will return all such tools and equipment to Owner in the condition received, and will indemnify Owner for any loss or damage to such items while being used by Contractor. If Owner's personnel operate any tools or equipment for Contractor, Owner's personnel shall be considered employees of Contractor during such operation, whether payrolled by Contractor or not, and Contractor will indemnify Owner against any claims resulting from such operations.

**15. SERVICES PRIOR TO EXECUTION.** To the extent any portion of the Work was performed prior to the date this Contract was executed, all such Work shall be governed by the terms and conditions of this Contract and shall be deemed to be a part of the Work. Contractor shall not be entitled to any compensation for such prior activities and services except as expressly provided herein. If this Contract has been sent or delivered to Contractor, and Contractor begins work without returning a signed copy of the Agreement to Owner, then Contractor shall be deemed to have accepted all of the terms and conditions of this Contract as sent or delivered to Contractor, as if this Contract had been signed and returned to Owner. By starting the Work hereunder, Contractor agrees that contrary or additional terms or conditions set forth on any acceptance or other form provided by Contractor shall be of no force or effect.

**16. CONDITIONS TO PAYMENT.** All funds paid Contractor shall first be used by Contractor to discharge obligations incurred by Contractor in performance of the Work herein contracted. All invoices shall be submitted to Owner no later than the 10th day of each month, and shall show the Job Number, if any. If the Work is on a time and material basis, time sheets and invoices must be supplied and attached to Contractor's invoices. Final payment shall not relieve Contractor of responsibility for faulty materials or workmanship connected with the Work. Unless otherwise specified, Contractor shall correct, repair and remedy any defect in the Work or in the materials or equipment incorporated in the Work installed or supplied by Contractor, regardless of the cause of the defect. If any claims arising out of or in connection with Contractor's performance of the Work are outstanding at the time any payment becomes due, Owner may withhold the amount of such claims until they are settled.

**17. DAMAGES FOR NON-PERFORMANCE.** Contractor represents and warrants that Contractor is experienced and knowledgeable in estimating and bidding of jobs similar to the Work; that Contractor has thoroughly reviewed the Plans and Specifications and this Contract; that the Contract Price represents Contractor's actual and expected cost of labor and materials required to perform the Work, plus a reasonable amount for profit and overhead expense; and that the Contract Price does not result from an artificially low bid. Contractor will be liable to Owner for its costs and expenses (including delay damages) if Owner is required to re-bid the Work because of Contractor's inability or unwillingness to perform the Work at the agreed Contract Price.

**18. INDEMNIFICATION.**

a. Contractor shall indemnify, defend and hold Owner and Owner's management company harmless from and against any and all claims, demands, causes of action, settlements, judgments and expenses, including, but not limited to, attorney's fees and investigative costs, directly or indirectly resulting from personal injury or death, property damage or intangible pecuniary loss, sustained or alleged to have been sustained by any business organization or person, including employees of Contractor and any subcontractors, in connection with the Contractor's (including agents, servants, employees, or subcontractors) fault, negligence, breach of contract, willful misconduct, or violation of law. Contractor shall be proportionately responsible for damages only to the extent caused thereby. In no event shall either party be liable to the other for any punitive, or exemplary damages.

b. If Owner shall pay, or cause to be paid, or become liable to pay, any sums of money for which Contractor is liable or responsible under or by reason of this Contract, including attorney's fees, investigative expenses, and any and all charges and expenses of whatsoever kind and nature, Contractor shall reimburse Owner for such expenses on Owner's written demand, by payment made within ten (10) days of such demand.

c. As used throughout this Contract a requirement that Contractor "indemnify" Owner, means the scope of indemnity and defense described in this Paragraph 18.

d. Contractor releases Owner from any liability for death, injury, or property damage incurred during the performance of the Work.

**19. MECHANIC'S LIENS.**

a. Contractor shall have no right or interest in the Project and hereby waives and releases all liens, stop notice rights or rights of lien now existing or that may hereafter arise, under any present or future law, for work, labor or services performed or materials or documents furnished under this Contract.

b. Contractor agrees to pay promptly for all materials furnished or labor performed in connection with its work performed pursuant to this Contract. Contractor agrees to indemnify, from and against, and to keep the Project free and clear of, any and all claims, liens and liabilities (including costs and expenses of defending such claims) arising or alleged to have arisen from any claim by any laborer, materialman or subcontractor for materials furnished or labor performed in connection with the Work. In that regard, Contractor agrees to execute such affidavits, lien waivers and similar documents as may be required by Owner incident to the making of payments to Contractor under this Contract.

