



KONE People Flow - Solution for You

- Eco-efficient
- Reliable
- Attractive



12/18/2018

KONE Inc.
Elevators & Escalators

3421 Enterprise Way
Miramar, Florida, 33025
Mobile 9548425409
Work
ricardo.escobar@kone.com
www.kone.us

Dear Susan Goebel-Canning,

We are pleased to enclose, for your review and consideration, KONE's proposal to modernize your equipment located at the following address for the amount of \$338,266.13:

Old School Square Parking Garage
91 NE 1st Ave.
Delray, Florida

Please know that we are available to assist you in coordinating the work by others as further described in our "Bid Attachment B". Should you have any questions or require additional information, please feel to contact me directly. We look forward to hearing from you and working together on this project.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ricardo", is displayed on a light gray rectangular background.

Ricardo Escobar
Sales Executive - Modernization
KONE Inc.

1 Solution Specification

Technical Equipment Data / Elevators 1 & 2

Rated load	3500 lbs
Rated speed	125 fpm
Travel height	55 ft 0 in
Number of floors	5

Offered Components

Door Panels	New car door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour.
ReNova Door Operator	<p>A closed loop permanent magnet PWM high-performance door operator shall be provided to open and close the car and hoistway doors simultaneously. Door movement shall be cushioned at both limits of travel. An electric contact shall be provided on the car at each car entrance to prevent the operation of the elevator unless the car door is closed. The door operator shall be arranged so that, in case of interruption or failure of electric power, the doors can be readily opened by hand from within the car, in accordance with applicable code.</p> <p>Emergency devices and keys for opening doors from the landing shall be provided as required by the local code. Doors shall open automatically when the car has arrived at or is leveling at the respective landings. Door shall close after a predetermined time interval or immediately upon pressing of a car button. A door open button shall be provided in the car. Momentary pressing of this button shall reopen the doors and reset the time interval. Door hangers and tracks shall be provided for each car door. Tracks shall be contoured to match the hanger sheaves. The hangers shall be designed for power operation with provisions for vertical and lateral adjustment. Hanger sheaves shall have polyurethane tires and pre-lubricated sealed-for-life bearings.</p>
Curtain of Light	The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.
KCM831 Hydraulic Controller	KONE KCM831 is a modular modernization solution for elevator control and electrical systems, based on the latest in control technology. This replaces outdated technology such as relays and older electronic systems, improving the levels of performance, reliability, safety and energy efficiency of your elevator. The modular structure of KONE KCM831 is designed to correctly interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.

A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading. Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, troubleshooting, and adjusting without requiring the use of an outside service tool.

Field Pipe & Accessories

New field pipe and or accessories shall be provided as required.

Hydraulic Power Unit

A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.

Control valves, including safety check valve, up direction valve with high pressure relief including up leveling and soft stop features, lowering valve including down leveling and manual leveling feature, will be mounted in a compact unit assembly. A valve, designed to shut off the flow of oil between the cylinder and the Power Unit, will be provided in the oil line in the machine room. Automatic two-way leveling will be provided to automatically stop and maintain the car approximately level with the landing, regardless of change in load.

An up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective.

Two (2) manual shut off valves will also be provided.

ReVive 500, 600

New KONE car & hall signalization shall be provided per code compliance.

Layout Drawings

Mechanical Layout Engineering - Machine Room Only

Cab Interiors

A Cab interior allowance of \$15,000 per elevator has been included.

Turn-key scope

Scope for turn-key project detailed on the next page

TURN-KEY SCOPE OF WORK INCLUDED:

1. We have included furnishing and installing:
 - a. Main line safety switch with rejection clips and RK5 fuse. (Size of disconnect is based on existing Motor sizes)
 - b. New cab car light safety switches.
 - c. Code compliance machine room light fixtures with protective covers
 - d. GFI receptacles in machine room.
 - e. GFI receptacles in each pit.
 - f. Signal wire to the Existing ATS
 - g. Lowering relays
 - h. New hoist way lights in each pit.
 - i. Dedicated earth grounds per elevator machine room
 - j. Phone conduit with wire (connections by others)
 - k. Air conditioner connection for two (2) 1 ton A/C (add price for A/C see below)
 - l. Permit provided with this proposal (please allow 4 weeks after the owner information is submitted for permitting)
 - m. Price is Base on re-using main line feeders. (Based on existing motor sizes)
 - n. Labels on all disconnects

Machine room Mechanical work

1. **We have included furnishing and installing:**
 - a) Two (2) 1-ton mini split.
 - b) Two (2) refrigeration line set.
 - c) Two (2) drain line connection.
 - d) Two (2) wall mount condenser stands.
 - e) Two (2) Line Cover
 - f) One year service contract.
 - g) Permit provided with this proposal.

Fire Alarm Work

Allowance of \$15,000 has been included:

We have included furnishing and installing:

- a) Allowance for fire alarm recall only
- b) Testing, engineering, pre-inspection and elevator inspection for each elevator
- c) Conduit & wire from the existing device to the new controllers

2 DETAILED SPECIFICATION

Elevators 1 & 2

Door Panels



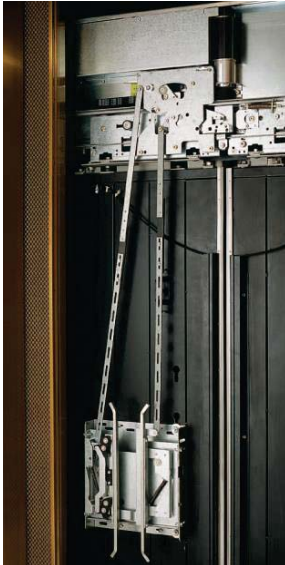
Number of floors served
Car Panel Finishing Material

Door type
Door width [in]
Door Height (Inches)
Qty of sets of Car door panel
(per car)

New door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour.

