



City of Palo Alto

City Council Staff Report

(ID # 9447)

Report Type: Consent Calendar

Meeting Date: 8/20/2018

Summary Title: Modernization of the Two Elevators Located at the Cowper/Webster, Lot J, Parking

Title: Approval of a Contract With Kone, Inc. in an Amount Not-to-Exceed \$687,760 for the Modernization of the two Elevators Located at the Cowper/Webster, Lot J, Parking Garage, Funded in the Capital Improvement Project PF-18000

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that Council:

1. Approve and authorize the City Manager or his designee to execute contract C18171695 with Kone, Inc. (Attachment A) in the amount of \$687,760 for the modernization of the two elevators in the Cowper/Webster, Lot J, parking garage, funded in the Capital Improvement Program project, Parking Lot J Elevator Modernization (PF-18000);
2. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Kone, Inc. for related, additional but unforeseen work, which may develop during the project, the total value of which shall not exceed \$62,240.

Background

The Cowper/Webster parking garage was constructed in 1984 and is located at 520 Webster Street. The two traction elevators were installed at that time, and have frequent maintenance issues and repair parts are difficult to find, rendering them inoperative, sometimes for extended periods of time. Entrapments are not

uncommon. Additionally, the elevators neither meet current ADA or fire codes nor are energy efficient.

Discussion

Project Description

The primary scope of this project is modernizing the elevator equipment and controls, updating the cab interiors and bringing the elevators up to ADA and fire code compliance.

A detailed scope of work is provided in the attached contract and includes:

- replacing controllers, motor drives, and hoist machines;
- replacing hoist ropes, rope brakes, and governors;
- replacing entrance equipment, door operators, and car wiring;
- installing new ADA compliant hall stations and car fixtures;
- updating car interiors; and
- installing new smoke detectors in each of the elevator lobbies.

One elevator will be modernized at a time to lessen the impact on users during the project.

Vendor Selection Process

Section 2.30.360(j) of Title 2 of the Palo Alto Municipal Code identifies the process that allows the use of Intergovernmental Cooperative Purchasing agreements. Bids for this purchase were obtained through US Communities Government Purchasing Alliance, an approved cooperative group. A request for quotation was sent to Kone, and a quote was received on March 19, 2018.

Timeline

Pending Council approval of this contract, the project is expected to begin in April 2019 and be complete by December of 2019.

Resource Impact

Funding for this project is available in Capital Improvement Program project, Parking Lot J Elevator Modernization (PF-18000).

Policy Implications

This recommendation does not represent any change to existing City policies.

Environmental Review

This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under Sections 15301 and 15302 of the CEQA Guidelines as repair, maintenance and alteration of an existing facility and no further environmental review is necessary.

Attachments:

- Attachment A: C18171695 Kone - Lot J Elevator Moderization

CITY OF PALO ALTO CONTRACT NO. C18171695

GENERAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into on the 20th day of August, 2018, by and between the **CITY OF PALO ALTO**, a California chartered municipal corporation ("**CITY**"), and **KONE INC.**, a California corporation, located at 15021 Wicks Blvd., San Leandro, CA 94577, Telephone Number: (510)351-5141 DIR Number: 1000003806 ("**CONTRACTOR**"). In consideration of their mutual covenants, the parties hereto agree as follows:

1. **SERVICES.** CONTRACTOR shall provide or furnish the services (the "Services") described in the Scope of Services, attached at Exhibit A.
2. **EXHIBITS.** The following exhibits are attached to and made a part of this Agreement:

- "A" - Scope of Services
- "A-1" - On-Call Task Order (Optional)
- "B" - Schedule of Performance
- "C" - Schedule of Fees
- "D" - Insurance Requirements
- "E" - Performance and/or Payment Bond
- "F" - Liquidated Damages (Optional)

CONTRACT IS NOT COMPLETE UNLESS ALL INDICATED EXHIBITS ARE ATTACHED.

