

**Lift Chair Maintenance Riverside**  
**(17-007-YSD)**

**THIS CONTRACT** is entered into by and between the State of Montana, **Montana Department of Corrections** (Department), whose address and phone number are **5 S. Last Chance Gulch, Helena, MT 59601, (406) 444-3930** and **KONE, Inc.**, (Contractor), whose address and phone number are 3110 E. Lyndale Ave. and (406)-449-1399.

**1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1 Contract Term.** The contract's initial term is upon contract execution through **July 31, 2018**, unless terminated earlier as provided in this contract. In no event is this contract binding on the Department unless the Department's authorized representative has signed it. The legal counsel signature approving legal content of the contract does not constitute an authorized signature.

**1.2 Contract Renewal.** The Department may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in one-year intervals, or any interval that is advantageous to the Department. This contract, including any renewals, may not exceed a total of seven (7) years.

**2. SERVICES AND/OR SUPPLIES**

Contractor shall provide the Department the following

CONTRACTOR agrees to provide necessary services to maintain the lift chair located at Riverside Recovery and Reentry Center.

**2.1 Extent of Service (parts components repair, replacement, testing & alignment)**

Furnish all materials and labor necessary to maintain the operation of one (1) chair lift. Maintenance shall include lubrication and adjustment to insure smooth and efficient operation of, but is not limited to machines, motors, generators, controllers, control and landing positioning systems, selectors, worms, gears, thrusts, drives, governors, sheaves, and ropes, bearings, power units, pumps, valves, jacks, all brake components, windings, commutators, rotating elements, contacts, coil resistances, relays, magnet frames, leveling devices, load-weighers, cams, car and hoistway door (or gate) hangers, tracks, guides, doors or operating devices, interlocks and contacts, doors or gates (except finish), push buttons, annunciators, cables including hoist and governor cables, governor equipment, electrical conductors, car guides and shoes (or guide rollers), safety devices (mechanisms) and indicator lights, signal and lamp fixtures, fans, gates, rail alignment, hoistway doors, door frames, platforms, and counterweights, sills, hoist way gates, power feeders and switches to insure maximum performance and safe operation.

**2.2 Safety testing**

Test equipment as outlined in federal, state, local safety codes to insure inspections will be passed.

- Perform governor, safety and load tests
- Perform pressure and equipment test
- Correct deficiencies and meet compliance requirements
- Adhere to new published safety rules/standards

Perform all required safety tests as indicated by the State of Montana, Elevator Safety Program. Completions of the required tests are to include prompt submission of test results to the State of Montana Elevator Program.

### **2.3 Rules**

Rules make reference to the "American Society of Mechanical Engineers, ASME, A17.3-2002" and any supplements codes thereto, which have been adopted by the State of Montana by applying MCA title 50, chapter 60, part 7, ARM 24.301.602.

Vendors may request a copy from the Department of Labor and Industry, Building Codes Division, 301 South Park, Helena, MT 59620 or by phoning 406-841-2040.

### **2.4 Skilled Mechanics**

It is the responsibility of the CONTRACTOR to provide skilled mechanics, directly employed and supervised by it, to perform all routine preventive maintenance as well as any emergency breakdown service.

All skilled mechanics employed for this contract must be thoroughly trained in the mechanical and electrical operation of elevator equipment. Particular effort must be made to familiarize these mechanics with the specific equipment needed for this contract.

### **2.5 Number of Hours/Routine Scheduled Maintenance**

Contractor will provide routine scheduled maintenance for cleaning, adjusting and lubricating of equipment semi-annually. Repair, replacement and callback time are separate from scheduled maintenance time requirements.

- A. Contractor shall not charge for service requests for minor repairs/adjustments or emergency entrapments.
- B. After hour service requests, initiated by the Contractor, must be approved in advance by the facility, including all additional cost not covered under contract.