5
New car door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour. Finish will be #4 stainless steel.
Single speed center opening
42
84
1

ReNova Door



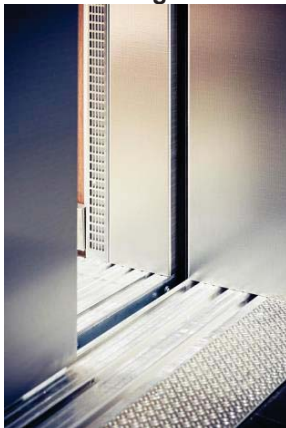
Number of floors served
Hoistway NEMA Rating
Front/rear entrances
Number of front openings
Door type
Door width [in]

A closed loop permanent magnet PWM high-performance door operator shall be provided to open and close the car and hoistway doors simultaneously. Door movement shall be cushioned at both limits of travel. An electric contact shall be provided on the car at each car entrance to prevent the operation of the elevator unless the car door is closed. The door operator shall be arranged so that, in case of interruption or failure of electric power, the doors can be readily opened by hand from within the car, in accordance with applicable code.

Emergency devices and keys for opening doors from the landing shall be provided as required by the local code. Doors shall open automatically when the car has arrived at or is leveling at the respective landings. Door shall close after a predetermined time interval or immediately upon pressing of a car button. A door open button shall be provided in the car. Momentary pressing of this button shall reopen the doors and reset the time interval. Door hangers and tracks shall be provided for each car door. Tracks shall be contoured to match the hanger sheaves. The hangers shall be designed for power operation with provisions for vertical and lateral adjustment. Hanger sheaves shall have polyurethane tires and pre-lubricated sealed-for-life bearings.

5
Hoistway rating is NEMA 1.
Front entrances only
5
Single speed center opening
42

Curtain of Light

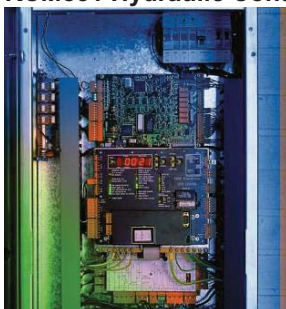


Number of floors served
Hoistway NEMA Rating
Front/rear entrances

The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.

5
Hoistway rating is NEMA 1.
Front entrances only

KCM831 Hydraulic Controller



KONE KCM831 is a modular modernization solution for elevator control and electrical systems, based on the latest in control technology. This replaces outdated technology such as relays and older electronic systems, improving the levels of performance, reliability, safety and energy efficiency of your elevator. The modular structure of KONE KCM831 is designed to correctly interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.

A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading. Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, trouble-shooting, and adjusting without requiring the use of an outside service tool.

Elevator Group Size
Number of floors served
Travel (in)
Speed [FPM]
Hoistway NEMA Rating
Machine Room NEMA Rating
Power supply voltage [V]
Pit depth (in)
Overhead height (in)
Existing Motor Size (hp)
New Motor Size
Motor Starts per Hour
Front/rear entrances

Simplex
5
660
125
Hoistway rating is NEMA 1.
Machine room rating is NEMA 1.
480
48
156
40
50
80 Standard
Front entrances only

Number of front openings	5
Signalization Type	Serial
COP quantity	1
Battery Backup	KONE will provide battery backup which will allow passengers to safely exit an elevator in the event of a power outage.
Hoistway Duct	KONE will remove all existing wiring, conduit and duct from the hoistway. New conduit and duct properly sized and constructed for the job requirements will be installed (in accordance with applicable codes)
New Minimum Fuse Size	80
Voice Annunciator	Logic will be provided for factory-programmed speech synthesizer that issues spoken messages including floor arrivals, car departures and safe use of the elevator.
Field Pipe & Accessories	New field pipe and or accessories shall be provided as required.
Capacity [LBS]	3500
Speed [FPM]	125
Field Pipe Accessories Make	Victaulic
Field Pipe Length (in)	240
Field Pipe Size	3"
Mainline Shutoff Valves	Two automatic safety valves will be supplied in the oil line at the jack unit (pit) and in the machine room.
Mainline Strainer	A main line strainer will be provided in the oil line.
Oil Return Pump	An electric oil return system consisting of a pump with oil line and necessary fittings will be provided to automatically return oil from the cylinder head collector ring to the power unit oil reservoir tank.
Qty of couplings	10
Qty of elbows	3

Hydraulic Power Unit

A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.

Control valves, including safety check valve, up direction valve with high pressure relief including up leveling and soft stop features, lowering valve including down leveling and manual leveling feature, will be mounted in a compact unit assembly. A valve, designed to shut off the flow of oil between the cylinder and the Power Unit, will be provided in the oil line in the machine room. Automatic two-way leveling will be provided to automatically stop and maintain the car approximately level with the landing, regardless of change in load.

An up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective.

An automatic Safety Valve will be supplied in the oil line at the jack unit (pit) designed to shut off the flow of oil from the cylinder and bring the car to rest in case the car attains excessive down speed.

Two (2) manual shut off valves will also be provided.

