

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

Modification No. 1

THIS MODIFICATION (this “Modification”) is made as of **October 1, 2019**, in San Francisco, California, by and between **KONE Inc.** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Airport Commission, hereinafter referred to as “**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 commencing on July 1, 2019 in an amount not to exceed \$9,675,600; and
- D. City and Contractor desire to administratively modify the Agreement on the terms and conditions set forth herein to revise Appendix B by increasing the Allowance for As-Needed Services with no change to the contract amount; and
- E. Approval for this Agreement was obtained when the Civil Service Commission approved PSC No. 47246-18/19 on April 15, 2019; and
- F. The Contractor represents and warrants that it is qualified to perform the services required by City under this Agreement;

Now, THEREFORE, the parties agree that the following Articles have been changed as follows:

1. Article 1. Definitions, 1.1 Agreement has been revised. The definition “Agreement” shall mean the Agreement dated May 7, 2019 between Contractor and City.

2. Article 1. Definitions, has been amended to include the following into the Agreement:

1.10 “City Data” or “Data” includes, but is not limited to, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. This includes data that is provided by a third-party for use under this Agreement.

1.11 “Confidential Information” means any and all nonpublic information, whether written, electronic, or oral, concerning or relating to Airport technology, computer, or data systems, processes, or procedures, or that is subject to local, state, or federal laws or regulations restricting its disclosure, including but not limited to Private Information as defined under San Francisco Administrative Code Chapter 12M (Chapter 12M), or Critical Infrastructure Information or Protected Critical Infrastructure

Information as defined under the Homeland Security Act of 2002 and 6 CFR §29.2, which information or access to such information is supplied by the Airport or on behalf of the Airport to Contractor or otherwise acquired by Contractor during the course of dealings with the Airport and regardless of whether such information is in its original form, a copy, or a derivative product. "Derivative" means written or electronic material created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the Airport.

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

3. Article 3 Financial Matters, 3.6.1 Covered Services and 3.6.2 Wage Rates are hereby replaced with new **3.6.1 Covered Services and 3.6.2 Wage Rates**.

3.6.1 Covered Services. Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code or Section 21C [Miscellaneous Prevailing Wage Requirements] (collectively, "Covered Services"). The provisions of Section 6.22(e) and 21C of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

3.6.2 Wage Rates. The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement ("OLSE") and on the Internet at <http://www.dir.ca.gov/DLSR/PWD> and <http://sfgov.org/olse/prevailing-wage>. Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Contractor who perform Covered Services under this Agreement. Contractor further agrees as follows:

4. Article 4 Services and Resources, 4.5 Assignment is hereby replaced with new **4.5 Assignment**.

4.5 Assignment. The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

5. New Article 7 Payment of Taxes, 7.3 Withholding is hereby added to the Agreement to read as follows:

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

6. **Article 8 Termination and Default, 8.2.1(a)** is hereby amended to include **Article 13 “Data and Security”** into the table.

7. **Article 8 Termination and Default, 8.4.1** is hereby amended to include **Article 13 “Data and Security”** into the table.

8. **New 10.4 Consideration of Salary History** is hereby added to the Agreement to read as follows:

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history> . Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

9. **Article 10 Additional Requirements Incorporated by Reference, 10.11 Limitations on Contributions** is hereby replaced with **New 10.11 Limitations on Contributions**.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10. New 11.3 Incorporation of Recitals is hereby added to the Agreement to read as follows:

11.3 Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Agreement.

