

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR ELEVATOR MAINTENANCE SERVICES
PURSUANT TO US COMMUNITIES GOVERNMENT PURCHASING ALLIANCE
CONTRACT NUMBER: 201414653 – EAST END ANNEX UPGRADES**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Kone Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide elevator services related to upgrades to be performed at the Fort Bend County East End Annex (hereinafter "Services") pursuant to Contract Number: 201414653, available to County by and through the US Communities Government Purchasing Alliance; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Contractor shall render Services in accordance with the People Flow Repair and Upgrade Proposal attached hereto as Exhibit A to this Agreement and incorporated herein for all purposes.

Section 2. Personnel

- A. Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.
- B. All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the

opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

- C. Contractor shall communicate all inquiries concerning project management to County's Director of Facilities. However, only the Commissioners Court and the County Purchasing Agent (in accordance with the County Purchasing Act) are authorized to execute legal documents on behalf of the County.

Section 3. Compensation and Payment

- A. Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is \$77,510.00. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an amendment executed by the parties.
- B. All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
- C. County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County one (1) electronic (pdf) or one (1) original copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

- A. Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of \$77,510.00 specifically allocated to fully discharge any and all liabilities County may incur.
- B. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed \$77,510.00.

Section 5. Modifications and Waivers

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 6. Time for Performance

The time for performance of the Scope of Services by Contractor shall begin with receipt of the Notice to Proceed from County and end no later than three (3) months thereafter. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

Section 7. Termination

- A. Termination for Convenience: County may terminate this Agreement at any time upon thirty (30) days written notice.
- B. Termination for Default
 - 1. County may terminate the whole or any part of this Agreement for cause in the following circumstances:
 - a. If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;
 - b. If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.
 - 2. If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had

been issued for the convenience of the County in accordance with Section 7A above.

- C. Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.
- D. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

- A. Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - 1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- C. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. Contractor shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Contractor.

Section 11. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

- A. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- B. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.
- C. Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges

and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

- D. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 13. Independent Contractor

- A. In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.
- B. Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 14. Notices

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County
Attn: Director of Facilities
301 Jackson Street, Suite 301
Richmond, TX 77469

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

Contractor: Kone Inc.
One Montgomery Court
PO Box 429
Moline, IL 61265

C. Notice is effective only if the party giving or making the Notice has complied with subsections 15(A) and 15(B) and if the addressee has received the Notice. A Notice is deemed received as follows:

1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Performance Warranty

- A. Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

- B. Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

Section 17. Assignment and Delegation

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.
- B. Neither party may delegate any performance under this Agreement.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 19. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor

release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

Remainder left blank

Execution page follows

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on dated signed by the last party.

FORT BEND COUNTY

Robert E. Hebert, County Judge

Date

ATTEST:

Laura Richard, County Clerk

Reviewed:

James Knight, Director
Fort Bend County Facilities

KONE INC.



Authorized Agent- Signature

Trish A. Pritchard
Authorized Agent- Printed Name

Assistant Secretary
Title



Date
KONE Contract# 41260382

*Acceptance by KONE is expressly conditioned
upon the terms of Rider No. 1
dated 12/28/2016 taking precedence and
prevailing.

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish
and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

Exhibit A: Scope of Services

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301 Jackson St.
Richmond, Texas 77469
FORT BEND COUNTY

Attn: Justin Zwahr

Re: East End Annex Upgrades

Dear Mr. Zwahr,

The safety, performance and reliability of your vertical transportation equipment are important to us. We understand the value of the equipment to your building and know that the following areas are important to you:

- Passenger and employee safety
- Code compliance
- Performance and reliability
- Accessibility
- Aesthetics
- Eco-efficiency



Therefore, based on our detailed equipment evaluation, we thank you for the opportunity to submit the following proposal to you which will help improve your equipment in one or more of the above areas. Our trained service technicians will follow proven performance procedures to perform the recommended work in a safe, professional manner designed specifically for each piece of equipment.

Upon your approval, please sign and return the following proposal to our local Branch Office for processing.

Should you have any questions regarding this agreement, or if we can be of any further assistance, please contact me at 713-380-9772.

Sincerely,

Alex Hamilton
Service Sales Consultant
KONE Inc.

301 Jackson St.
Richmond, Texas 77469
FORT BEND COUNTY

Attn: Justin Zwahr

Re: East End Annex Upgrades

KONE Inc.
4607 World Houston Pkwy.,
Ste 150
Houston, Texas 77032
Tel 713-380-9772
www.kone.com
alex.hamilton@kone.com

Descriptions of Work

We propose to furnish and install the labor, materials, tools and supervision to perform the following work at East End Annex.