Travel (in)	660
Capacity [LBS]	3500
Speed [FPM]	125
Existing Motor Size (hp)	40
New Motor Size	50
Motor Starts per Hour	80 Standard
Existing Piston Diameter [in.]	6
Control Valve OEM	Maxton
Empty Car Weight [lbs]	3500
Field Pipe Length (in)	240
Field Pipe Size	3"
FL Working Pressure at Pump	407.36587
Jack location	Inground
Jack type	Single Stage
Load Class	Passenger
Low Oil Switch	

An Up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective

NL Static Pressure [Single Stage]	180.886366
Piston Wall	0.6875
Qty Jacks per Car	1

Tank Drain Connection	Yes
Front/rear entrances	Front entrances only
Owners Manuals	Standard
Qty Owners Manuals	1
Toe Guard	A new code compliant toe guard will be provided.
Layout Type Required	An engineered machine room layout will be provided for informational purposes only.

ReVive 500, 600



New KONE car & hall signalization shall be provided.

Elevator Group Size	Simplex
Number of floors served	5
Code year	2013
Capacity [LBS]	3500
Hoistway NEMA Rating	Hoistway rating is NEMA 1.
Front/rear entrances	Front entrances only
Number of front openings	5
Car fixture display color	The Car Operating Panel will incorporate a car position indicator showing car position in the hoistway with single or dual numeral and/or letter floor designations along with an arrow corresponding to the direction of car travel.
Car fixture material	Car fixture material finish will be #4 stainless steel.
Car fixture mounting	Car fixtures will be a flush mount design style.
Car position indicator type	Dot Matrix
COP quantity	1
COP engraving	Yes
Hall fixture display color	Amber
Hall fixture material	Hall fixture material finish will be #4 stainless steel.
Hall fixture mounting	Hall fixtures will be a surface mount design style.
Hall position indicator size [in]	1
Hall position indicator type	Dot Matrix
Qty of hall stations (6.6" X 12.9")	4
Qty of hall stations (6.6" X 25")	1
Qty of new combination hall lantern/position indicator combos	5
Qty of car direction lanterns	1
Fire keyswitch type	Florida FL1-7
Jamb braille	New code compliant elevator jamb braille will be provided.
No smoking sign	Yes
Qty of hoistway access switches	2
Voice Annunciator	Logic will be provided for factory-programmed speech synthesizer that issues spoken messages including floor arrivals, car departures and safe use of the elevator.

**Layout Drawings**

Machine Room Only Mechanical Layout Drawing

Handover date

Mutually agreeable project schedule will be determined at time of proposal acceptance. Current delivery lead time is 16 weeks from order receipt, deposit and approval of drawings.

Downtime period

6 weeks per unit

Price Overview

Proposal pricing is based on the scope of work as defined herein. Any additional work required will be performed only upon purchaser's approval of a mutually agreeable change proposal. Any other deficiencies revealed in the progress of the work will be promptly reported to the purchaser with recommendations and cost for corrective action.

Total Sales Price

\$338,266.13

Pricing Conditions

This offer is valid for 90 days.

Maintenance

~~Price is contingent upon a simultaneous award and execution of a maintenance agreement~~

Component Overview**Equipment number**

Door Panel(s)
ReNova Door Equipment
Curtain of Light
KCM831
Field Pipe & Accessories
Power unit
ReVive 500/600

Sales price**\$ 169,133.10****Component Overview****Equipment number**

Door Panel(s)
ReNova Door Equipment
Curtain of Light
KCM831
Field Pipe & Accessories
Power unit
ReVive 500/600

Sales price**\$ 169,133.03****Total Sales Price****\$ 338,266.13**

3 Tender Approval

Receiver:

KONE Inc.
Ricardo Escobar
3421 Enterprise Way
Miramar, Florida, 33025
ricardo.escobar@kone.com

Sender:

Susan Goebel-Canning
Public Works Director
Old School Square PK Garage
95 NE 1st Ave
Florida, Delray, 33444

Submitted by:



Ricardo Escobar
Sales Executive - Modernization
12/18/2018

We accept the offer constituted by this proposal (total sales price of \$338,266.13) and agree to the conditions contained therein.

Approved by KONE Corporate Officer**Approved by Purchaser**

Signature: _____

Signature: _____

Printed Name:

Printed Name:

Title:

Title:

Date:

Company Name:

Date:

Clarifications

- Contract terms between KONE Inc. and Purchaser shall be based on our Proposal and Attachments. (See Attachment “A” and “B”)
- All new elevator equipment provided shall meet applicable ASME A17.1 code requirements. Any provisions of codes applicable to out-of-scope items shall be the Purchaser’s responsibility. Cost of any future code changes adopted prior to permitting and completion are excluded.
- The existing cab and entrance dimensions, which may not meet current ADA or stretcher access rules, will be retained as is.
- Our proposal includes inspections and testing as required by the AHJ. However, any re-testing required due to other trades’ failures to complete their work or tests in a timely manner will be billed at our regular billing rates.
- No costs for preventive maintenance services are included in this capital improvement pricing.
- The ASME code limits changes to the empty car weight + capacity of each elevator to 5% of the originally installed value. If past or proposed changes result in a change to the weight or system pressure (for hydraulic) greater than 5% above the original design values, the cost of any engineering and of any required modifications to the elevator system or structure shall be extra to this proposal scope and pricing. If this situation is discovered during the engineering process, KONE will notify purchaser and recommend an alternate design or other changes.
- In order to provide best pricing, proposal excludes any extra demobilizations and remobilizations. If we must demobilize from the jobsite for any reason outside our control, we shall be compensated at our regular billing rates.
- Proposal pricing is based on the scope of work as defined herein. Any additional work required will be performed only upon Purchaser’s approval of a mutually agreeable change proposal. Any other deficiencies revealed in the progress of the work will be promptly reported to purchaser with recommendations and cost for corrective action.
- Asbestos: Notwithstanding anything contained to the contrary within this bid or contract, KONE’s work shall not include any abatement or disturbance of asbestos containing material (ACM) or presumed asbestos containing materials (PACM). Any work in a regulated area as defined by Section 1910 or 1926 of the Federal OSHA regulations is excluded from KONE’s scope of work without an applicable change order to reflect the additional costs and time. In accordance with OSHA requirements, the Customer shall inform KONE and its employees who will perform work activities in areas which contain ACM and/ or PACM of the presence and location of ACM and/or PACM in such areas which may be contacted during work before entering the area. Other than as expressly disclosed in writing, Customer warrants that KONE’s work area at all times meets applicable OSHA permissible exposure limits (PELs). KONE shall have the right to discontinue its work in any location where suspected ACM or PACM is encountered or disturbed. Any asbestos removal or abatement, or delays caused by such, required in order for KONE to perform its work shall be the Customer’s sole responsibility and expense. After any removal or abatement, customer shall provide documentation that the asbestos has been abated from the KONE work area and air clearance reports shall be made available upon request prior to the start of KONE’s work.
- Purchaser shall provide any security, escort or other building service support personnel required during demolition, installation, testing, and inspections.
- For hydraulic elevators, we can assume no responsibility for unusual conditions such as hole cave in and complete hydraulic cylinder assembly embedded in concrete. The excavation of the hole to accommodate the new hydraulic cylinder assembly is based on encountering soil free of rocks, boulders, building construction members, sand, water, quicksand, underground caves and/or any other obstructions or unusual conditions. Should such obstructions or unusual conditions be encountered, additional time above or beyond the working days estimated to complete this project may be required. We will proceed with this portion of the project on a time and material basis, based on our normal billing rates.