### **2.6 Maintenance Requirements**

- A. The chair lift must be serviced semi-annually. This will be on a date mutually agreed upon between the Contractor and the facility.
- B. With proper tools and equipment, thoroughly check and make all necessary repairs and adjustments to each elevator to insure uninterrupted, safe, and comfortable service.
- C. In accordance with manufacturer's instructions, complete scheduled lubrication.
- D. Upon disclosure of major wear on any part, Contractor will notify Department and down time shall be scheduled during regular working hours for replacement to be made.
- E. Not less than once a year, preferably in **January**, the Contractor must make a thorough no-load safety test in the presence of a representative of Department, reporting in detail the work performed and results of the test and submit the test results to the State of Montana Elevator Program.
- F. All routine scheduled maintenance must be performed Monday through Friday between 8:00 am and 4:00 pm. (Except on holidays)

### **2.7 Check Charts (logs)**

The Contractor will be required to maintain a check chart for the chair lift, listing all the parts requiring service and the intervals at which they are to be serviced.

This chart will be kept in a mutually agreed upon location supplied by Department and shall be turned over to Department upon completion of this contract. Every service call must be recorded on the appropriate chart, including routine maintenance and emergency repair calls, listing services performed and parts or equipment replaced.

### **2.8 Emergency Callbacks**

Upon failure of the chair lift to properly operate between service calls, the Contractor must provide emergency callback service and restore operation. All expenses for this emergency service must be included in bid prices. Department shall assign one person responsible to contact the Contractor for all emergency callbacks. The mechanic must notify this person upon completion of emergency work.

The mechanics assigned to work on the chair lift must be capable of responding to emergency callbacks within three (3) hours (24 hours a day Monday through Friday). On Saturday and Sunday, response time shall be extended to four (4) hours.

### **2.9 Claims**

It is expressly understood and agreed that no claim for extra work, labor or materials, not specifically herein provided, will be allowed by Department. Contractor will not do any work or furnish any materials not covered by this contract unless such work is ordered in writing by Department; and in no event shall CONTRACTORS incur any liability by reason of verbal directions or instruction by DEPARTMENT or its authorized agent.

### **2.10 Inspection**

Contractor must maintain access to all phases of contract permitting inspection by Department or its representative. Department reserves the right to make such inspections and tests as and when deemed necessary to ascertain that the requirements of this agreement are being fulfilled.

### **2.11 Performance Requirements**

Contractor must respond within 24 hours after notice of observed defects has been given and shall proceed to immediately remedy these defects at Contractor expense.

If a Contractor's services are not in conformance to the requirements of this contract, Department has the right to require immediate re-performance. All work rejected as unsatisfactory shall be subject to final inspection and acceptance.

Nothing herein stated shall obligate the Contractor to remedy defects caused by the owner's abuse of that work.

### **2.12 Supplies and Replacement Parts**

If replacement parts/devices are not identical to original equipment or to the equipment manufacturer's recommendation, prior written approval from Department shall be obtained. Approval requests shall be made in writing, include the reasons for the proposed substitution, and provide a detailed technical description of the part or device.

- A. Normal supplies including lubricant and devices required for routine use shall be readily available.

## **3. WARRANTIES**

**3.1 Warranty of Products.** Contractor warrants that the products supplied conform to the specifications requested, are fit and sufficient for the purpose manufactured, are of good material and

workmanship, and are free from defect. The length of warranty may vary by product. Contractor further warrants that the products are new and unused and of the latest model or manufacture, unless the Department specifies otherwise. Contractor acknowledges that exceptions will be rejected.

**3.2 Warranty of Services.** Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. The Department's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the Department may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

#### **4. CONSIDERATION/PAYMENT**

**4.1 Payment Schedule.** In consideration of the supplies or services to be provided, the Department shall pay Contractor according to the following schedule:

- A. Department shall pay Contractor \$79.00 per month, not to exceed nine hundred forty eight and 00/100 Dollars (**\$948.00**) per Fiscal Year for the services described herein.
- B. This rate is inclusive of all travel and per diem. Department will not compensate Contractor for travel or travel time, lodging, meals, supplies, or any other expense incurred by Contractor while performing services identified within this Contract.

**4.2 Cost Increase by Mutual Agreement.** After the contract's initial term and if the Department agrees to a renewal, the parties may agree upon a cost increase according to the cost sheet provided by the Contractor in Limited Solicitation COR-LimtSol-2017-0033 . Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs.

**4.3 Payment Terms.** Unless otherwise noted in the solicitation document, the Department has 30 days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate the Department's electronic funds transfer payments.

**4.4 Reference to Contract.** The contract number **MUST** appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the Department is not obligated to pay the invoice.