Cab Interior Panels

New cab interior panels will be provided and installed in the elevator cab. The old panels will be removed and the new panels will be custom made to your elevator. The new cab interior panels will meet current code requirements for fire rating for the materials used in passenger car enclosures.

Cab Ceilings

A new ceiling assembly will be provided and installed in the elevator cab. All material provided shall be manufactured and installed in accordance with current codes.

Door Replacement Package

The KONE ReNova Complete Replacement package (package A1) will be provided and installed. Package A1 includes complete replacement of the existing car and hoistway door operation equipment.

- KONE ReNova is designed for up to 800,000 door cycles per year (1 cycle = open + close).
 - Door opening time is adjustable down to 1.8 seconds, and door closing time is adjustable down to 2.2 seconds (Based on 42 inch by 84 inch center opening doors).
 - Average noise level of less than 55 dB(A).
 - The ReNova V3F-inverter drive is integrated with door control electronics to form a uniform drive module.
 - Location of the motor is optimized directly above the door panels, vertically in line with the center of gravity of the doors. This, together with toothed belt torque transmission eliminates complicated mechanical cams and provides highly reliable and optimal performing door operation solution.
 - AC 3 phase permanent magnet synchronous motor eliminates the need for brushes.
 - Closed-loop operation constantly adapts to changing conditions to maintain the predefined performance profile.
 - Self-learning set-up feature automatically adjusts the system to meet the performance profile requirements. This reduces installation and down time.
 - Restrictive device is integrated with the clutch assembly. The restrictive device prevents the car doors from opening when the car is outside the landing zone.
-

Door movement will be cushioned at both limits of travel. An electro-mechanical interlock will be provided at each hoistway entrance to prevent the operation of the elevator unless all doors are closed and locked. An electric contact will be provided on the car at each car entrance to prevent the operation of the elevator unless the car door is closed.

Door hangers and tracks will be provided for each car and hoistway door. Tracks will be contoured to match the hanger sheaves. The hangers will be designed for power operation with provisions for vertical and lateral adjustment.

Car equipment included: Operator, clutch with integrated door lock, door top adapter bars (if required) and tracks and hanger roller assembly.

Hoistway equipment included: Track, hanger roller assembly, door top adapter assembly (if required), emergency opening device, pick-up roller assembly, interlock and reel closing device (if required).

Car Operating Panel

We will furnish and install one (1) new Main Car Operating Panel applied to existing front return. New panel will contain all devices required for the specified operation, as follows:

Main: Furnish and install new car operating panel with an emergency light, integral ADA phone, alarm, and door open buttons, Code-compliant keyed "emergency stop" switch, illuminated floor pushbuttons, rear mount Braille plates and Digital Car Position Indicator. The operation of the "emergency stop" switch in the car shall, in addition to stopping the car, cause the alarm bell to ring as per Code. Also included are required operating switches such as fan and light key switches, as well as car capacity, and elevator designation signage.

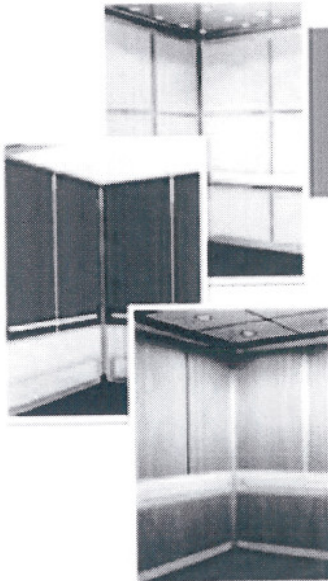
- We will also furnish and install new flush or surface mounted hall stations on all floors served. Illuminated buttons shall illuminate to indicate call has been registered at that floor for the indicated direction. Each terminal station shall contain one illuminating push button; each intermediate station shall consist of two illuminating push buttons, one for the up direction and one for the down position.

Travel Cable

Description of Work

We propose to furnish and install the labor, materials, tools and supervision to perform the following work on the Travel Cable located at East End Annex.

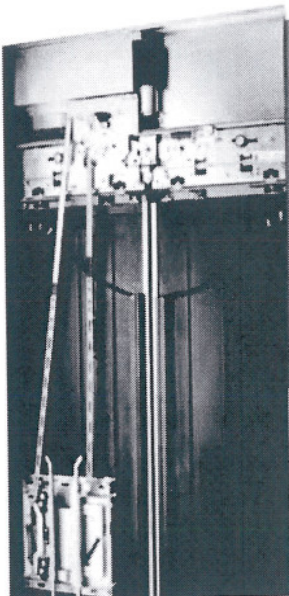
The traveling cable which travels with the car of the elevator (is worn and the outer insulation is frayed beyond satisfactory repair) (has several broken wires and cannot be repaired with satisfactory results) (has been damaged beyond repair) and should be replaced. Failure to correct this condition may lead to serious personal injury, death, or property damage.