Bid Attachment “A” / KONE Inc. General Terms and Conditions (Modernization)

1. APPLICATION OF THESE TERMS

The parties agree to be bound by the terms and conditions contained in the Bid Letter, this Bid Attachment A and Bid Attachment B, including the documents incorporated herein by reference (collectively, the “Proposal”).

2. SPECIAL PURCHASING REQUIREMENTS

This Proposal is made without regard to compliance with any special sourcing and/or manufacturing requirements including, but not limited to, Buy America, Buy American, U.S. Steel, FAR clauses, minority / disadvantaged supplier requirements or similar federal and/or state procurement laws. Should such requirements be applicable to this Project, KONE reserves the right to modify and/or withdraw its Proposal.

3. PROPOSAL CONDITIONS

The Proposal shall be open for acceptance within the period stated in the Bid Letter or, when no period is stated, for a period of 30 days from the date of the Bid Letter. Prior to commencing manufacture of the equipment described in the Bid Letter (“Equipment”), KONE must have (i) a fully executed contract; (ii) a schedule acceptable to KONE identifying the Equipment installation start date, or alternatively, KONE’s letter specifying the ship date (“Ship Date Letter”) signed by Customer, which, as applicable, is incorporated by reference herein; (iii) the first payment in Section 4 herein; and (iv) fully approved KONE layouts.

4. PAYMENT TERMS

Payment of the total Price is due within 30 days from invoice date, based on benchmarks as follows:

- 30% of the Price for engineering, site management, and overhead, billable and due upon execution of this Proposal or receipt of the subcontract;
- 50% of the Price for material and shipping, billable and due upon delivery of material to the jobsite or KONE Distribution Center;
- 20% of the Price for Equipment installation, billable and due at the billing cycle following the start of installation.

KONE reserves the right to delay, suspend, or stop the work, including manufacturing, delivery, installation and/or Equipment turnover, for non-payment, without liability to KONE or being held in default. Simple interest at 1.5% per month shall be charged on amounts not paid when due. Payments to KONE are not contingent on any third party payments to Customer. Customer shall reimburse KONE for all costs of collection, including courts costs and reasonable attorneys’ fees.

Prior to turnover, KONE must be paid in full, less 10% maximum retention, the Price including all change orders. Retention shall be due and payable within 30 days of execution of the Uniform Final Acceptance or Equipment turnover, whichever occurs first.

If certified payroll reporting is required, KONE will submit the requested reporting in the format of the U.S. Department of Labor form WH 347 & WH 348. The Price does not include Textura or any other special billing requirements, which can be added via change order at a rate of 0.3% of the Price.

5. INSTALLATION

Customer shall be responsible for procurement and cost of all permits, except permits related to installation of the Equipment. Where KONE's scope of work or other responsibilities include the obligation to utilize materials and/or finishes resembling or identical to those pre-existing in the building, KONE shall use reasonable efforts to procure such materials and Customer acknowledges and accepts that the materials and/or finishes reasonably available may not be in all respects identical to those pre-existing in the building. This Proposal is conditioned upon KONE using its standard installation method. The installation of the Equipment shall start after Customer has completed all work set forth in Bid Attachment B and any other documents describing site requirements ("Site Requirements"), all of which are incorporated by reference herein. Within two (2) weeks prior to the scheduled delivery date for KONE's materials, KONE shall conduct a standard visual site survey to verify that the Site Requirements are complete and notify Customer if there are outstanding deficiencies preventing KONE from beginning installation. KONE's site survey may include, but is not limited to, inspection of site access, working and safety conditions on site, wear and tear of any existing structures or surfaces, and planning of any dismantling or removal of existing equipment, components and materials, where applicable. KONE shall not be deemed to have surveyed any hidden structures, latent defects, subsurface conditions, or other non-visible matters, including but not limited to searching for hazardous substances and/or materials, which shall be subject to Section 16. If KONE's site survey reveals any deficiencies, KONE shall be entitled to delay the start of installation and Customer shall be responsible for all additional costs incurred by KONE, including without limitation, costs associated with: labor reallocation, re-directing materials to and storage in a KONE Distribution Center, additional labor for double handling of materials, and additional trucking, freight and insurance. Once the Site Requirements are completed, the start of installation shall be subject to the availability of labor and the delivery of material, if applicable.