- c. Contractor shall at all times pay all federal and state taxes, withholdings, and subventions having to do with the performance of the Work or the workers performing same, and shall further pay all amounts contractually due to any union or union health or pension fund relating to labor performed on this job.
- d. In the event that any lien is placed upon the Property as a result of Contractor's activities, Contractor shall indemnify Owner from all liability thereunder, shall forthwith take all necessary action to cause the removal of the said lien, and on request of Owner, shall provide a bond for the removal of the said lien. In the event that Contractor fails to do so within ten (10) days after notice from Owner, then Owner may take any action necessary to remove the lien, including the posting of a bond or the payment of a settlement to the claimant, all of which shall be at the expense of Contractor.
- e. Owner has the right to withhold payment for any part of the Work if Contractor fails to provide satisfactory evidence that all current bills for labor, materials, and other job-related liabilities of Contractor have been paid, and Owner has the right to require lien releases from laborers, unions, materialmen, and subcontractors as a condition of any payment.
20. **DISPUTES.** Should a dispute arise during the performance of the Work between Contractor and Owner concerning the Work, Contractor shall continue the Work in accordance with this Contract; provided, however, that Owner shall continue to make payment for services in accordance with this Contract for that portion of the Work not in dispute.
21. **TERMINATION OF CONTRACT.**
- a. Owner shall have the right to cancel and terminate this Contract with or without cause at any time upon ten (10) days written notice to Contractor.
- b. If the property is sold, the contract terminates on the date of sale unless the contract is assumed by the new Purchaser of the property.
- c. In the event Owner cancels or terminates this Contract without cause, Contractor shall be paid for all Work performed through the effective date of the cancellation or termination, with such payment to be prorated as of the effective date of the cancellation or termination. Such payment shall be Contractor's sole remedy for such termination or cancellation, and Contractor waives any and all claims Contractor may have that such termination or cancellation was wrongful in any respect.
- d. In the event Owner cancels or terminates this Contract for cause, which shall be deemed to exist if, in the sole opinion of Owner:
- 1) Contractor fails to provide competent and adequate labor to do the Work called for in this Contract on a timely basis, or
  - 2) Contractor fails to furnish sufficient quantities of material to keep up with the progress of the Work, or
  - 3) Contractor fails to perform the Work as scheduled, or
  - 4) Contractor fails to pay any subcontractors, materialman or other individual or entity to whom Contractor is obligated on the Work, whether or not such failure results in the filing of a mechanic's or materialman's lien against the Project, or
  - 5) Contractor fails to meet the requirements or specifications of the Work on this Contract, then
- Contractor shall not be entitled to receive any further payment until the Work has been completed, and Owner shall deduct from any such further payment all damages suffered by Owner, whether direct, indirect, consequential or otherwise. If the cost of completing Contractor's Work, plus the amounts previously paid by Owner to Contractor under this Contract exceeds the Contract price for the Work, Contractor shall pay such excess to Owner on demand.
- e. If the Contractor is adjudged bankrupt or becomes a debtor under any chapter of the Bankruptcy Code, or files a petition for relief under any chapter of the Bankruptcy Code, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of any provision of this Contract, Owner may terminate this Contract immediately on giving written notice of such termination to Contractor, and Owner shall have the remedies specified in Subparagraph c above.
22. **DEFAULT BY OWNER.** Owner shall not be in breach or default of this Contract unless and until Owner has been given sixty (60) days notice of the act or omission alleged to constitute the breach or default, and has within that time failed to cure the breach or default.
23. **WAIVER.** No waiver of any provision hereof shall be enforced against Owner unless Owner shall have agreed in writing to waive said provision, and no waiver of any term or condition hereof, or any breach or violation of or default under such terms and conditions shall prevent Owner from enforcing the same or other terms or conditions upon any subsequent breach thereof.
24. **WARRANTY.** Contractor fully warrants that all products supplied in connection with the Work and this Contract are new and of good workmanship and quality, free of faults and defects and in conformity with the Plans and Specifications and the Contract Documents. Contractor guarantees all workmanship, labor, and materials against defects. Upon written notice from Owner that products or workmanship are not satisfactory, Contractor agrees within ten (10) days after notice to begin and proceed with reasonable diligence to repair said products or workmanship in a satisfactory manner at its own cost and expense. Contractor further agrees that if Owner notifies Contractor that such defects are a danger to life or property, or interfering with Owner's contractual and/or business relations with others, including tenants, Contractor will treat such repairs as an emergency and begin correction of the defects as soon as possible, and in any event within forty eight (48) hours of notice. If Contractor fails to proceed as above stated, Owner may, without further notice to Contractor, proceed to arrange for such work to be done at the expense of the Contractor, which shall pay for same within five (5) days of receipt of bill from Owner, or Owner may deduct payment from monies not yet paid to Contractor. If in repairing its own work Contractor damages the work of any other's, repairing and paying for repairs of such other work is included in Contractor's responsibility.