Benefits:

- Improves the aesthetics, perception and value of your building
- Increases tenant satisfaction

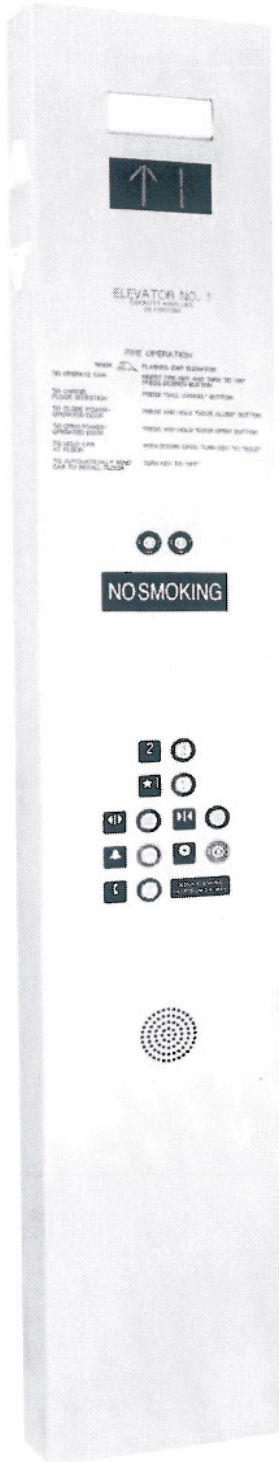
Remodel or upgrade of the elevator cab interior. Select from a wide selection of new wall panels, ceiling, lighting, doors and/or handrails. Includes options for new wall panels, ceilings, lighting, doors and/or handrails. Solution for old, dimly lit, outdated, or damaged cab interiors to improve the overall appearance of your elevator.



Benefits:

- Improves reliability of the door system and reduces operating noise
- Decrease service interruption and increases availability, which may reduce operating expenses not covered under your maintenance agreement
- Reduces noise improving tenant satisfaction
- Improves passenger and tenant perception of the equipment and building overall
- Rugged mechanical design prolongs equipment life
- Increases safety and reduces claims risk

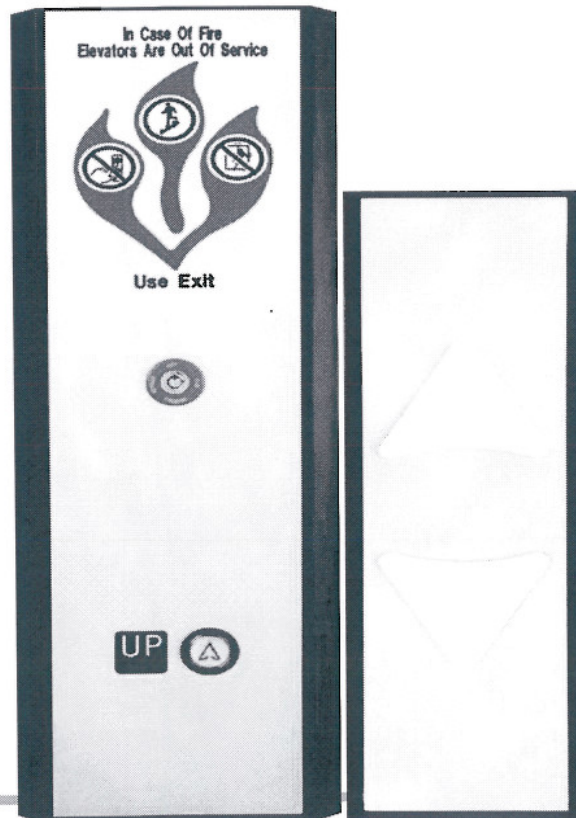
Designed for 800,000 door operations per year, has closed loop control, a permanent magnetic synchronous motor and variable frequency drive.



Coordinating swing return and car station installation has never been easier. We will install a swing return and car station combined into an easy to install, one-piece unit. Perfect for elevator cab remodeling or modernization – gives the car a like-new appearance. Fit and finish is much better as compared to an applied plate on an existing return, ensures A.D.A. height compliance.