#### **5. AGENCY ASSISTANCE**

To the extent possible, Contractor shall use its own equipment in providing the goods/services set forth in Section 3. However, the parties recognize that services provided to Department may occur within the confines of a secure correctional facility necessitating the use of Department facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and phone service (e.g., Montana State Prison does not allow cellular or digital phones within the facility).

#### **6. PREVAILING WAGE REQUIREMENTS**

**6.1 Montana Resident Preference.** The nature of the work performed, or services provided, under this contract meets the statutory definition of a "public works contract" in 18-2-401, MCA. Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction

services. Contractor shall abide by the requirements set out in 18-2-401 through 18-2-432, MCA, and all administrative rules adopted under these statutes.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

**6.2 Standard Prevailing Rate of Wages.** In addition, unless superseded by federal law, all employees working on a public works contract must be paid prevailing wage rates in accordance with 18-2-401 through 18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in 18-2-401, MCA, in which the total cost of the contract is greater than \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Because this contract has an initial term of 12 months with optional renewals, this contract is subject to the 3% adjustment when the contract length becomes more than 30 months. The 3% rate increase becomes effective upon the second renewal, and the 3% is paid starting in the third year of the contract beginning with the 25th month. The adjustment must be made and applied every 12 months for the term of the contract. This adjustment is the sole responsibility of Contractor and no cost adjustment in this contract will be allowed to fulfill this requirement.

**6.3 Notice of Wages and Benefits.** Furthermore, 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with 18-2-423, MCA.

**6.4 Wage Rates, Pay Schedule, and Records.** 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each contractor, subcontractor, and employer shall maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract. The Commissioner of the Montana Department of Labor and Industry has established the standard prevailing rate of wages in accordance with 18-2-401 and 18-2-402, MCA, for Elevator Repairers to be \$48.59 per hour, plus a benefit rate of \$34.08.

## **7. ACCESS AND RETENTION OF RECORDS**

**7.1 Access to Records.** Contractor shall provide the Department, Legislative Auditor, or their authorized agent's access to any records necessary to determine contract compliance. The Department may terminate this contract under section 17, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

**7.2 Retention Period.** Contractor shall create and retain all records supporting the insert services rendered and supplies provided for a period of eight years after either the completion date of this contract or termination of the contract.

## **8. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this contract without the Department's prior written consent. (18-4-141, MCA) Contractor is responsible to the Department for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the

acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the Department under this contract.

## **9. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, indemnify, and hold harmless the Department, its elected and appointed officials, agents and employees from and against all legal, equitable or administrative claims, causes of action, damages, losses and expenses, of any kind or character, including but not limited to attorneys' fees and the costs of defense, arising in favor of Contractor's employees or third parties on account of bodily injury, sickness, disease, death, personal injury, violation of an offender's constitutional or statutory rights, or to injury to or destruction of tangible property except for such claims, causes of action, damages, losses or expenses which are solely due to the fault or negligence of the party seeking indemnity.

## **10. REQUIRED INSURANCE**

**10.1 General Requirements.** Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**10.2 Primary Insurance.** Contractor's insurance coverage shall be primary insurance with respect to the Department, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the Department, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**10.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The Department, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

**10.4 Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

**10.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the Department. At the request of the Department either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Department, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**10.6 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by the Department's Contracts Management Bureau, P.O. Box 201301, Helena, MT 59620. Contractor must notify

the Department immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The Department reserves the right to require complete copies of insurance certificates at all times.

**11. LICENSURE**

Contractor agrees to provide copies of current licenses and certifications that register Contractor and any associates performing under this Contract.

**12. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the Department of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are Department employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the Department's Contracts Management Bureau, P.O. Box 201301, Helena, MT 59620.

**13. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. CONTRACTOR will comply with the Prison Rape Elimination Act 42 U.S.C.A. § 15601ff, the Prison Rape Elimination Act final rule 28 CFR Part 115, MDOC Policy 1.3.14, Prison Rape Elimination Act, and ACCD 1.3.1400 PREA to include incident reporting. CONTRACTOR shall establish a zero tolerance policy to incidents of sexual assault/rape or sexual misconduct. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

The Affordable Care Act requires a contractor, if contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980 H (ACA) if provided by the State.

**Additional Indemnification.** Claims under this provision also include those arising out of or in any way connected with Contractor's breach of this contract, including any Claims asserting that any of Contractor's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to, excise taxes or penalties imposed on the State under the Code §§ 4980H, 6055 or 6056.