25. **INSURANCE.** At its expense, Contractor shall maintain in full force and effect, the following policies of insurance:
- a. Workers Compensation insurance in compliance with the laws of the State of California;
  - b. Comprehensive General Liability, Bodily Injury and Property Damage, including Broad Form Property Damage coverage (including Completed Operations), Completed Operation/Products coverage, Blanket Contractual coverage, Independent Contractors coverage, Personal Injury coverage, Errors and Omissions coverage, contractual liability coverage, and where any type of underground work is applicable, XCU, in an amount not less than \$2,000,000 Combined Single Limit bodily injury and property damage liability. Contractor's indemnity obligations to Owner shall be insured under such Comprehensive General Liability insurance.
  - c. Automobile Liability insurance on all owned, non-owned, hired or leased automotive equipment used in the performance of the Work in an amount not less than a combined single limit of \$1,000,000 for bodily injury and \$100,000 for property damage.
  - d. Contractor may also carry such other insurance as it may desire for its own protection.
  - e. All insurance which Contractor is required to carry hereunder shall be carried with an insurer or insurers who are satisfactory to and approved by Owner, under policies satisfactory to and approved by Owner, and shall name Owner as an additional insured, and shall be primary, with Owner's insurance policies non-contributing.
  - f. Contractor shall submit to Owner Certificates of Insurance as evidence of the coverages required in this Paragraph. If the insurance certificates are not submitted within fifteen (15) days from the date of this Contract, this Contract may be canceled immediately at Owner's option. Each Certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without at least thirty (30) days prior written notice, except for non-payment which shall be ten (10) days prior written notice, to be delivered by certified or registered mail to Owner. Should any policy be canceled before final payment to Contractor and Contractor fails to immediately procure other insurance as specified, Owner may, but is not required to, procure such insurance and deduct the cost from any sum due Contractor under this Contract (or bill Contractor for such sum).
26. **ROYALTIES AND PATENTS.** If any design, device, material or process covered by patent or copyright is used by Contractor, Contractor shall obtain all necessary licenses and authorizations to use the same, and shall indemnify Owner from and against any and all loss or expense arising out of or in connection with the use of such device, design, material or process.
27. **STATUS OF CONTRACTOR.** Contractor acknowledges and agrees that it is acting under this Contract solely as an independent contractor, and not as a partner, joint venturer or employee of Owner. Contractor shall have no authority to act for, bind, or obligate Owner in any manner whatsoever, except as specifically authorized in writing by Owner. No contractual relationship shall be entered into between Contractor and any other person in connection with the Project covered by this Contract except as agreed to by Owner in writing.
28. **RELEASE OF INFORMATION.** Contractor shall not, without the prior written approval of Owner, make any news releases, public announcements, denials or confirmations relating to the subject matter of this Contract, or disclose any privileged or confidential information obtained in connection with this Contract to any third party without the prior written consent of Owner.
29. **GENERAL PROVISIONS.**
- a. **Binding Contract.** Owner and Contractor agree that this Contract is to be binding upon all successors, permitted assigns, heirs, executors and administrators (but this section does not authorize any assignments otherwise prohibited by this Contract). The liability of Owner hereunder, and any redress against Owner, is limited to the Owner's equity interest in the Project and in no event shall any other property or assets of Owner, its parents, its subsidiaries, or its shareholders, directors, officers, agents, employees, partners, joint venturers or others associated with Owner, be subject to any claim hereunder. The obligations of Owner under this Agreement are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, and of Owner's parent companies, subsidiaries, partners, shareholders, or joint venturers, nor Owner's investment, asset, and/or property managers, including but not limited to Orchard Management Services, and the respective trustees, directors, officers, partners, beneficiaries, stockholders, employees, or agents of any of the foregoing or of Owner.
  - b. **Inspection And Submission Of Samples.** Contractor shall furnish Owner with access to the Work, and with every opportunity and facility for inspection of the Work. Contractor shall deliver to Owner on request, without charge, properly identified test specimens of materials required by the Plans and Specifications or to be used in the Work. If any inspection is required by Owner or the Plans and Specifications, and such part of the Work is covered by Contractor prior to inspection, it must be uncovered at Contractor's expense.