KONE's work shall be performed during regular union working hours of regular working days, Monday to Friday, statutory holidays excluded. If overtime is mutually agreed upon and performed, the additional costs for such work shall be added to the Price at KONE's standard overtime rates. If the installation cannot be performed in an uninterrupted manner for any reason beyond KONE's control, Customer shall store the Equipment at Customer's cost and compensate KONE for any costs caused by such delay including, but not limited to, double handling of Equipment and demobilization.

KONE shall not be required to perform overtime or any Customer directed change to its work ("Extra Work") without an executed change order. No action by KONE, including but not limited to, performing Extra Work without an executed change order, shall be a waiver of KONE's right to seek payment for Extra Work performed. KONE shall be entitled to an extension of time and an equitable adjustment in the Price, including but not limited to, any increased costs of labor, including overtime, resulting from any change of schedule, re-direction of KONE personnel to another work area, acceleration, or out of sequence work.

KONE shall take reasonable methods to protect its work-in-place while KONE is actively on site and until execution of a KONE Uniform Final Acceptance, which is incorporated by reference herein. Should damage occur to KONE property, material or work-in-place by fire, water, theft or vandalism, Customer shall compensate KONE for said damages. Additionally, the Customer is solely responsible for ensuring that the equipment maintenance contractor, if not KONE, does not disturb, delay or interfere with KONE's work. KONE shall abide by Customer's safety policies and procedures to the extent such policies and procedures are not in conflict with KONE's Safety Policy. Testing and/or security features of Equipment must be completed before Equipment turnover. KONE is not responsible for damages, either to Equipment or the building, or for any personal injury or death, arising out of or resulting from any code required safety tests performed on Equipment or hoistway access granted by Customer to other trades.

6. TEMPORARY USE



Temporary use of certain types of Equipment may be permitted, provided the use period allows adequate time for Equipment restoration for final turnover and Customer executes KONE's Temporary Use Agreement. Temporary use shall be invoiced separately and subject to payment terms in Section 4 herein. At the end of temporary use, Customer shall return the Equipment to KONE in "like new" condition.

7. HAZARDOUS MATERIALS

KONE's work shall not include any abatement or disturbance of asbestos containing material ("ACM"), presumed asbestos containing materials ("PACM"), or other hazardous materials (i.e. lead, PCBs) (collectively "HazMat"). KONE shall have the right to discontinue its work in any location where suspected HazMat is encountered or disturbed. Any HazMat removal or abatement, or delays caused by such, required in order for KONE to perform its work shall be Customer's sole responsibility and expense. Should any HazMat abatement occur within the shaft or machine room, Customer shall execute KONE's Hoistway or Pit Access Request. If any HazMat is known to be present on site before the start of work, HazMat removal or abatement shall be completed prior to KONE scheduling installation and delivering material.

8. TITLE AND RISK TO EQUIPMENT

Title to and ownership of all Equipment intended for incorporation in KONE's work, whether installed or stored on or off site, shall remain with KONE until final payment is made and, in the case of suspension or termination for non-payment, the parties agree that KONE may retake possession and remove any or all of KONE's works, Equipment or apparatus without material damage to the property and irrespective of the manner in which the same is attached or affixed. Risk of loss in KONE's work and Equipment passes to Customer upon delivery to the site or off-site storage.

Any tools, devices, or other equipment that KONE uses to perform its work or monitor the Equipment remains the sole property of KONE. If this Proposal terminates or expires for any reason, Customer will give KONE access to the premises to remove such tools, devices or equipment at KONE's expense.

9. TURNOVER

Prior to turnover, KONE must receive a final punchlist. Upon turnover, KONE requires a signed Uniform Final Acceptance. KONE shall provide its standard electronic O&M manuals with CD-ROMs in electronic format, if applicable, upon execution of the Uniform Final Acceptance. Standard KONE samples shall be provided upon request. No mock-ups or video training are included in the Price.

10. DELAY

KONE shall not be liable for any loss, damage, claim, or delay due to any cause beyond KONE's control, including, but not limited to, acts of government (including a change in law), strikes, lockouts, work interruption or other labor disturbance, delays caused by others, fire, explosion, theft, floods, inclement weather, riot, civil commotion, war, malicious mischief, or acts of God. In the event of such delays,

KONE shall be entitled to an extension in time equal to the length of such delay and an equitable adjustment in the Price. Customer shall compensate KONE for labor and material cost escalations resulting from Project delays not caused by KONE, which extend completion of KONE's work beyond the end of the current calendar year. Customer is on notice that IUEC labor rates increase annually.

11. LIMITED WARRANTY

For one (1) year after the acceptance date set forth in the signed Uniform Final Acceptance, date of Equipment turnover, or date of Customer's use of Equipment (unless such use is pursuant to the Temporary Use Agreement), whichever occurs first, KONE warrants Equipment against defect in workmanship and material. The warranty excludes remedy for damage or defect caused by abuse, misuse, vandalism, neglect; repairs, alteration or modifications not executed by KONE; improper or insufficient maintenance, improper operation, characteristics of the building such as electrical power or security features, natural or other catastrophe such as flood, fire, or storm, or normal wear and tear and normal usage. The warranty excludes training or instruction in the proper operation or maintenance of Equipment. Specific noise ratings and energy efficiencies cannot be guaranteed due to different building characteristics and ambient noise levels. Customer's remedy is limited to repair or replacement of a defective part, in KONE's sole discretion, and excludes labor. 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 NON- INFRINGEMENT.