**Reporting Requirements.** Contractor, if contractor is an applicable large employer under the ACA, further states that it shall satisfy all reporting requirements under the Code §§ 6055 and 6056 (ACA) with respect to

individuals who perform services for the State.

**Auditing.** The State may audit Contractor's operations to ensure that the Contractor has complied with the statements made above.

**14. DISABILITY ACCOMMODATIONS**

The Department does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**15. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

**16. CONTRACT TERMINATION**

**16.1 Termination for Cause with Notice to Cure Requirement.** The Department may terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**16.2 Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this contract for the Department's failure to perform any of its duties under this contract after giving the Department written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30 days**. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**16.3 Reduction of Funding.** The Department must by law terminate this contract if funds are not appropriated or otherwise made available to support the Department's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the Department budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the Department shall terminate this contract as required by law. The Department shall provide Contractor the date the Department's termination shall take effect. The Department shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the Department shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the Department's termination takes effect. This is Contractor's sole remedy. The Department shall not be liable to Contractor for any other



payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

## **17. EVENT OF BREACH – REMEDIES**

**17.1 Event of Breach by Contractor.** Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

- products or services furnished fail to conform to any requirement;
- failure to submit any report required by this contract;
- failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior Department approval; or
- voluntary or involuntary bankruptcy or receivership.

**17.2 Event of Breach by Department.** The Department's failure to perform any material terms or conditions of this contract constitutes an event of breach.

### **17.3 Actions in Event of Breach.**

Upon Contractor's material breach, the Department may:

- terminate this contract under Section 17.1 and pursue any of its remedies under this contract, at law, or in equity; or
- treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon the Department's material breach, Contractor may:

- terminate this contract under Section 17.2 and pursue any of its remedies under this contract, at law, or in equity; or
- treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

## **18. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

## **19. WAIVER OF BREACH**

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

## **20. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the Department's Contracts Management Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

## **21. LIAISONS AND SERVICE OF NOTICES**

**21.1 Contract Liaisons.** All project management and coordination on the Department's behalf must be through a single point of contact designated as the Department's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the Department's liaison and Contractor's liaison.

Dan Kissner is the Department's liaison.  
2 Riverside Road  
Boulder, MT 59632  
Telephone: (406)-225-4502  
E-mail: [dkissner@mt.gov](mailto:dkissner@mt.gov)

Blain Bermingham is Contractor's liaison.  
3110 E. Lyndale Ave  
Helena, MT 59601  
Telephone: (406)-449-1399

**21.2 Notifications.** The Department's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

## **22. MEETINGS**

**22.1 Technical or Contractual Problems.** Contractor shall meet with the Department's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the Department in the performance of their respective obligations, at no additional cost to the Department. The Department may request the meetings as problems arise and will be coordinated by the Department. The Department shall provide Contractor a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

**22.2 Failure to Notify.** If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the Department, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

**22.3 Department's Failure or Delay.** For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the Department's failure or delay in discharging any Department obligation, the Department shall review same and determine if such problem or circumstance was

in fact the result of such failure or delay. If the Department agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the Department does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

**23. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the Department or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The Department shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If the Department terminates a project or this contract for cause, then the Department may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the Department may have sustained as a result of Contractor's breach.

**24. CHOICE OF LAW AND VENUE**

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or this contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

**25. TAX EXEMPTION**

The Department of Montana is exempt from Federal Excise Taxes (#81-0302402).

**26. AUTHORITY**

This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**27. SEVERABILITY CLAUSE**

A declaration by any court or any other binding legal source that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually and materially dependent.

**28. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**28.1 Contract.** This contract consists of 12 numbered pages and any Attachments as required. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**28.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

29. WAIVER

The Department's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

30. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

DEPARTMENT OF MONTANA  
Montana Department of Corrections  
5 S. Last Chance Gulch  
Helena, MT 59601

KONE, Inc.  
3110 E. Lyndale Ave  
Helena, MT 59601



Cindy McKenzie, Administrator  
Youth Services Division

DATE: 7-28-17



Jeff Blum, Sr. Vice President  
KONE Inc.

DATE: 9-11-2017

Approved as to Legal Content:

 7/28/17  
Legal Counsel (Date)