3. **TERM.**
The term of this Agreement is from April 23, 2018 to January 31, 2020 inclusive, subject to the provisions of Sections R and W of the General Terms and Conditions.
4. **SCHEDULE OF PERFORMANCE.** CONTRACTOR shall complete the Services within the term of this Agreement in a reasonably prompt and timely manner based upon the circumstances and direction communicated to CONTRACTOR, and if applicable, in accordance with the schedule set forth in the Schedule of Performance, attached at Exhibit B. Time is of the essence in this Agreement.
5. **COMPENSATION FOR ORIGINAL TERM.** CITY shall pay and CONTRACTOR agrees to accept as not-to-exceed compensation for the full performance of the Services and reimbursable expenses, if any:

- The total maximum lump sum compensation of _____ dollars (\$ _____);
OR
- The sum of _____ dollars (\$ _____) per hour, not to exceed a total maximum compensation amount of _____ dollars (\$ _____); **OR**
- A sum calculated in accordance with the fee schedule set forth at Exhibit C, not to exceed a total maximum compensation amount of Six Hundred Eighty-Seven Thousand Seven Hundred Fifty-Nine dollars and Fifty Cents (\$687,759.50).

CONTRACTOR agrees that it can perform the Services for an amount not to exceed the total maximum compensation set forth above. Any hours worked or services performed by CONTRACTOR for which payment would result in a total exceeding the maximum amount of compensation set forth above for performance of the Services shall be at no cost to CITY.

- CITY has set aside the sum of Sixty-Two Thousand Two Hundred Forty dollars (\$62,240.00) for Additional Services. CONTRACTOR shall provide Additional Services only by advanced, written authorization from the City Manager or designee. CONTRACTOR, at the CITY's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONTRACTOR's proposed maximum compensation, including reimbursable expense, for such services. Compensation shall be based on the hourly rates set forth above or in Exhibit C (whichever is applicable), or if such rates are not applicable, a negotiated lump sum. CITY shall not authorize and CONTRACTOR shall not perform any Additional Services for which payment would exceed the amount set forth above for Additional Services. Payment for Additional Services is subject to all requirements and restrictions in this Agreement.

6. COMPENSATION DURING ADDITIONAL TERMS.

- CONTRACTOR'S compensation rates for each additional term shall be the same as the original term; **OR**
- CONTRACTOR's compensation rates shall be adjusted effective on the commencement of each Additional Term. The lump sum compensation amount, hourly rates, or fees, whichever is applicable as set forth in section 5 above, shall be adjusted by a percentage equal to the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland- San Jose area, published by the United States Department of Labor Statistics (CPI) which is published most immediately preceding the commencement of the applicable Additional

Term, which shall be compared with the CPI published most immediately preceding the commencement date of the then expiring term. Notwithstanding the foregoing, in no event shall CONTRACTOR's compensation rates be increased by an amount exceeding five percent of the rates effective during the immediately preceding term. Any adjustment to CONTRACTOR's compensation rates shall be reflected in a written amendment to this Agreement.

7. CLAIMS PROCEDURE FOR "9204 PUBLIC WORKS PROJECTS". For purposes of this Section 7, a "9204 Public Works Project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. Public Contract Code Section 9204 mandates certain claims procedures for Public Works Projects, which are set forth in "Appendix A Claims for Public Contract Code Section 9204 Public Works Projects".

This project is a 9204 Public Works Project and is required to comply with the claims procedures set forth in Appendix A, attached hereto and incorporated herein.

OR

This project is not a 9204 Public Works Project.

8. INVOICING. Send all invoices to CITY, Attention: Project Manager. The Project Manager is: Dennis Huebner, Dept.: Public Works Facilities, Telephone: 650- 496-6970. Invoices shall be submitted in arrears for Services performed. Invoices shall not be submitted more frequently than monthly. Invoices shall provide a detailed statement of Services performed during the invoice period and are subject to verification by CITY. CITY shall pay the undisputed amount of invoices within 30 days of receipt.

GENERAL TERMS AND CONDITIONS

A. ACCEPTANCE. CONTRACTOR accepts and agrees to all terms and conditions of this Agreement. This Agreement includes and is limited to the terms and conditions set forth in sections 1 through 8 above, these general terms and conditions and the attached exhibits.

B. QUALIFICATIONS. CONTRACTOR represents and warrants that it has the expertise and qualifications to complete the services described in Section 1 of this Agreement, entitled "SERVICES," and that every individual charged with the performance of the services under this Agreement has sufficient skill and

experience and is duly licensed or certified, to the extent such licensing or certification is required by law, to perform the Services. CITY expressly relies on CONTRACTOR's representations regarding its skills, knowledge, and certifications. CONTRACTOR shall perform all work in accordance with generally accepted business practices and performance standards of the industry, including all federal, state, and local operation and safety regulations.