12. IDEMNIFICATION

KONE shall only indemnify and hold Customer harmless for claims, damages, losses or expenses, but excluding loss of use ("Claims") due to bodily injury, including death, or tangible property damage (other than the Project or KONE's work itself) to the extent caused by KONE's negligent acts or omissions. KONE shall not indemnify Customer for any other Claims. Customer agrees to indemnify and hold KONE harmless from any Claim for bodily injury, including death, or tangible property damage in connection with the use or operation of the Equipment. Each party shall defend itself in the event of a Claim.

13. INTELLECTUAL PROPERTY

KONE shall retain title and ownership of all intellectual property rights relating (directly or indirectly) to the Equipment provided by KONE, including but not limited to software or firmware (whether in the form of source code, object code or other), drawings, technical documentation, or other technical information delivered under the Proposal. KONE grants Customer a non-exclusive and non-transferable license and right to use the software and firmware in connection with the use and maintenance of the Equipment. Customer shall not use any drawings, technical documentation or other technical information supplied by or on behalf of KONE for any purposes other than those directly related to the Proposal or to the use and maintenance of the Equipment. Customer shall not in any form copy, modify or reverse engineer the software, or give access to the software for such use to any third party without KONE's prior written consent. KONE shall not provide any information such as KONE's internal manuals, manufacturing drawings, source codes, or other proprietary and confidential information, all of which are excluded from the Proposal.

14. INSURANCE

In lieu of any Customer insurance requirements, KONE shall provide its standard certificate of insurance, which shall be deemed to satisfy all insurance requirements for this Project. KONE shall not provide loss runs, insurance rate information, copies of its insurance policies or any other information which KONE considers confidential. KONE shall not provide coverage for professional (E&O) liability, pollution liability, data privacy/security, or no-fault medical payments. If the Project is covered by a Wrap Up Insurance Program, KONE agrees to participate provided there is no cost to KONE, no reduction in the Price, and subject to KONE's review of the proposed program. The insurance requirements contained in the wrap up insurance program's manual shall govern as the

only insurance requirements for this Project. In the event that the wrap up insurance program is terminated before completion of KONE's Work, KONE will provide its standard insurance certificates which shall satisfy the insurance requirements for this Project. This shall apply to the project specific Wrap Up Insurance Program's Manual and any applicable enrollment documents. If KONE's primary limits are sufficient to satisfy insurance coverage requirements, excess/umbrella liability will not be required or if excess/umbrella is required, KONE's excess coverage does not follow form although typically provides broader coverage than KONE's primary policies. The excess coverage is not AM Best Rated nor licensed to do business within the jurisdiction although the carrier has strong Standard & Poor's and Moody's financial ratings that may be evidenced upon request.

15. LIMITATION OF LIABILITY

In no event shall either party be liable to the other party for any consequential, special, punitive, exemplary, liquidated, incidental, or indirect damages (including, but not limited to, loss of profits or revenue, loss of goodwill, loss of use, increase in financing costs) (collectively, "Consequential Damages") that arise out of or relate to this Proposal even if such party has been advised of the possibility of such Consequential Damages. The limitation set forth in this section shall apply whether the claim is based on contract, tort or other theory.

16. CONCEALED OR UNKNOWN CONDITIONS

If during the course of its work, KONE encounters conditions at the site that are subsurface, differ materially from what is represented in the contract documents, or otherwise concealed physical conditions, KONE shall be entitled to an extension of time and additional costs for the performance of its work, which shall not be subject to any payment conditions or contingencies.

17. TECHNICAL SURVEY

KONE's Price and obligations under this Proposal are subject to a technical survey to be performed on Customer's existing units within 90-days of the effective contract start date. If a safety hazard or code violation is identified during KONE's technical survey, Customer shall immediately remove the unit from service until repairs are performed. KONE is not obligated to perform tests, correct outstanding violations or deficiencies that were not addressed by the prior service provider and/or the owner, or make related necessary repairs or component replacements on the unit. If additional work is necessary, KONE shall provide a separate proposal or recommendation for such work. Customer agrees to indemnify, defend, and hold KONE harmless for any claims arising out of Customer's failure to comply with KONE's recommendations and proposal, and any obligation on the part of KONE to indemnify or defend Customer with regard to such claim shall be null and void. If Customer does not immediately approve KONE's proposal or recommendation, KONE reserves the right to terminate this Proposal/contract without penalty.

18. TERMINATION

If a party materially breaches this Proposal, the other party shall provide written notice of the breach and a reasonable time to cure the breach, but in no event less than 30 days. If the breaching party fails to cure the breach within the specified time period, the non-breaching party may terminate the Proposal upon 15 days written notice to the other party. If KONE notifies Customer of a material breach pursuant to this paragraph, KONE may temporarily suspend its work without liability.

19. GOVERNING LAW AND DISPUTE RESOLUTION

The parties agree that this Proposal shall be governed by the laws of the state where the Project is



located, and venue for disputes shall be located in that state. KONE does not agree to participate in arbitration proceedings.

20. PRICE ADJUSTMENT

KONE shall be entitled to an equitable adjustment in the Price, including but not limited to, any increased costs of materials, resulting from any change in law (by legislation, executive order, treaty or other similar means), or a change in law that imposes tariffs on raw materials or finished goods.