c. **Reports And Audits.** Contractor will supply Owner with such daily reports, orally or in writing, as are from time to time requested by Owner. At Owner's request, Contractor will allow Owner or its representatives the right to review and audit any of Contractor's books and records relating to performance of the Work or to this Contract.

d. **Observance Of Owner's Rules, Regulations, And Directions.** Contractor shall at all times obey and comply with all of Owner's rules, regulations, and directions relating to the job, and to jobsite safety (but nothing set forth herein shall diminish Contractor's responsibility for maintenance of a safe jobsite and safety during the performance of the Work). Contractor shall forbid the use or consumption of alcoholic beverages or drugs on the jobsite at any time, and shall not utilize any workers who are under the influence of drugs or alcohol at any time in regard to the work or on the jobsite. If Owner gives notice to Contractor of a violation of the above rules, Contractor shall forthwith remove the offending worker from further participation in the performance of the Work.

e. **Responsibility For Contractor's Tools And Materials.** Contractor shall be responsible to protect its own tools and materials, until attached to a structure on the Property, and accordingly, Owner shall not be liable to Contractor for any theft, loss, or damage to tools, materials, or other property of Contractor used on the job or present on the job site.

f. **Care For Property.** Contractor shall take proper care for all buildings, construction, sidewalks, curbs, gutters, plants, materials, tools and other property of Owner or other subcontractors, and other property located on the Property, and shall be responsible to pay for any waste or damage occurring to such property which is caused by Contractor or its activities, regardless of whether Contractor is negligent.

g. **Removal From Jobsite.** In the event that, under any provision of this Contract, Owner removes Contractor from the jobsite, Owner may and shall take possession of all materials, appliances, tools, and equipment on the site, or materials in preparation wherever located, and Contractor shall take all necessary action to allow Owner to do so. Under such circumstances, Owner may complete the work with its own forces, or through others, and Contractor will pay to Owner any excess of expense of doing so over what would have been paid hereunder to Contractor for the said performance.

h. **Bonding.** If bonding is required in the Plans and Specifications, then Contractor shall provide the bond required by Owner for faithful performance and/or labor and material. In the event that Owner requests a bond after the execution of this Contract, and which was not a part of the price hereof, then Contractor shall obtain same and Owner shall pay for the said bond as an extra, but if Contractor is unable to bond as requested, Owner may terminate this Contract without further liability. Bond(s) shall be executed by a corporate surety licensed as such and acceptable to Owner, and shall be in a form acceptable to Owner. It is agreed that no change, alteration, or modification in or deviation from this Contract or the Plans and Specifications shall release or exonerate, in whole or in part, any surety of any bond given in connection with this Contract or the Work.

i. **Picketing And Union Activities.** In the event that there is picketing at the jobsite and Owner establishes a separate gate for the use of Contractor, then Contractor shall be required to complete the Work and man the job without regard to any pickets at the said second gate. Contractor shall in no event be excused from performance of any obligations hereunder by any matters related to labor unions.

j. **Governing Law.** This Contract shall be governed by the laws of the State of California.