- C. **INDEPENDENT CONTRACTOR.** It is understood and agreed that in the performance of this Agreement, CONTRACTOR and any person employed by CONTRACTOR shall at all times be considered an independent CONTRACTOR and not an agent or employee of CITY. CONTRACTOR shall be responsible for employing or engaging all persons necessary to complete the work required under this Agreement.
- D. **SUBCONTRACTORS.** CONTRACTOR may not use subcontractors to perform any Services under this Agreement unless CONTRACTOR obtains prior written consent of CITY. CONTRACTOR shall be solely responsible for directing the work of approved subcontractors and for any compensation due to subcontractors.
- E. **TAXES AND CHARGES.** CONTRACTOR shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of CONTRACTOR's business.
- F. **COMPLIANCE WITH LAWS.** CONTRACTOR shall in the performance of the Services comply with all applicable federal, state and local laws, ordinances, regulations, and orders.
- G. **PALO ALTO MINIMUM WAGE ORDINANCE.** CONTRACTOR shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as it may be amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONTRACTOR shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONTRACTOR shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.
- H. **DAMAGE TO PUBLIC OR PRIVATE PROPERTY.** CONTRACTOR shall, at its sole expense, repair in kind, or as the City Manager or designee shall direct, any damage to public or private property that occurs in connection with CONTRACTOR's performance of the Services. CITY may decline to approve and may withhold payment in whole or in part to such extent as may be necessary to protect CITY from loss because of defective work not remedied or other damage

to the CITY occurring in connection with CONTRACTOR's performance of the Services. CITY shall submit written documentation in support of such withholding upon CONTRACTOR's request. When the grounds described above are removed, payment shall be made for amounts withheld because of them.

- I. WARRANTIES.** CONTRACTOR expressly warrants that all services provided under this Agreement shall be performed in a professional and workmanlike manner in accordance with generally accepted business practices and performance standards of the industry and the requirements of this Agreement. CONTRACTOR expressly warrants that all materials, goods and equipment provided by CONTRACTOR under this Agreement shall be fit for the particular purpose intended, shall be free from defects, and shall conform to the requirements of this Agreement. CONTRACTOR agrees to promptly replace or correct any material or service not in compliance with these warranties, including incomplete, inaccurate, or defective material or service, at no further cost to CITY. The warranties set forth in this section shall be in effect for a period of one year from completion of the Services and shall survive the completion of the Services or termination of this Agreement.
- J. MONITORING OF SERVICES.** CITY may monitor the Services performed under this Agreement to determine whether CONTRACTOR's work is completed in a satisfactory manner and complies with the provisions of this Agreement.
- K. CITY'S PROPERTY.** Any reports, information, data or other material (including copyright interests) developed, collected, assembled, prepared, or caused to be prepared under this Agreement will become the property of CITY without restriction or limitation upon their use and will not be made available to any individual or organization by CONTRACTOR or its subcontractors, if any, without the prior written approval of the City Manager.
- L. AUDITS.** CONTRACTOR agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for three (3) years from the date of final payment, CONTRACTOR's records pertaining to matters covered by this Agreement. CONTRACTOR agrees to maintain accurate books and records in accordance with generally accepted accounting principles for at least three (3) following the terms of this Agreement.
- M. NO IMPLIED WAIVER.** No payment, partial payment, acceptance, or partial acceptance by CITY shall operate as a waiver on the part of CITY of any of its rights under this Agreement.
- N. INSURANCE.** CONTRACTOR, at its sole cost, shall purchase and maintain in full force during the term of this Agreement, the insurance coverage described at Exhibit D. Insurance must be provided by companies with a Best's Key Rating of

A-:VII or higher and which are otherwise acceptable to CITY's Risk Manager. In addition, all policies, endorsements, certificates and/or binders are subject to approval by the Risk Manager as to form and content. CONTRACTOR shall provide an Owners and Contractors Protective Liability policy which lists CITY as the Named Insured. Policy limits shall be at least \$2,000,000. CONTRACTOR shall obtain an endorsement stating that the insurance is primary coverage and will not be canceled or materially reduced in coverage or limits until after providing 30 days prior written notice of the cancellation or modification to the Risk Manager. CONTRACTOR shall provide certificates of such policies or other evidence of coverage satisfactory to the Risk Manager, together with the required endorsements, to CITY concurrently with the execution of this Agreement and shall throughout the term of this Agreement provide current certificates evidencing the required insurance coverages and endorsements to the Risk Manager. CONTRACTOR shall include all subcontractors as insured under its policies or shall obtain and provide to CITY separate certificates and endorsements for each subcontractor that meet all the requirements of this section. The procuring of such required policies of insurance shall not operate to limit CONTRACTOR's liability or obligation to indemnify CITY under this Agreement.