21. MISCELLANEOUS

This Proposal, including the documents incorporated herein by reference, constitutes the entire agreement of the parties and supersedes all prior negotiations, understandings, and representations whether written or oral in relation to the subject matter hereof. Where a conflict or ambiguity exists between this Proposal and any other contract document (including but not limited to, Customer's drawings and specifications), the terms and conditions of this Proposal shall control. This Proposal may be amended only in writing by the duly authorized representative of both parties. This Proposal may be executed in one or more counterparts. Each counterpart shall be considered an original and all of the counterparts shall constitute a single agreement binding all the parties as if all had signed a single document. For purposes of executing this Proposal, a document signed by electronic means is to be treated as an original document. The failure of either party to insist upon performance or strict performance of any of the terms or conditions of this Proposal shall not be deemed a waiver of any rights or remedies that such party may have or a waiver of any subsequent breach or default under this Proposal. Neither party may assign or transfer the benefit or burden of this Proposal without prior written consent of the other party.

US COMMUNITIES CONTRACT TERMS AND CONDITIONS ATTACHED SUPERSEDE

PART II
FACILITY REPAIR & MAINTENANCE
CONTRACT

STANDARD TERMS AND CONDITIONS

Sec. 1. General Indemnification.

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

2. **Contractor's Agents** means Contractor's officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents.

3. **City** means City and its agents, officials, officers and employees.

B. Contractor's obligations under this Section with respect to indemnification shall be limited to the coverage and limits of General Liability insurance that Contractor is required to procure and maintain under this Contract. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

C. Contractor shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all negligent acts or omissions in connection with this Contract but only to the extent caused by Contractor or Contractor's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Contractor is not obligated under this Section to indemnify City for the negligence of City.

D. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 2. Independent Contractor. Contractor is an independent contractor and is not City's

agent. Contractor has no authority to take any action or execute any documents on behalf of City.

Sec. 3. Insurance.

A. Contractor shall procure and maintain in effect throughout the duration of this Contract insurance coverage of the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, Contractor shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Contractor's Self-Insured Retention.

1. **Commercial General Liability Insurance:** with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

a. Severability of Interests
Coverage applying to Additional Insureds

b. Contractual Liability

c. Per Project Aggregate
Liability Limit

d. No Contractual Liability
Limitation Endorsement

e. An Owners and Contractors
Protective Liability Policy (OCPL).

2. **Workers' Compensation Insurance:** as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory
Employers Liability \$100,000 accident
with limits of:

\$500,000 disease-policy limit

\$100,000 disease-each employee

3. **Commercial Automobile Liability Insurance:** with a limit of \$1,000,000, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "each accident" basis. This insurance will be written on a Commercial Automobile Liability form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as

to acts done in connection with the Contract, by Contractor.

4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$2,000,000.

B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as Named Insureds on the OCPL for the services performed under this Contract and maintain products and completed operations coverage for the duration of this Agreement. Contractor shall provide to City at execution of this Contract a certificate of insurance showing all required coverage and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or authorized by the State of Missouri to do business in Missouri.

D. Contractor's failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City pursuant to Section 1. If the coverage afforded is cancelled or changed or its renewal is refused, Contractor shall give at least thirty (30) days prior written notice to City. In the event of Contractor's failure to maintain the required insurance in effect, City may order Contractor to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.

E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

F. Contractor shall obtain evidence that all Subcontractors have in force general, automobile, and employer's and workers' compensation liability insurance in the amounts

required by these Contract Documents, and evidence that each is current on its unemployment insurance payments before Subcontractors begin Work at the Site. Contractor shall retain such evidence in its files and make available to City within ten (10) days after written request.

Sec. 4. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 5. Compliance with Laws. Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this contract.

Sec. 6. Termination for Convenience.

A. City may, at any time upon thirty (30) days notice to Contractor specifying the effective date of termination, terminate this Contract, in whole or in part. If this Contract is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Contractor shall prepare an accounting of the services performed and money spent by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

B. If this Contract is terminated prior to Contractor's completion of services, all work or materials prepared or obtained by Contractor pursuant to this contract shall become City's property.

C. If this Contract is terminated prior to Contractor's completion of the services to be performed hereunder, Contractor shall return to City any sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the Contract. Contractor shall prepare an accounting of the services performed and money spent by Contractor up to the effective date of termination

and shall return to City any remaining sums within thirty (30) days of such date.

Sec. 7. Resolution of Claims

A. For purposes of this Section 7 only, the following terms shall have the meanings listed:

1. A Claim is a demand or assertion by the Contractor seeking, as a matter of right, the adjustment of Contract price and/or times with respect to the terms of the Contract.

2. City's Representative--Person or agency designated to act for the Director.

B. The Contractor must give written notice to the City's Representative within fourteen (14) calendar days after the occurrence of the event giving rise to the Claim or within fourteen (14) calendar days after the first recognition of the conditions giving rise to the Claim. After the fourteen (14) day period for filing claims has expired, the Claim shall be considered waived unless the Director grants an extension based on good cause shown by the Contractor that such additional time is warranted. The responsibility to substantiate Claims shall rest with the Contractor.

C. If the claim cannot be resolved by direct negotiation between the City's Representative and the Contractor, the parties must submit the Claim to the Director within five (5) days after the parties agree that they cannot resolve the Claim.

D. The submittal of the Claim position statements shall: 1) be in writing; 2) state the issues; 3) and state the respective positions of the parties.

E. The Director shall review the written statements and reply in writing to both parties within ten (10) working days. The Director may extend this period if necessary by notifying the parties.

F. Absent fraud, gross mistake or bad faith, the Director's decision shall be final and binding on City and Contractor within fourteen (14) calendar days after issuance.

G. All administrative procedures set forth in this contract must first be exhausted before suit is filed.

H. The time frame for the Director's decision may be tolled if the parties mutually

agree to participate in mediation. Mediator selection and the procedures to be employed in the mediation shall be mutually acceptable to both parties. Cost of the mediation, including the mediator's fees, shall be shared equally among the parties.