k. **Assignment.**

- 1) Contractor shall not assign or transfer any interest in this Contract or in any monies due or to become due hereunder either voluntarily or involuntarily or by operation of law without the written consent of Owner. A change of more than twenty percent (20%) on a cumulative basis of any ownership interest in Contractor shall constitute an assignment of this Contract.
- 2) Owner may assign and/or transfer its interest in this Contract at any time without the consent of Contractor, including, without limitation, to a lender as collateral security for a loan. On such assignment, Owner shall be relieved of any and all further obligations to Contractor under this Contract, and Contractor agrees to look solely to the assignee or transferee of this Contract in the event of any default under this Contract.

l. **Place Of Making; Place Of Performance.** This contract is made in Santa Clara County. It is not to be considered made until a signed copy of the Agreement attached hereto is received at Owner's offices in Santa Clara County. This contract is to be performed in Santa Clara County, by the payment of fees set forth herein at Owner's Santa Clara County offices, and by Contractor's performance of planning and consideration in said County, in addition to any physical work performed in the County. Contractor agrees that if Contractor shall bring any suit against Owner relating hereto, it will bring said suit only in Santa Clara County, and in the event suit is brought by any party, Contractor waives the right to transfer the action out of Santa Clara County, and agrees that if brought elsewhere it shall immediately be transferred to Santa Clara County.

m. **Notices.** All notices given pursuant to this Contract shall be in writing and shall be deemed given when personally delivered or, in the alternative, mailed by registered or certified mail, postage prepaid, or sent by recognized overnight delivery service such as Federal Express, to the Owner or Contractor at the addresses indicated in Paragraph 1 above or to such other address as may be specified from time to time by notice given by Owner or Contractor. Notice is deemed given on delivery to the recipient to a competent person apparently in charge thereof (including a receptionist); three (3) days after deposit in the U.S. Mail; and on the date of delivery as shown by the receipt of the overnight delivery service.

n. **Severability.** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

o. **Entire Agreement; Amendments; No Oral Agreements.** This Contract represents the entire and integrated agreement between Owner and Contractor and supercedes all prior negotiations, representations or agreements, written or oral. It covers in full and contains all of the terms of each and every agreement of every kind or nature whatsoever between Owner and Contractor concerning the Work and this Contract, and all preliminary negotiations, proposals, agreements, and bids of any kind or nature are merged in this Contract. No oral agreements have been made other than as set forth in this Contract, and Contractor acknowledges that no representations or warranties of any kind or nature not specifically set forth herein have been made. Neither this Contract nor the Work can be modified or changed except by a writing signed by Contractor and Owner, and any attempted oral modifications of this Contract or the Work shall be void and of no force or effect.

p. **Attorney's Fees.** If there is any litigation or arbitration between the parties arising from the Agreement or the relationship between the parties to which the Agreement relates, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party and all of the prevailing party's costs of bringing and maintaining the proceeding, whether the said costs are normally considered to be taxable costs or not, including all expert fees reasonably incurred by the prevailing party. Such fees and costs may be ordered as party of the judgment in the proceeding, or may be collected in a separate proceeding.

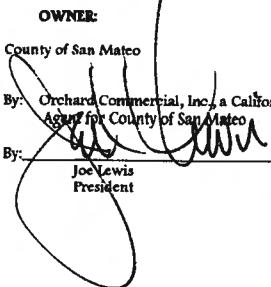
q. **Survival.** All representations, warranties and indemnifications made or given by Contractor herein, together with any and all causes of action and other rights and remedies which Owner may have as a result of breach of any term or condition, representation or warranty of this Contract, shall survive any expiration or termination of this Contract.

r. **Warranty of Authority.** Each person signing this Agreement on behalf of a corporation, partnership, or other legal entity warrants that he/she is authorized to do so pursuant to authority properly granted by the said entity, according to its rules, regulations, and procedures.

s. **Delay, Acts Of God, Acts Of Government.** Owner shall not under any circumstances be responsible for any delays or damages caused by acts of the Contractor, or third parties, strikes, lockouts, force majeure, government action or inaction, wars, natural catastrophes, earthquakes, floods, acts of God, weather, or other forces beyond Owner's control.

t. **Non-Discrimination Policy.** Contractor shall not deny the benefits of this Contract to any person nor discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or any other applicable protected classification. Contractor will take affirmative action to insure that the evaluation and treatment of employees are free from such discrimination. Contractor, unless exempt, further agrees to abide by the terms of all applicable federal, state, and local non-discrimination provisions, including but not limited to 41 CFR Sec. 60-1.4, such non-discrimination provisions being incorporated herein by reference. Contractor shall include this Non-Discrimination Clause in all subcontracts to perform work under this Contract, and will notify all labor organizations with which it has a collective bargaining agreement of the obligations under this paragraph.