- O. HOLD HARMLESS.** To the fullest extent permitted by law and without limitation by the provisions of section N relating to insurance, CONTRACTOR shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents from and against any and all demands, claims, injuries, losses, or liabilities of any nature, including death or injury to any person, property damage or any other loss and including without limitation all damages, penalties, fines and judgments, associated investigation and administrative expenses and defense costs, including, but not limited to reasonable attorney's fees, courts costs and costs of alternative dispute resolution), arising out of, or resulting in any way from or in connection with the performance of this Agreement. CONTRACTOR's obligations under this Section apply regardless of whether or not a liability is caused or contributed to by any negligent (passive or active) act or omission of CITY, except that CONTRACTOR shall not be obligated to indemnify for liability arising from the sole negligence or willful misconduct of CITY. The acceptance of the Services by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section survive the completion of the Services or termination of this Agreement.

O.1 LIMITATION OF LIABILITY.

O.1 (a) LIMITATION OF LIABILITY OF CONSULTANT. Notwithstanding any other provision of this Agreement, in no event shall CONTRACTOR be liable to CITY, regardless of whether any claim is based on contract or tort, for special, consequential, indirect or incidental damages or for any loss of profit or loss of

business by CITY, even if CONTRACTOR has been advised of the possibility of any such potential claim, loss or damage. Except as provided in the immediately following sentence, in no event shall the total aggregate liability under this Agreement of CONTRACTOR to CITY exceed the dollar amount provided for in section 5 ("not to exceed compensation") of this Agreement. CONTRACTOR's liability limit set forth herein shall not apply to (1) damages caused by CONTRACTOR's gross negligence or willful misconduct, (2) CONTRACTOR's obligations to indemnify and defend CITY pursuant to section O ("Hold Harmless") of this Agreement, (3) limit claims or general damages that fall within the insurance coverage of this Agreement, (4) statutory damages, and (5) wrongful death caused by CONTRACTOR.

O.1(b) LIMITATION OF LIABILITY OF CITY. CITY'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 5 ("not to exceed compensation") of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall CITY be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

P. NON-DISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONTRACTOR certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONTRACTOR acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

Q. WORKERS' COMPENSATION. CONTRACTOR, by executing this Agreement, certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and certifies that it will comply with such provisions, as applicable, before commencing and during the performance of the Services.

R. TERMINATION. The City Manager may terminate this Agreement without cause by giving ten (10) days' prior written notice thereof to CONTRACTOR. If CONTRACTOR fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, the City Manager may terminate this Agreement immediately upon written notice of termination.

Upon receipt of such notice of termination, CONTRACTOR shall immediately discontinue performance. CITY shall pay CONTRACTOR for services satisfactorily performed and proven costs incurred by reason of procurement of materials and/or equipment necessary to perform the Services, up to the effective date of termination. If the termination is for cause, CITY may deduct from such payment the amount of actual damage, if any, sustained by CITY due to CONTRACTOR's failure to perform its material obligations under this Agreement. Upon termination, CONTRACTOR shall immediately deliver to the City Manager any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by CONTRACTOR or given to CONTRACTOR, in connection with this Agreement. Such materials shall become the property of CITY.

- S. ASSIGNMENTS/CHANGES.** This Agreement binds the parties and their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written consent of CITY. No amendments, changes or variations of any kind are authorized without the written consent of CITY.
- T. CONFLICT OF INTEREST.** In accepting this Agreement, CONTRACTOR covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. CONTRACTOR further covenants that, in the performance of this Agreement, it will not employ any person having such an interest. CONTRACTOR certifies that no CITY officer, employee, or authorized representative has any financial interest in the business of CONTRACTOR and that no person associated with CONTRACTOR has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. CONTRACTOR agrees to advise CITY if any conflict arises.
- U. GOVERNING LAW.** This Agreement shall be governed and interpreted by the laws of the State of California.
- V. ENTIRE AGREEMENT.** This Agreement, including all exhibits, represents the entire agreement between the parties with respect to the services that may be the subject of this Agreement. Any variance in the exhibits does not affect the validity of the Agreement and the Agreement itself controls over any conflicting provisions in the exhibits. This Agreement supersedes all prior agreements, representations, statements, negotiations and undertakings whether oral or written.
- W. NON-APPROPRIATION.** This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in

