

## MASTER CONTRACTOR/SERVICES AGREEMENT

**THIS AGREEMENT** is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1st Avenue, Delray Beach, FL 33444 and Kone Inc., an Illinois Corporation, (hereinafter referred to as "Contractor"), authorized to do business in Florida, whose address is 3421 Enterprise Way Miramar, Florida 33025, this 29<sup>th</sup> day of August, 2019.

**WHEREAS**, the City desires to purchase services related to elevator maintenance, inspection, and modernization; and

**WHEREAS**, the City desires to procure these services from Contractor, utilizing existing contract prices provided to U.S. Communities Government Purchasing Alliance, pursuant to its solicitation number EV2516, for Elevator and Escalator Maintenance and Services; and

**WHEREAS**, in accordance with solicitation number EV2516, U.S. Communities Government Purchasing Alliance, entered into a six (6) year agreement with Contractor for services effective December 1, 2018 through November 30, 2024, with the option to renew for an additional five years; and

**WHEREAS**, the City desires to purchase services from Contractor on the same terms, conditions, and pricing provided under solicitation number EV2516, subject to the terms and conditions of this Agreement, the City's Purchasing ordinance, and Florida law; and

**WHEREAS**, the Contractor agrees to extend the terms, conditions, and pricing of solicitation number 18C-018L to the City, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

1 The above recitals are true and correct and are incorporated herein by reference.

2 The Contractor shall provide to the City Elevator Maintenance, Inspection, Modernization and Related Services for the City, in accordance with and pursuant to the same terms, conditions, and pricing of solicitation number EV2516 procured by U.S. Communities Government Purchasing Alliance.

3 This Agreement shall terminate on November 30, 2024, unless the Master Intergovernmental Cooperative Purchasing Agreement exercises its option to renew. This Agreement shall automatically renew pursuant to the same terms and conditions upon the proper execution of a renewal option by the Lead Public Agency.

4 The City, at its sole discretion, reserves the right to terminate this Agreement with or without cause immediately upon providing written notice to Contractor. Upon receipt of such notice, the Contractor shall not incur any additional costs under the Agreement. The City shall be liable only for reasonable costs incurred by Contractor prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

5 The Contactor certifies that the price and rate represents the lowest price and rate for the products and services of any contract between the Contractor and any other governmental entity within the State of Florida.

6 Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For CITY:

City of Delray Beach  
100 N.W. 1st Avenue  
Delray Beach, Florida 33444  
Attention: City Manager

For CONTRACTOR:

Kone, Incorporated  
3421 Enterprise Way  
Miramar, FL 33025  
Attn: Bruce Zenlea, General Manager

7 Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

8 This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. Should either party seek court intervention as it relates to this contract, each party shall be responsible for its own attorney's fees and costs.

**9 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE**

**CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.**

Contractor shall comply with public records laws, specifically to:

- a. Keep and maintain public records required by the City to perform the service.
- b. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
- d. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- e. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

10 Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this

Agreement justifying its termination.

11 The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

12 The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. Terms and Conditions of U.S. Communities Government Purchasing Alliance Solicitation number EV2516.
- c. Contractor's response to solicitation number EV2516 and any subsequent information submitted by Contractor during the evaluation and negotiation process.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City and Contractor executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson  
Katerri Johnson, City Clerk

BY: [Signature]  
Neal de Jesus, Interim City Manager

Approved to form for legal sufficiency:

[Signature]  
Lynn Gein, City Attorney

CONTRACTOR

BY: [Signature]  
Bruce Zentka  
Printed Name  
Branch Manager  
Title

(SEAL)

STATE OF Florida

COUNTY OF Broward

The forgoing instrument was acknowledged before me this 6 day of August, 2019, by Bruce Zentka, as Branch Mgr (name of officer or agent, title of officer or agent), of Kone Inc. (name of corporation acknowledging), a Delaware (state of place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced N/A (type of identification) as identification.

[Signature]  
Notary Public - State of Florida

