

CLEVELAND PUBLIC LIBRARY

Board Meeting

April 19, 2016

**RESOLUTION TO ENTER INTO AN AGREEMENT WITH KONE INC. FOR
REPAIR SERVICE TO ELEVATOR DRIVES IN THE MAIN LIBRARY**

WHEREAS, The Property Management Department has determined that the DC drives on the elevators in the Main Library complex are obsolete. The elevator drives are located in the controllers and control the energy necessary to safely and smoothly raise and lower the elevator. The drives in the elevators are no longer being manufactured and are nearing the end of their product life cycle; and

WHEREAS, The Director of Property Management recommends installing new drives and software for two (#20012127 and #20090017) out of ten elevators in the Main Library complex for a total cost of \$39,028. As each drive is being repaired, the parts will be saved in the event parts are needed for the remaining eight drives. Property Management is planning to replace two elevator drives a year until all 10 have been replaced; and

WHEREAS, KONE Inc. has provided the attached letter attesting that they are the sole source provider for this drives in the Library's elevator system. KONE Inc. has provided good, reliable products and service in the past; now therefore be it

RESOLVED, That the Board of Trustees of the Cleveland Public Library hereby authorizes the Executive Director, CEO, or his designee, to enter into an agreement with KONE Inc. for the labor and materials to install new drives and software on elevator numbers 20012127 and 20090017 in the amount of \$39,028, subject to approval of the Chief Legal Officer, with the expenditure being charged to 12100053-53310 (Building Repair).



Elevators Escalators

April 15, 2016

Cleveland Public Library
325 Superior Avenue
Cleveland OH 44114

Attn: Myron Scruggs

Dear Mr. Scruggs,

Please be advised KONE Inc. is the sole source of material for the elevator drive upgrade for your KONE MIPROM elevators.

Should you have further questions or concerns please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Judy Foreman" followed by a circled "JF" monogram.

Judy Foreman
KONE Inc.
P 440-546-1100
F 440-546-1106
Email: judy.foreman@kone.com



February 18, 2016

Tim Murdock
CLEVELAND PUBLIC LIBRARY
325 SUPERIOR AVE
CLEVELAND, OH 44114-1902

KONE Inc.
6670 W. Snowville Road
BRECKSVILLE, OH 44141-3242
Tel 440-546-1100 x 216
Fax 440-546-1106
www.kone.com
judy.foreman@kone.com

Subject: Proposal and Contract for Quoted Repair

Property: **Cleveland Public Library**

Dear Mr. Tim Murdock,

KONE Inc. (KONE) is pleased to offer you (Purchaser) this proposal and contract for the repair service described below.

The price stated in this letter is valid for a period of thirty (30) days from the date of the letter.

1. Equipment.

[#20012127, 20090017](#)

2. Description of Work. KONE will provide labor and materials to perform the following services:

Install new drives and software. Once complete, KONE will load car to capacity weight and test operation.

The DC Drives on your elevators are obsolete. The elevator drive is located in the controller and controls the energy necessary to safely and smoothly raise and lower the elevator. The drive in your elevator is no longer manufactured, and is nearing the end of its product life cycle.

Confidential – KONE Inc.

3. **Price.** The total price to perform the services described above is \$ \$39,028.00, plus applicable taxes and is based on 50% down payment.

4. **Payment Terms.** KONE will invoice Purchaser the down payment amount promptly after Purchaser executes this letter or after KONE starts the services described in this letter. KONE will invoice Purchaser for the balance of the total price promptly after completing the services.

5. **General Terms and Conditions.** This letter and the General Terms and Conditions below form the contract between Purchaser and KONE. This contract is effective on the earlier of (a) the date KONE's authorized representative signs below; or (b) the date KONE begins the services described in this letter. This contract expires automatically when KONE completes its services.

Kind Regards,

Judy Foreman
Sales Consultant

Accepted for KONE INC.

Accepted for PURCHASER

Signature

Signature

Printed Name

Printed Name

Title

Title

Date of Acceptance (Effective Date)

GENERAL TERMS AND CONDITIONS

Hours of Service. Unless expressly provided otherwise in the Agreement, all services will be performed during the regular working hours of the regular working days of the elevator or escalator trade in the location in which the services are performed.