the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

X. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONTRACTOR shall comply with CITY's Environmentally Preferred Purchasing policies which are available at CITY's Purchasing Division, which are incorporated by reference and may be amended from time to time. CONTRACTOR shall comply with waste reduction, reuse, recycling and disposal requirements of CITY's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, CONTRACTOR shall comply with the following zero waste requirements:

- All printed materials provided by CONTRACTOR to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by Contractor on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including, but not limited to, Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Division's office.
- Reusable/returnable pallets shall be taken back by CONTRACTOR, at no additional cost to CITY, for reuse or recycling. CONTRACTOR shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

Y. AUTHORITY. The individual(s) executing this Agreement on behalf of the parties represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

Z. PREVAILING WAGES

This Project is not subject to prevailing wages. CONTRACTOR is not required to pay prevailing wages in the performance and implementation of the Project in accordance with SB 7, if the Agreement is not a public works contract, if Agreement does not include a public works construction project of more than \$25,000, or the Agreement does not include a public works alteration,

demolition, repair, or maintenance (collectively, 'improvement') project of more than \$15,000.

OR

Contractor is required to pay general prevailing wages as defined in Subchapter 3, Title 8 of the California Code of Regulations and Section 16000 et seq. and Section 1773.1 of the California Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the Agreement for this Project from the Director of the Department of Industrial Relations ("DIR"). Copies of these rates may be obtained at the Purchasing Division's office of the City of Palo Alto. Contractor shall provide a copy of prevailing wage rates to any staff or subcontractor hired, and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of all sections, including, but not limited to, Sections 1775, 1776, 1777.S, 1782, 1810, and 1813, of the Labor Code pertaining to prevailing wages.

AA.DIR REGISTRATION. In regard to any public work construction, alteration, demolition, repair or maintenance work, CITY will not accept a bid proposal from or enter into this Agreement with CONTRACTOR without proof that CONTRACTOR and its listed subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work, subject to limited exceptions. City requires CONTRACTOR and its listed subcontractors to comply with the requirements of SB 854.

CITY provides notice to CONTRACTOR of the requirements of California Labor Code section 1771.1(a), which reads:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.S. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the Agreement is awarded."

CITY gives notice to CONTRACTOR and its listed subcontractors that CONTRACTOR is required to post all job site notices prescribed by law or

regulation and CONTRACTOR is subject to SB 854-compliance monitoring and enforcement by DIR.

CITY requires CONTRACTOR and its listed subcontractors to comply with the requirements of Labor Code section 1776, including:

Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, CONTRACTOR and its listed subcontractors, in connection with the Project.

The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of CONTRACTOR and its listed subcontractors, respectively.

At the request of CITY, acting by its project manager, CONTRACTOR and its listed subcontractors shall make the certified payroll records available for inspection or furnished upon request to the project manager within ten (10) days of receipt of CITY's request.

[For state- and federally-funded projects] CITY requests CONTRACTOR and its listed subcontractors to submit the certified payroll records to the project manager at the end of each week during the Project.

If the certified payroll records are not produced to the project manager within the 10-day period, then CONTRACTOR and its listed subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and CITY shall withhold the sum total of penalties from the progress payment(s) then due and payable to CONTRACTOR.

Inform the project manager of the location of CONTRACTOR's and its listed subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to the project manager within five (5) business days of any change of location of those payroll records.

BB. CONTRACT TERMS. All unchecked boxes do not apply to this Agreement. In the case of any conflict between the terms of this Agreement and the exhibits hereto or CONTRACTOR's proposal (if any), the Agreement shall control. In the case of any conflict between the exhibits hereto and CONTRACTOR's proposal, the exhibits shall control.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

KONE, INC.