11. Article 11 General Provisions, 11.13 Order of Precedence is hereby replaced with **New 11.16 Order of Precedence.**

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated March 8, 2019. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

12. New Article 11 General Provisions, 11.14 Notification of Legal Requests is hereby added to the Agreement to read as follows:

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

13. New Article 13 Data and Security, 13.4 Management of City Data and Confidential Information is hereby added to the Agreement to read as follows:

13.4 Management of City Data and Confidential Information

13.4.1 Access to City Data. City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

13.4.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its

obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

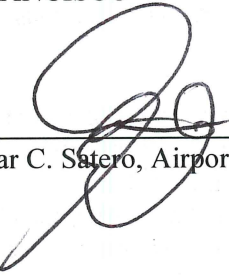
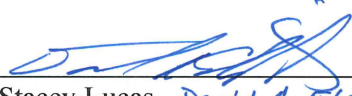
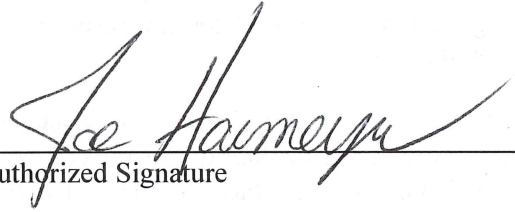
13.4.3 **Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

14. **Appendix B**, is hereby replaced in its entirety by the attachment at the end of this modification.

15. **Effective Date.** Each of the changes set forth in this Modification shall be effective on and after **October 1, 2019**.

16. **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, Contractor and City have executed this Modification as of the date first referenced above.

<p>CITY AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO</p> <p>By:  Ivar C. Satero, Airport Director</p> <p>Attest:</p> <p>Approved as to Form: Dennis J. Herrera City Attorney</p> <p>By:  Stacey Lucas David A. Edington Deputy City Attorney</p>	<p>CONTRACTOR</p> <p> Authorized Signature</p> <p>Joe Harmeyer Printed Name</p> <p>Vice President, Mid Pacific District Title</p> <p>KONE Inc. Company Name</p> <p>000003220 City Supplier ID</p> <p>567 7th Street Address</p> <p>San Francisco, CA 94103 City, State, ZIP</p> <p>415-554-0580 Telephone Number</p> <p>36-2357423 Federal Employer ID Number</p>
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**Appendix B
Calculation of Charges**

Refer to Section 3.3 “Compensation” of the Agreement for payment requirements including City approval of Contractor services performed and invoice format.

A. Preventative Maintenance Services

The price for preventative maintenance services provided in this Agreement is inclusive of all costs related to preventative maintenance described in the Scope of Services. The price shall cover all parts, materials, tools, diagnostic equipment and personnel (including costs of labor, overhead, and profit) required to maintain safe and reliable operation of the designated equipment throughout the entire term of the Agreement, and all costs related to security checks and identification badges required for the Contractor’s employees working on site at the Airport.

Description	Price per Unit* per Month
Preventative Maintenance Services for Escalators Built 2000 or Earlier	\$1,750
Preventative Maintenance Services for Escalators Built 2001 or Later	\$2,100
Preventative Maintenance Services for Electric Walks Built 2000 or Earlier	\$3,275
Preventative Maintenance Services for Electric Walks Built 2001 or Later	\$3,900

* A “unit” is either an escalator or a moving walkway, depending on the description.

B. As-Needed Services

As-needed services may or may not be performed, and shall only be performed when and as directed by the Airport through the issuance of a written task order signed by the Airport and Contractor. As-needed services shall include the approved replacement of obsolete or deficient parts. Contractor shall be responsible for providing, at its own expense, all necessary tools, diagnostic equipment, and personnel to perform the Services.

The task order shall include a description of 1) the as-needed services, 2) any required parts, materials and/or equipment, 3) any deliverable(s), 4) a schedule for performance, 5) cost, and 6) method and timing of payment, and shall be made a part of and incorporated into the contract documents without further modification to the Contract.

If the cost of Services performed under any Allowance is less than the amount stated in the contract, the total compensation payable shall be reduced by the difference between the amount stated in the Agreement and the cost of Services actually performed.

The total cost of As-Needed Services performed under this contract shall not exceed \$5,000,000.

Total Not-to-Exceed Contract Amount

\$ 9,765,600