

Leroy Sisneros

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DocuSigned by:

Jeff Littlefield

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**City and County of San Francisco
Airport Commission
P.O. Box 8097
San Francisco, California 94128**

**Agreement between the City and County of San Francisco and
KONE Inc.**

**Contract No. 50205
Modification No. 5**

This Modification is made this 5th day of March, 2024, in the City and County of San Francisco, State of California, by and between: KONE Inc., 567 7th Street, San Francisco, CA 94103 (the “Contractor”), and the City and County of San Francisco, a municipal corporation (the “City”), acting by and through its Airport Commission (the “Commission”).

Recitals

- A. City and Contractor have entered into the Agreement for the San Francisco International Airport (the “Airport” or “SFO”) (as defined below); and,
- B. The Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and
- C. On May 7, 2019, by Resolution No. 19-0098, the Commission awarded this Agreement to the Contractor for a two-year term from July 1, 2019 through June 30, 2021, in an amount not to exceed \$9,765,000; and
- D. On October 1, 2019, City and Contractor administratively modified the Agreement through Modification No. 1 to revise Appendix B by increasing the allowance for As-Needed Services with no change to the contract amount; and
- E. On July 1, 2020, City and Contractor administratively modified the Agreement through Modification No. 2 to reduce unit prices for preventative maintenance by five percent because of the COVID-19 pandemic, adjust the preventative maintenance schedule, and update standard contractual terms; and
- F. On December 1, 2020, by Resolution No. 20-0223, the Commission approved Modification No. 3 to the Agreement to increase the contract amount by \$9,000,000 for a not-to-exceed amount of \$18,765,600, with no change to the contract term; and
- G. On February 9, 2021, by Resolution No. 55-21, the Board of Supervisors approved Modification No. 3 under San Francisco Charter Section 9.118 for a reduced amount of \$8,500,000 for a not-to-exceed amount of \$18,265,600; and
- H. On May 4, 2021, by Resolution No. 21-0104, the Commission approved Modification No. 4 to extend the contract duration by three years to a new contract end date of June 30, 2024, and increase the contract amount by \$16,200,000 for a new not-to-exceed amount of \$34,465,600; and

I. On June 15, 2021, by Resolution No. 306-21, the Board of Supervisors approved Modification No. 4 under San Francisco Charter Section 9.118; and

J. On April 18, 2023, by Resolution No. 23-0095, the Commission approved Modification No. 5 to the Agreement to increase the contract amount by \$14,000,000 for a new not-to-exceed amount of \$48,465,600 with no change to the contract term; and

K. Since the Commission's approval of Modification No. 5, Airport staff identified billing discrepancies that necessitated a revision to the amount of the contract increase that was approved by Resolution No. 23-0095; and

L. City and Contractor acknowledge that the previous iteration of Modification No. 5 was not executed by City. City and Contractor now desire to void the previous iteration of Modification No. 5 and to replace it with this revised Modification No. 5 modifying the Agreement to increase the contract amount by \$8,314,641 for a new not-to-exceed amount of \$42,780,241 with no change to the contract term, increase the contract allowance for as-needed services by \$8,396,581, update the list of equipment to be maintained by Contractor, and update standard contractual clauses; and

M. On March 5, 2024, by Resolution No. _____, the Commission repealed Resolution No. 23-0095 and replaced it with Resolution No. _____, the latter approved this revised Modification No. 5 to increase the contract amount by \$8,314,641 for a new not-to-exceed amount of \$42,780,241 with no change to the contract term; and

N. On _____, by Resolution No. _____, the San Francisco Board of Supervisors approved this Agreement under San Francisco Charter Section 9.118; and

O. Approval for this Agreement was obtained when the Civil Service Commission approved PSC No. 47246-18/19 on April 17, 2023 and

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Article 1. Definitions** is hereby amended as follows:

a. **Section 1.1 Agreement** is replaced in its entirety with the following:

1.1 "Agreement" or "Contract Document" means this contract document dated May 7, 2019, Modification No. 1 dated October 1, 2019, Modification No. 2 dated July 1, 2020, Modification No. 3 dated December 1, 2020, and Modification No. 4 dated May 4, 2021, including all attached appendices, and all applicable City ordinances and "Mandatory City Requirements" which are specifically incorporated by reference into this Agreement.

b. **Section 1.10 City Data** is replaced in its entirety with the following:

1.10 "City Data" means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

c. **New Section 1.13 Digital Signature** is added to the Agreement as follows:

1.13 “Digital Signature” means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

2. **Article 3. Compensation, Section 3.3.1 Payment** is hereby amended to increase the total not-to-exceed compensation payable by Eight Million Three Hundred Fourteen Thousand Six Hundred Forty-One Dollars (\$8,314,641) for a new total not-to-exceed amount of Forty-Two Million Seven Hundred Eighty Thousand Two Hundred Forty-One Dollars (\$42,780,241).

3. **Article 8. Termination and Default, Section 8.2.2 Exercise of Default Remedies** is amended to specify that Section 8.2.2 shall survive termination or expiration of the Agreement.

4. **Article 11. General Provisions, Section 11.1 Notice to the Parties** is replaced in its entirety as follows to provide for the use of trackable overnight mail for notices of default, and establish consent for use of Digital Signatures:

11.1 Notices to the Parties. Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: **Michael Hauser**
Mechanical Maintenance
San Francisco International Airport
PO Box 8097
San Francisco, CA 94128
Michael.Hauser@flysfo.com

To Contractor: **Joe Harmeyer, Vice President**
KONE Inc.
567 7th Street
San Francisco, CA 94103
Joe.Harmeyer@KONE.com

Any notice of default must be sent by registered mail or other trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice of the change to the other Party. If email notification is used, the sender must specify a receipt notice.

11.1.1 The Parties consent to the use of Digital Signatures, affixed using the City’s DocuSign platform, to execute this Agreement and all subsequent modifications.

4. **Appendix B, B. As-Needed Services** is hereby amended to increase the total Allowance for As-Needed Services by \$8,396,581 for a new total Allowance not to exceed \$21,596,581.

5. **Appendix C, Equipment List** is hereby replaced in its entirety with **New Appendix C, Equipment List**, attached to this Modification with marked text to indicate a) the 19 units being added, b) the 20 units being removed, and c) the two (2) units which have been replaced with their installation dates updated.

6. **Other Terms.** Terms used and not defined in this Modification shall have the meanings assigned to such terms in the Agreement.

7. Effective Date. Each of the changes set forth in this Modification shall be effective on and after the date of this Modification.

8. Legal Effect. Except as expressly changed by this Modification, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

| CITY | CONTRACTOR |
|--|---|
| AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO | |
| By: _____ Ivar C. Satero, Airport Director | <p>DocuSigned by: <i>Joe Harmeyer</i> 2466DDC3FAFB4DA... _____ Authorized Signature</p> |
| Attest: | _____ Joe Harmeyer Printed Name |
| By _____ Kantrice Ogletree, Secretary Airport Commission | _____ Vice President, Mid Pacific District Title |
| Resolution No: _____ | _____ KONE Inc. Company Name |
| Adopted on: _____ | _____ 0000003220 City Supplier Number |
| Approved as to Form: | _____ 567 7 th Street Address |
| David Chiu City Attorney | _____ San Francisco, CA 94103 City, State, ZIP |
| By _____ Daniel A. Edington Deputy City Attorney | _____ 415-554-0580 Telephone Number |
| | _____ 36-2357423 Federal Employer ID Number |

Attachment:

Appendix C, Equipment List