City Manager or Designee

1st Officer

By _____

Name _____

Title _____

Approved as to form:

2nd Officer

City Attorney or Designee

By _____

Name _____

Title _____

**EXHIBIT A
SCOPE OF SERVICES**

CONTRACTOR shall update the two City of Palo Alto’s Parking Garage Lot J elevators, located at 520 Webster Street, Palo Alto, CA, with elevator equipment consistent with the specifications and components set forth below:

Solution Specification:

Modernization (2) Traction Elevators

Building Name:	520 Webster Garage	
Building / Unit #	01	02
State #	078310	078309
KONE #	20274198	20274199
Rated Load	2000	2000
Rated Speed	350	350
Travel Height	58	58
# of Floors	07	07

Scope of work in Summery

Machine Room

Controllers & Drives	New - KONE AC (Regenerative Drive)
Operation	Retain – Duplex
Hoist Machines	New – HW Basement Geared Elevator
Hoist Ropes	New
Rope Brake	New - Hollister Whitney, Seismic Engineered for New Machine
Governors	New – Located in Overhead
Hoist cables	New
Speed	Retain
Travel & Capacity	Retain
Seismic Switch	New

Hoistway

Openings / Stops	Retain
Sheaves	Retain
Entrance Equipment	New - All Hoistway Doors, Tracks, Headers, Hangers, Rollers, Closers,
Gibs, Astrigals	
Travelling Cable	New
Hoistway Wiring	New
Cwt Roller Guides	New – Elsco
Car Frame & Safeties	Retain
Car Shell & Cwt Buffers	Retain
Final Limit Switches	New
Leveling Switches	New

Car

Car top Inspection	New
Car Rollers Guides	New - Elsco
Cab Interiors	Retain – Alternate Add (Stainless as Lot Q)

Door Operator Package	New – ReNova, Header, Tracks, Hanger, Door, Clutch, Gibs
Door Return Light Curtin	New
Car Wiring	New

Fixtures

Hall Stations	New
Car Fixtures	New
Hoistway Access	New

Products to be provided in Detail:

KONE Controller
KONE ReSolve



KONE ReSolve 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 ReSolve is designed to correctly interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.

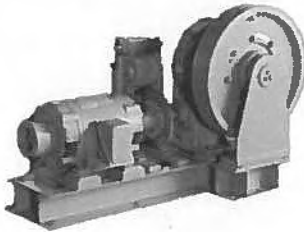
A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading.

The control for the hoist motor will be by means of a solid-state drive system. The system will be a controlled pulse-width modulated AC vector drive. The variable voltage variable frequency drive will convert the AC power supply using a two-step process to a variable voltage variable frequency power supply for use by the hoist motor. Varying the frequency and voltage of the motor will automatically and continuously control the speed, acceleration and deceleration. The system will be closed loop.

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.

New Hoist Machines:

(2) New Geared Basement Machines



A new geared traction machine shall be provided; designed to meet the service encountered in elevator operation. A properly grooved sheave will be driven through a worm and gear by a moderate speed motor. The sheave wheel will be mounted with heavy antifriction bearings on a rigid shaft, or will be firmly pressed onto a shaft supported by a sleeve or antifriction bearing of ample capacity.

The bedplate will be of cast iron or steel in one piece, either separate or integral with the machine frame. The gear housing, brake support and motor support will be mounted on the machine, rigid bedplate or they will be a single casting. This gear case will have gasketed hand holes to permit inspection of worm gear face, worm gear and worm contact, and worm gear mounting bolts.

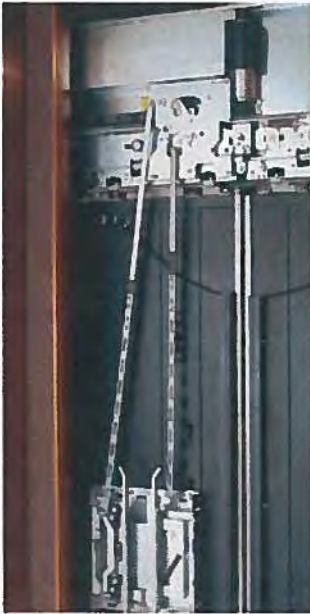
The complete assembly will be arranged to effectively prevent oil leakage from the gear case and worm shaft opening. The machine will be mounted in compact soundproofing units to attenuate the predominated frequency of the elevator system. The sheave and gear spider will be pressed on and keyed to the shaft. The worm gear will have an accurately machined bronze rim or such a composition that it will not show appreciable wear after one year. The worm gear will be securely bolted to the spider.