I. If the Claim is not resolved during mediation, the Contractor agrees that it will file no suit based on facts or evidentiary materials that were not presented for consideration to the City during the mediation process or of which the Contractor had knowledge and failed to present during the administrative procedures.

Sec. 8. Default and Remedies. If Contractor shall be in default or breach of any provision of this Contract, City may terminate this contract, suspend City's performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor notice and opportunity to correct such default or breach.

Sec. 9. Waiver. Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Contractor to which the same may apply and, until complete performance by Contractor of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 10. Modification. Unless stated otherwise in this Contract, no provision of this Contract may be waived, modified or amended except in writing signed by City and Contractor.

Sec. 11. Headings; Construction of Contract. The headings of each section of this Contract are for reference only. Unless the context of this Contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 12. Severability of Provisions. Except as specifically provided in this Contract, all of the provisions of this Contract shall be severable. In the event that any provision of this Contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Contract shall be valid unless the court finds that the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 13. Records.

A. For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.

2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

B. Contractor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all Records upon ten (10) days written notice from the City.

Sec. 14. Affirmative Action. Not Used.

Sec. 15. Tax Compliance. Contractor shall provide proof of compliance with the City's tax

ordinances administered by the City's commissioner of revenue as a precondition to the City making the first payment under this contract or any contract renewal when the total contract amount exceeds \$150,000.00.

Sec. 16. Assignability or Subcontracting.

A. Assignability. Contractor shall not assign or transfer any part or all of Contractor's obligation or interest in this Contract without prior written approval of City. If Contractor shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from subcontracting as otherwise provided for herein.

B. Subcontracting. Contractor shall not subcontract any part or all of Contractor's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor's services hereunder.

Sec. 17. Conflicts of Interest. Contractor certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to

perform services on behalf of Contractor in this Contract.

Sec. 18. Rules of Construction. The judicial rule of construction requiring or allowing an instrument to be construed to the detriment of or against the interests of the maker thereof shall not apply to this Contract.

Sec. 19. Reports. Contractor shall provide City detailed reports of actual contract usage by category each quarter and annually at no cost.

Sec. 20. Employee Eligibility Verification. If this contract exceeds five thousand dollars (\$5,000.00), Contractor shall execute and submit an affidavit, in a form prescribed by the City, affirming that Contractor does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). Contractor shall attach to the affidavit documentation sufficient to establish Contractor's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration and Reform and Control Act of 1986. Contractor may obtain additional information about E-Verify and enroll at www.dhs.gov/xprevprot/programs/ge_118522_1678150.shtm. For those Contractors enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Contractor will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this section. Contractor shall submit the affidavit and attachments to the City prior to execution of the contract, or at any point during the term of the contract if requested by the City.

Sec. 21. Buy American and Missouri Preference Policies. It is the policy of the City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible. Pursuant to Section 71.140 RSMo., preference shall be given to materials, products, supplies and all other articles produced, manufactured, made or grown within the State of Missouri.

Sec. 22. Missouri Sales Tax Exemption.

Pursuant to Section 144.062, RSMo, City is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. City shall furnish Contractor a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

Sec. 23. Escalator Technical Survey.

Contractor is not obligated to perform tests, correct outstanding violations or deficiencies that were not addressed by the prior service provider and/or the owner, or make related necessary repairs or component replacements on the equipment. If additional work is necessary, Contractor will provide a separate proposal or recommendation for such work. Contractor's price and obligations under this Agreement are subject to a technical survey to be performed within 90-days of the effective date. If a safety hazard or code violation is identified during Contractor's technical survey, City will immediately remove the unit from service until repairs are performed. City agrees to indemnify, defend, and hold Contractor harmless for any claims arising out of City's failure to comply with Contractor's recommendations and proposal. If City does not immediately approve Contractor's proposal or recommendation, Contractor reserves the right to terminate this Agreement without penalty.

Sec. 24. Hazardous Materials. Notwithstanding anything contained to the contrary within this bid or contract, Contractor's work shall not include any abatement or disturbance of asbestos containing material (ACM), presumed asbestos containing materials (PACM) or other hazardous materials (i.e. lead, PCBs) (collectively "HazMat"). Contractor shall have the right to discontinue its work in any location where suspected HazMat is encountered or disturbed. Any HazMat removal or abatement, or delays caused by such, required in order for Contractor to perform its work shall be the City's sole responsibility and expense.

Sec. 25. Consequential Damages. In no event will either party be liable to the other party for indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature arising from or related to performance of the Agreement, including without limitation loss of profits, loss or inaccuracy of data, or loss of use damages, even if the party has been advised

of the possibility of such damages and even if under applicable law such damages would not be considered for indirect, incidental, punitive, special, or consequential damages. Each party hereby waives its rights to such damages to the fullest extent permitted by applicable law.

Sec. 26.Force Majeure. A party is not liable for failure to perform its obligations under the Agreement if such failure results from Acts of God, fire, flood, unusual delay in deliveries, unavoidable casualties, terrorist activities, government sanction, blockage, embargo, labor dispute, strike, or lockout, concealed conditions, shortage or unavailability of materials, supplies, labor, equipment or systems, interruption or failure of electricity or telephone service or any other causes beyond Contractor 's control. The non-performing party must promptly notify the other party in writing of the force majeure event and resume performance immediately upon cessation of the event.

Sec. 27.Intellectual Property. All proprietary and intellectual property rights to the equipment, any drawings, technical documentation and software shall remain solely with Contractor.