WHEREFORE, Owner and Contractor have executed this Contract as of the Contract Date.

**OWNER:**  
 County of San Mateo  
 By:   
 Orchard Commercial, Inc., a California corporation  
 Agent for County of San Mateo  
 By: Joe Lewis  
 President

**CONTRACTOR:**  
 Kone Inc.  
 By: Brian McLemore

**EXHIBITS**

- Exhibit A Synopsis of Pricing and Scope of Work
- Exhibit B Owner and Additional Insured Information and Invoice Information

**EXHIBIT A**

**KONE – SERVICE & REPAIR ORDER**

February 21, 2013  
One Circle Star  
Proposal A

*Dedicated to People Flow*



**TO:**  
**ORCHARD COMMERCIAL**  
2055 Laurelwood Dr  
Suite 130  
Santa Clara, CA 95004

**FROM:**  
**Main Office**  
15021 Wicks Boulevard  
San Leandro, CA 94577  
T: (510) 351-5141  
F: (510) 351-5341  
24/7 Hotline: (877) 276-8891

**PROJECT LOCATION:**  
One Circle Star  
San Carlos

**ACCOUNT MANAGER:**  
Brian McLemore  
T: (925) 580-6692  
F: (510) 351-5341  
E: [Brian.McLemore@KONE.com](mailto:Brian.McLemore@KONE.com)

**I. SCOPE OF WORK**

KONE will perform the following items:

**Perform Pre- Maintenance repairs on 3 elevators**

Elevator will be secured and removed form service

Hositway doors (2) on the following entrances will be removed and transported to an off site fabricator

1st Floor Left Elevator  
3<sup>rd</sup> Floor Middle Elevator

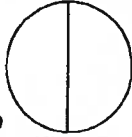
Fabricator will remove the existing stainless steel door skins and replace with new  
(#4 Stainless Steel)

Doors will be returned and reinstalled

Elevators will be inspected and the flowing work performed  
Adjust doors for proper operation  
Replace fixture lamps as needed  
Replace batteries in Emergency Light / Alarm Bell Units  
Tighten leaky Victaulic fittings in machine room  
Test Fire Service functions for proper operation

Elevator will be returned to service

**End Scope of Work**



Please Initial

**II. PRICE**

**Total: \$16,250.00**  
**(Sixteen Thousand Two -Hundred Fifty and 00/100 Dollars)**

**A downpayment of \$8,000 will be required before any work is performed**

Our price includes applicable labor, material and permit fees. This proposal is not binding on KONE until approved by an authorized KONE representative. Pricing is subject to KONE's attached Terms and Conditions for tendered repairs and, by signing below. Purchaser hereby agrees to these Terms and Conditions. Price is valid for 30 days from date of this proposal.

During the course of our work, should deficiencies, code violations, or other issues be discovered, we will promptly notify Purchaser and provide a separate quotation to correct these issues.

**2nd<sup>nd</sup> Payment**

Upon receipt of invoice at completion of job

End Price

*Rider # 1 is attached and 2 part of this agreement*

ACCEPTANCE: The foregoing Agreement is hereby signed and accepted in duplicate.

Respectfully submitted by.  
KONE Inc.

CUSTOMER - Approved By Authorized Representative

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Brian McInore, Senior Account Manager

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Approved By) Authorized Representative

\_\_\_\_\_  
(Print Title)

*Senior Sales Consultant*  
\_\_\_\_\_  
Title

Date: \_\_\_/\_\_\_/\_\_\_

Date: 3/13/2013



March 5, 2013

Page 3 of 3

Dedicated to People How 

## TERMS AND CONDITIONS

This proposal is subject to the following terms and conditions, all of which are hereby agreed to:

Purchaser agrees to pay the amount of any tax imposed by any existing law, or by any law enacted after the date of this Agreement, based upon the transfer, use, ownership or possession of the equipment involved in the services rendered herein. KONE reserves the right to discontinue our work at anytime until we have assurance, satisfactory to us, that payments will be made as agreed. Final payment shall become due and payable upon completion of the work described in this Agreement. Failure to pay any sum due to KONE within thirty (30) days of the invoice will be a material breach. A delinquent payment charge calculated at the rate of 1 1/2 % per month, or if such rate is usurious then at the maximum rate under applicable law, shall be applied to the delinquent payments. In the event of default on the payment provisions herein, Purchaser agrees to pay, in addition to any defaulted amount, all attorney fees, collection cost or court costs in connection therewith. The machinery, implements and apparatus furnished hereunder remain KONE's personal property and KONE retains title thereto until final payment is made, with right to retake possession of the same at the cost of the Purchaser if default is made in any of the payments, irrespective of the manner of attachment to the realty, the acceptance of notes, or the sale, mortgage or lease of the premises.

The states requiring notice prior to filing a lien, this notice requirement is hereby complied with

KONE shall not be liable for damage or delay caused directly or indirectly by accidents, embargoes, strikes, lockouts, work interruption or other labor dispute, fire, theft, floods, or any cause beyond KONE's control. Regardless of the type of delay, KONE shall not be liable for any indirect, consequential, or special damages including but not limited to fines, penalties, loss of profits, goodwill, business or loss of use of equipment or property.

Purchaser agrees to provide safe access to the equipment and machine room areas. Should conditions develop beyond KONE's control, making the building or premises in which KONE's personnel are working unsafe, KONE reserves the right to discontinue work until such unsafe conditions are corrected. Should damage occur to KONE's material or work on the premises, by fire, theft or otherwise, Purchaser shall compensate us therefore.

KONE undertakes to perform this work in conformity with the usual applied codes and standards, however, no guarantee can be made that all code violations or defects have been found. This work is not intended as a guarantee against failure or malfunction of equipment at any future time.

It is agreed and understood that KONE is not responsible for damages, either to the vertical transportation equipment or to the building, or for any personal injury or death, arising from or resulting from any code required safety tests performed on this equipment.

Nothing in this agreement shall be construed to mean that KONE assumes any liability of any nature whatsoever arising out of, relating to or in any way connected with the use or operation of the equipment described above. Purchaser shall be solely responsible for the use, repair and maintenance of the equipment and for taking such steps including but not limited to providing attendant personnel, warning signs and other controls necessary to ensure the safety of the user or safe operation of the equipment.

Neither KONE nor its affiliates, subsidiaries or divisions shall be responsible or liable for any damages, claims, suits, expenses and payments on account of or resulting from any injury, death or damage to property arising or resulting from the misuse, abuse or neglect of the equipment herein named or any other device covered by this contract.

Purchaser shall at all times and at Purchaser's own cost, maintain a commercial general liability policy covering bodily injury and property damage with the limits of liability Purchaser's customarily carry (naming KONE as additional insured) arising out of the services provided under this Authorization and/or the ownership, maintenance, use or operation of the equipment described herein.

It is agreed and understood that Purchaser is solely responsible for ongoing maintenance and care of the equipment described above. IT IS EXPRESSLY UNDERSTOOD, IN CONSIDERATION OF OUR PERFORMANCE OF THIS WORK THAT PURCHASER ASSUMES ALL LIABILITY FOR THE USE, MAINTENANCE OR OPERATION OF THE EQUIPMENT DESCRIBED ABOVE AND FOR ANY INJURY, INCLUDING DEATH, TO ANY PERSON OR PERSONS AND FOR DAMAGE TO PROPERTY OR LOSS OF USE THEREOF, ON ACCOUNT OF OR RESULTING FROM THE PERFORMANCE OF THE WORK TO BE DONE HEREIN, AND AGREES TO THE EXTENT PERMITTED BY LAW TO DEFEND, INDEMNIFY AND HOLD HARMLESS KONE, ITS OFFICERS, DIRECTORS AND EMPLOYEES FROM ALL DAMAGES, CLAIMS, SUITS, EXPENSES AND PAYMENTS ON ACCOUNT OF OR RESULTING FROM ANY SUCH INJURY, DEATH OR DAMAGE TO PROPERTY, EXCEPT THAT RESULTING FROM THE SOLE NEGLIGENCE OF KONE INC. Purchaser hereby waives any and all rights of recovery, arising as a matter of law or otherwise, which Purchaser might now or hereafter have against KONE INC.