The sheave material will be of hard alloy cast iron, smooth turned grooves and flanges. These sheaves will be tested until proven free from cracks and holes or other imperfections. The worm will be accurately machined in one piece from a solid steel forging or heat treated steel bar stock and be integral with the worm shaft. The worm shaft will be mounted on at least two bearings, one of which will be an oversized double active preloaded ball bearing, or guide bearing.

All thrust bearings will be removable without dismantling the machine. The brake will be spring actuated, electrically released of heavy construction and having a proper braking area for the load and speed. The two brake shoes will be spring operated. The springs will have sufficient power to stop and hold the elevator at 125 % of contract load. Hoist cable guards will be installed at the front and rear of each machine. Guards will be installed in such a manner so as to cover all pinch points.

Door Operators

ReNova Door Operator



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.
- 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.
- 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.

Guides

New ELSCO Roller Guides shall be provided on the Car & Cwt to reduce vibration and noise.



Governor



The car safety will be activated by a new speed governor located overhead, driven by a governor rope suitably connected to the car safety. The governor will be equipped with rope grip jaws designed to clamp the governor rope so as to actuate the car safety upon a predetermined over speed downward. The governor will be set at not less than 115% of specified rated car speed and not more than the maximum governor tripping speed specified in the code for the specified rated car speed.

The rope grip jaws must be positively tripped within the permitted range of speed. The governor rope-tripping device will be so designed that no appreciable damage to or deformation of the governor rope will result from the stopping action of the device in operating the car safety. The governor over speed switches will conform to ANSI A17.1 code requirements and be so located and enclosed that excess lubricant will not enter the switch enclosure.

Upon activation of the safety switch, the switch will remain in the open position until manually reset. The governor will be accurately adjusted and sealed with tripping speed specified. Date tags indicating the test date will be applied.

Fixtures Car & Hall

New Hall & Car Operating Fixtures including Hall Lanterns; Stations; Access Switches; Car Operating Panels; Position Indicators – All serial linked to KONE Resolve Controller



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..

Cab Interiors:

Downtime period

Add 1 week per elevator

Cab Interiors

Included: Both Cabs (Installed)



5WL Textured Stainless Steel:

Interbay Design Quick Cab, 2000# Standard Height Cab:

- Provide drawings prior to manufacturing for approval.
- Provide three (3) 5WL textured stainless steel true vent base supports.
- Provide twelve (12) horizontal 5WL textured stainless steel panels.
- Provide 5WL textured stainless steel reveals.
- Provide three (3) 1 ½" round #4 brushed stainless steel sectional handrails. Handrail ends will be straight except where required by code.
- Provide 5WL textured stainless steel frieze for three (3) walls.
- Provide aluminum pad studs for three (3) walls.

Stainless Steel Suspended Ceiling, 2000# Cab:

- Provide drawings prior to manufacturing for approval.
- Provide a six (6) pan #4 brushed stainless steel suspended ceiling with six (6) Man-D-Tec Solo Beam LED down lights. Lighting transformer will be equipped with a standard dimmer.

Asbestos:

Notwithstanding anything to the contrary, 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 CITY 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, CITY 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 CITY's sole responsibility and expense. After any removal or abatement, CITY 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.

Electrical and Fire Alarm

Subcontractor:
Muscio Electric
901 D Palmetto Ave.
Pacifica, CA 94044
Lic. No. C10 309056 ACO 3696

Scope of Work:

Provide and install the following electrical and fire alarm work needed for elevator modernization.

- Two elevator disconnects with new lockable fused type and aux switch.
- Conduit and wire from elevator disconnects to new elevator equipment, with equipment ground wire from distribution panel.
- 120V circuits for car lights, machine room, sheave room, and pits
- Provide fused lockable switches for 120V devices.
- Install new protective lights and GFI outlet in machine room space.
- Install new switch, caged lighting fixture, and GFI outlet in elevator pit area.
- Telephone wire and conduit to controller.
- Replace Fire Alarm System to addressable type.
- FA initiating devices for elevator recall including one device at each landing, machine room, and sheave room.

- Inspections and pretesting of elevator recall with State inspector and elevator mechanic.
- Fire Alarm System drawings, permit, and standing inspections with local AHJ.

Surface EMT conduit will be used for above work.

Building floor plans to be provided in PDF format.

Additional work and/or change orders requested by Owner and/or inspectors will be billed separately.