Cancellation. Any cancellation or other termination of KONE's services under this contract constitutes a material breach. In such case, Purchaser will pay as a cancellation fee an amount equal the following percentages of the total price or not-to-exceed price: (i) 30% after the date KONE approves the contract; (ii) 80% after the date KONE orders materials; and (iii) 100% after the date KONE starts work.

Warranty. KONE warrants the materials and workmanship of the parts delivered under this contract for a period of ninety (90) days from the date services are complete. KONE will in its sole discretion repair or replace any defective part(s) at its material cost. This warranty excludes the price of the labor associated with the repair or replacement of parts, which is the responsibility of Purchaser. KONE is not liable for damage due to normal wear and tear, vandalism, abuse, misuse, neglect, work performed by third parties, or any other cause beyond KONE's control or without its fault. This provision provides an express warranty for parts provided under this contract. All parts covered by the warranty in this contract must be provided by KONE. KONE's warranty becomes null and void when a part is supplied by a third party. Purchaser waives all claims against KONE arising from or related to a part supplied by a third party. Except for this express warranty, KONE disclaims all other warranties of any kind, whether express, implied, statutory or otherwise, to the extent that such other warranties may be disclaimed under applicable law. Purchaser's sole remedy and KONE's sole liability for breach of warranty is repair of existing parts or delivery of conforming parts.

Payment Terms. Payment is due net thirty (30) days from the date of the invoice. A charge of the greater of: (i) 1½%; or (ii) the maximum rate permitted by applicable law will be applied to the unpaid balance. Purchaser will reimburse KONE for all costs of collection, including without limitation court costs and reasonable attorneys' fees. If this contract states a total price or a not-to-exceed price to be made in more than one payment, KONE is not obliged to start work until it receives Purchaser's initial payment. If Purchaser fails to make timely payment, any indemnity provided by KONE under this contract is null and void as to any damages that arise during the period of non-payment. Purchaser waives all claims against KONE arising from or related to suspension of services pursuant to this provision.

Risk of Loss. KONE will deliver all parts FOB Purchaser's premises and title to such parts will pass to and vest in Purchaser upon full payment of the total price. If Purchaser pays for any parts in full in advance, title to such parts will pass upon receipt of full payment in advance.

Indemnity. Purchaser will indemnify, defend, and hold KONE harmless from and against any and all claims, demands, actions, suits, proceedings, judgments, damages, loss, liabilities, costs, or expenses, including without limitation court costs and reasonable attorney's fees, whether arising from or related to Purchaser's, KONE's, or any third party's negligence, willful misconduct, or acts or omissions in performance of this contract.

Waiver of Consequential Damages and Claims. 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 this contract, 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 indirect, incidental, consequential, special, exemplary, or punitive damages. Each party hereby waives its rights to such damages to the fullest extent permitted by applicable law. Any waiver of claims, damages, or other rights, whether such rights arise under this contract or by law or in equity, purported to be made by KONE in this contract is null and void and will not be considered in interpreting this contract.

Insurance. Purchaser will name KONE as an additional insured on its insurance policy.

Limitation of Liability. KONE's total liability for any direct or indirect damages arising under this contract will not exceed the total amount paid by Purchaser to KONE under this contract.

U.S. Government Sales. If the product(s) or service(s) provided under this contract are for end use by a federal, state, or local government customer, KONE makes no representations, certifications, or warranties whatsoever with respect to the ability of its product(s), service(s), or price(s) to satisfy any applicable federal, state, or local statutes or regulations, including without limitation the Federal Acquisition Regulation ("FAR").

Force Majeure. A party is not liable for failure to perform its obligations under this contract if such failure is beyond its control and without its fault and results from Acts of God (including without limitation fire, flood, earthquake, storm, hurricane, or other natural disaster), labor disputes, strikes, lockouts, or other force majeure events. 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.