KONE warrants the materials and workmanship of the equipment for 90 days after completion. Purchaser's remedy is limited to repair or replacement of a defective part, in KONE's sole discretion. The warranty is limited to the replacement or repair of the part itself, and excludes labor. In no event shall KONE be responsible for damage due to normal wear and tear, vandalism, abuse, misuse, neglect, work or repairs or modifications by others, or any other cause beyond the control of KONE. KONE disclaims any other warranty of any kind, either expressed or implied, including without limitation the implied warranties of merchantability or fitness for a particular purpose, or noninfringement.

Unless otherwise agreed, it is understood that the work shall be performed during regular working hours of regular working days of the elevator trade. If overtime work is mutually agreed upon and performed, the additional price, at KONE's usual rates for such work, shall be added to the contract price herein named.

It is expressly understood and agreed all prior agreements written or verbal regarding the subject matter herein are void and the acceptance of this Agreement shall constitute the contract for the material and work specified in this Agreement. Any changes to this Agreement must be made in writing and signed by both parties.

The terms and conditions set forth herein shall constitute the complete agreement for any work performed, AND shall prevail over and supersede any terms and conditions contained in any documents provided by the Purchaser.

The Purchaser does hereby agree the exclusive venue for any dispute between the parties shall be in the county of Rock Island, IL.

End Terms and Conditions

**EXHIBIT B**

**OWNER:**

County of San Mateo

**ADDITIONAL INSURED:**

County of San Mateo, as Owner and Orchard Commercial, Inc., as Managing Agent

**ALL INVOICES SHOULD BE ADDRESSED AS FOLLOWS:**

ORCHARD MANAGED ACCOUNT #7700  
C/O ORCHARD COMMERCIAL, INC.  
ATTN: ACCOUNTING  
2055 LAURELWOOD ROAD, SUITE 130  
SANTA CLARA, CA 95054

CONTRACTOR SHALL PRESENT TWO (2) COPIES OF THE MONTHLY INVOICES FOR THE BASE CONTRACT. ALL INVOICES SHALL BE ITEMIZED TO SHOW MATERIAL AND LABOR COSTS. ANY WORK PERFORMED AS "EXTRA WORK" SHALL BE BILLED ON A SEPARATE INVOICE (TWO COPIES) WITH DETAILING OF THE LOCATION, TIME AND MATERIALS INVOLVED IN EXTRA WORK. ANY INVOICE RECEIVED LATER THAN SIXTY (60) DAYS AFTER COMPLETION OF WORK WILL NOT BE PAID. ALL INVOICES FOR THE FISCAL YEAR MUST BE SUBMITTED BY DECEMBER 2 OF THAT YEAR. ANY INVOICES SUBMITTED AFTER DECEMBER 2 WILL NOT BE PAID. ALL INVOICES SHALL REFERENCE THE PROJECT NUMBER, PROPERTY MANAGER AND ORCHARD PROPERTIES



RIDER NO. 1

The parties hereby agree to be bound to the terms contained in the Agreement between KONE Inc. and County of San Mateo, as Owner, and Orchard Commercial, Inc, as Managing Agent (the "Agreement"), together with those terms contained in this Rider. Provided, however, that notwithstanding any terms contained in the Agreement to the contrary, in the event of conflict between terms contained in the Agreement and terms contained in this Rider No. 1, the terms in this Rider shall supersede and prevail.

1. Neither party shall be liable for incidental or consequential damages.
3. Add the following language for clarification: "Entire paragraph regarding indemnification and defense applies only to the extent that such bodily injury or property damage was caused by the negligence of this Contractor (or its subordinates), and not to the extent caused by others."
3. In lieu of the additional insured requirement, KONE will provide an Owner's and Contractor's Protective Liability (OCPL) policy.

ACCEPTED:  
ORCHARD COMMERCIAL

KONE INC.

BY: \_\_\_\_\_

BY:  \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: Senior Sales Consultant

DATE: \_\_\_\_\_

DATE: 3/13/13

KONE CONTRACT #