Above work to be performed during normal hours.

Exclusions:

- Fire alarm speakers and/or phone jacks
- Fire alarm work outside of elevator related area.
- Relocating existing electrical conduit/devices not related to elevators in elevator areas.

EXHIBIT B
SCHEDULE OF PERFORMANCE

CONTRACTOR shall perform the Services so as to complete each task within the time period specified below. The time to complete each task may be increased or decreased by mutual written agreement of the project managers for CONTRACTOR and CITY so long as all work is completed within the term of the Agreement. Upon request CONTRACTOR shall provide a detailed schedule of work consistent with the schedule below.

The design and engineering work for the Project shall commence upon execution of the Agreement. Project site work shall start on or before April 1, 2019, and Project site work and final inspections shall be complete by December 14, 2019. In the event CONTRACTOR's performance is delayed by an act of the CITY or force majeure, CONTRACTOR shall not be liable for any delay damages, and the performance time shall be adjusted as necessary to reflect the delay.

**EXHIBIT C
SCHEDULE OF FEES**

Compensation based upon task

CONTRACTOR shall perform the tasks as described and budgeted below. CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for the Services including reimbursable expenses, does not exceed the amounts set forth in Sections 5 and 6 of the Agreement. Any services provided or hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

DESCRIPTION OF TASK	NOT TO EXCEED COMPENSATION PER TASK INCLUDING REIMBURSABLES
Base Modernization	\$575,000.00
Cab Interior	\$ 47,355.00
Capital Electric	\$ 58,595.00 (\$ x 10/10%)
Bonds	\$6,809.50
Total Sales Price (including tax)	\$ 687,759.50

Compliance with US Communities Contract 2019 Labor & Margins

**EXHIBIT D
INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
NO	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED.			

- I. INSURANCE COVERAGE MUST INCLUDE:
 - A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
 - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
 - C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.
- II. CONTACTOR MUST SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

**PURCHASING AND
CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303**

EXHIBIT E
BONDS

[BOND FORMS ARE REQUIRED]

**Appendix A:
Claims for Public Contract Code Section 9204 Public Works Projects**

The provisions of this this Appendix are provided in compliance with Public Contract Code Section 9204; they provide the exclusive procedures for any claims related to the Services performed under this Agreement.

1. **Claim Definition.** "Claim" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- (A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City.
- (B) Payment by the City of money or damages arising from the Services performed by, or on behalf of, the Contractor pursuant to the Agreement and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.
- (C) Payment of an amount that is disputed by the City.

2. **Claim Process.**

(A) **Timing.** Any Claim must be submitted to City in compliance with the requirements of this Appendix no later than fourteen (14) days following the event or occurrence giving rise to the Claim. This time requirement is mandatory; failure to submit a Claim within fourteen (14) days will result in its being deemed waived.

(B) **Submission.** The Claim must be submitted to City in writing, clearly identified as a "Claim" submitted pursuant to this Appendix, and must include reasonable documentation substantiating the Claim. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Agreement, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(C) **Review.** Upon receipt of a Claim in compliance with this Appendix, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days from receipt, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the City and Contractor may, by mutual agreement, extend the time period provided in this paragraph 2.

(D) **If City Council Approval Required.** If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(E) **Payment.** Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement. If the City fails to issue a written statement, paragraph 3, below, shall apply.

3. **Disputed Claims**

(A) **Meet and Confer.** If the Contractor disputes the City's written response, or if the City fails to respond to a Claim submitted pursuant to this Appendix within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement.

(B) **Mediation.** Any remaining disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing by the Contractor. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to any other remedies authorized by the Agreement and laws.

(i) For purposes of this paragraph 3.B, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(ii) Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation, if any, under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

4. **City's Failure to Respond.** Failure by the City to respond to a Claim from the Contractor within the time periods described in this Appendix or to otherwise meet the time requirements of this Appendix shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the City's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Appendix, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

5. **Interest.** Amounts not paid in a timely manner as required by this section shall bear interest at seven (7) percent per annum.

6. **Approved Subcontractor Claims.** If an approved subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against the City because privity of contract does not exist, the Contractor may present to the City a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier

subcontractor, that the Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the City shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the City and, if the Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

7. **Waiver of Provisions.** A waiver of the rights granted by Public Contract Code Section 9204 is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of Public Contract Code Section 9204, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.