Car Station Features as shown:

- #4 Brushed Stainless Steel
- Square Braille
- PB-1 Push Button
- Emergency communication system/hands-free ADA telephone



The I-line vandal resistant surface mount hall equipment, provides smooth lines and rugged construction that make these surface mount fixtures ideal for ADA and special retrofit projects. Our exclusive hinged design allows for quick installation and rapid service of all elevator panels, components, switches, etched instructions and signage.

Price

Our total price to perform the above-mentioned work amounts to: \$77,510.00 plus applicable taxes.

Our price includes applicable labor, material, permit fees, payment and performance bonds. This proposal is not binding on KONE until approved by an authorized KONE representative. Pricing is subject to previously agreed upon US Communities 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 the date of this proposal.

ACCEPTANCE: The foregoing Agreement is hereby signed and accepted in duplicate on behalf of FORT BEND COUNTY

Respectfully submitted by,
KONE Inc.

(Signature)

Alex Hamilton, Service Sales Consultant

(Print Name)

(Approved By) Authorized Representative

(Print Title)

Title

Date: ____ / ____ / ____

Date: ____ / ____ / ____

~~TERMS AND CONDITIONS~~

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

KONE shall submit invoices for the value of material delivered and/or labor performed, less the down payment paid at the time of proposal acceptance. A final invoice shall be issued by KONE upon completion of the work and shall include all balances due. 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 1½ % 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.

Any asbestos removal necessitated by work described in this Proposal will be the Purchaser's responsibility. Purchaser shall provide documentation that the asbestos has been abated from the KONE work area and air clearance reports shall be made available upon request. Purchaser is responsible for all costs of oil disposal should it be determined that oil from Purchaser's equipment is contaminated.

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 Purchasers 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.



RIDER NO. 1

Fort Bend County East End Annex, Fort Bend County, TX

The parties hereby agree to be bound to the terms contained in the Agreement, between KONE Inc. ("Contractor") and Fort Bend County ("County") (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. Section 8: At the end of the section, add "Nothing contained in the Agreement, shall (i) require Contractor to disclose any trade secrets or proprietary information, or (ii) supersede the rights of Contractor to full protection of all copyrights, patents or proprietary items or information furnished in connection with Contractor's provision of materials and labor with respect to the Project. The proprietary rights to any drawings, technical documentation or other intellectual property, shall remain solely with Contractor. Any software supplied with County's equipment is licensed to County or its successors, but only for use with, and for the operation of, the equipment. Use of such software for any other purpose is prohibited. Contractor shall not provide any information such as Contractor's internal manuals, manufacturing drawings or source codes."
2. Section 9: At the end of the section, add "County's right to inspect shall not extend to any information which Contractor, in its sole discretion, considers confidential or proprietary, nor to any lump sum prices, unit rates, established charges or fixed percentages or multipliers agreed to by the parties."
3. Section 10: Subsection A, line 5, delete "and/or policies". In the seventh line, delete "policies." In sub-item 2, delete "not less than." In sub-item 3, delete "not less than." In sub-item 4, delete "not less than" and replace with "of."
4. Section 11, line 3: Before "arising", add "to the extent".
5. Add the following: "Notwithstanding anything contained to the contrary within this Agreement, 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 County's sole responsibility and expense."
6. Add the following: "Notwithstanding anything to the contrary in this Agreement, in no event will either party be liable to the other party for any consequential, exemplary, special, liquidated, incidental, or indirect damages (including lost profits or loss of goodwill) (collectively, "Consequential Damages") arising out of or related to this Agreement, whether such damages are based in contract, tort (including negligence and strict liability) or any other form of action, even if such party has been advised of the possibility of any Consequential Damages."
7. Add the following: "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.”

This rider is for the above-referenced Project only and shall not be construed to be a course of dealing on future projects.

ACCEPTED:
FORT BEND COUNTY

KONE INC.

BY: _____

BY: _____

A handwritten signature in dark ink, appearing to read "Tim Joyce", is written over a horizontal line.

TITLE:
DATE:

Tim Joyce
TITLE: Senior Vice President
DATE: December 28, 2016

KONE INC. Opp #: 6415073

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2017-151856

Date Filed:
01/09/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Kone Elevators
Houston, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

21468
Elevator Upgrade at East End Annex

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Kone Inc.	Houston , TX United States	X	

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

B.J. Tyler

Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said B.J. Tyler, this the 9th day of Jan., 2017, to certify which, witness my hand and seal of office.

Teresa Matlow

Signature of officer administering oath

Teresa Matlow

Printed name of officer administering oath

Operations Coordinator

Title of officer administering oath