Intellectual Property Rights. KONE retains all rights, title, and interest, including all intellectual property rights, in and to the written materials it provides to Purchaser or uses to perform this contract, including without limitation shop drawings, technical documentation, and user manuals. KONE or its licensors retain all rights, title, and interest,

including all intellectual property rights, in and to any software provided with equipment manufactured by KONE. Purchaser will not use such software except in connection with the use and operation of this equipment. Purchaser will not reverse engineer or otherwise attempt to obtain the source code of any software in object code form.

KONE Property. KONE will provide Purchaser with any of its information or materials that it provides to its customers generally in the ordinary course of its business. Any tools, devices, or other equipment that KONE uses to perform this contract remains its sole property. If this contract terminates or expires for any reason, Purchaser will give KONE access to the premises to remove such any tools, devices, or other equipment at KONE's expense.

Miscellaneous. This contract is governed by the laws of the State of Illinois without regard to or application of its rules on the conflict of laws. The parties expressly exclude the application to this contract of the United Nations Convention on the International Sale of Goods. This contract supersedes all prior written or oral negotiations, commitments, agreements, and understandings between the parties relating to the subject thereof, and constitutes the entire agreement between the parties with respect to the subject matter hereof. The parties agree that any purchase order, work order, agreement, or other terms or conditions provided by Purchaser to KONE concurrent with either party signing this contract or after the effective date of this contract are null and void and will not be considered in interpreting the contract unless such terms and conditions are set forth in a writing signed by KONE and Purchaser. No amendment, modification, cancellation, or alteration of this contract is effective unless made in a writing signed by the parties' authorized representatives. The contract may be executed in multiple counterparts, each of which is an original and all of which taken together constitutes one and the same agreement. This contract may not be modified, amended, canceled, or altered by custom and usage of trade or course of dealing. Any section headings are for convenience only and will not in any way limit the scope or affect the interpretation of any provision of this contract. In the event any part of this contract is determined to be invalid or non-enforceable, the remaining part or provisions will continue in full force and effect. Failure or delay by a party to exercise any right, remedy, power, or privilege accorded by this contract does not constitute a waiver of such right, remedy, power, or privilege. A waiver is effective only if in writing and signed by the waiving party. A written waiver of default will not operate as a waiver of any other default or of the same default in the future. The terms and conditions of this contract that by their sense and context are intended to survive expiration or termination of this contract will so survive, including without limitation the making of all payments hereunder.

DOWN PAYMENT INVOICE/RECEIPT

Receipt #: 141803 02/18/2016 Receipt Date: 02/18/2016 Customer PO #:	Area Office: KONE Federal Tax ID #: 36 2357423 KONE, INC 6670 W. Snowville Road BRECKSVILLE, OH 44141-3242						
Bill To: CLEVELAND PUBLIC LIBRARY 325 SUPERIOR AVE CLEVELAND, OH 44114-1902	Project Location: CLEVELAND PUBLIC LIBRARY 325 & 525 SUPERIOR AVE CLEVELAND, OH 44114-1902						
In reference to proposal dated 01/13/2016, <table style="width: 100%; margin-top: 20px;"> <tr> <td style="width: 50%;">Contract Price:</td> <td style="text-align: right;">\$39,028.00</td> </tr> <tr> <td style="padding-left: 40px;">Down Payment Amount Due:</td> <td style="text-align: right;">\$19,514.00</td> </tr> <tr> <td style="padding-left: 40px;">Total Down Payment Amount:</td> <td style="text-align: right;">\$19,514.00</td> </tr> </table>		Contract Price:	\$39,028.00	Down Payment Amount Due:	\$19,514.00	Total Down Payment Amount:	\$19,514.00
Contract Price:	\$39,028.00						
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Total Down Payment Amount:	\$19,514.00						

Please return this portion with your payment.

Payer: CLEVELAND PUBLIC LIBRARY 325 SUPERIOR AVE CLEVELAND, OH 44114-1902	Receipt #: 141803 02/18/2016 Date: 02/18/2016 Customer #: 141803 Area Office #: 120
Remit To: KONE Inc. 6670 W. Snowville Road BRECKSVILLE, OH 44141-3242	AMOUNT: \$19,514.00

