1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **KONE Elevator Company (CONTRACTOR)** enter into this Contract **(06-060-ACCD)** in accordance with the terms and conditions of limited solicitation #LS-06-004--WATCh. The parties names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Adult Community Corrections Division
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

KONE Elevator Company
1900 West Broadway

Missoula, Montana 59808
(406) 543-6382

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. DUTIES/RESPONSIBILITIES OF THE CONTRACTOR

CONTRACTOR agrees to provide the following elevator maintenance of two (2) hydraulic U.S. Elevator, one (1) passenger, serial #24273, MT # 764-1,(capacity 4000 lbs. (26 person)) and one (1) freight, serial # 24272, MT #764-3, load capacity, (capacity 4000 lbs.).

2.1 Level of Maintenance

A high level of maintenance is mandatory. With prior approval by DEPARTMENT, CONTRACTOR shall be allowed to use any acceptable materials, equipment, methods, etc., to furnish this level of maintenance, provided strict adherence to federal, state and local codes is maintained and final work approved by the DEPARTMENT.

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

Furnish all materials and labor necessary to maintain the operation of two (2) hydraulic U.S. Elevator, one (1) passenger, serial #24273, MT # 764-1,(capacity 4000 lbs. (26 person)) and one (1) freight, serial # 24272, MT #764-3, load capacity, (capacity 4000 lbs.) located at WATCh,725 Orofino Way, Warm Springs Montana. 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, and hoist way gates to insure maximum performance and safe operation.

Cleaning and refinishing of the car, hoistway doors, frames and sills, and the replacement of car lamps or car flooring is not the responsibility of CONTRACTOR.

2.3 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.

2.4 Rules

Rules referred to throughout the text of this contract make reference to the "American Society of Mechanical Engineers, ASME, A17.1-2000, 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 title 24, Chapter 301, Sub-chapter 6.

Contractor 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.

2.5 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.

2.6 Number of Hours/Routine Scheduled Maintenance

No less than one-half (1/2) hour per quarter [every 3 months (January, April, July, October)], must be spent in routine scheduled maintenance for cleaning, adjusting and lubricating. Repair, replacement and callback time are separate from scheduled maintenance time requirements.

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

2.7 Maintenance Requirements

A. Two (2) hydraulic U.S. Elevator, one (1) passenger, serial #24273, MT # 764-1,(capacity 4000 lbs. (26 person)) and one (1) freight, serial # 24272, MT #764-3, load capacity, (capacity 4000 lbs.) must be serviced at least once quarterly. This will be on approximately the 15th day of the servicing month at a time and date mutually agreed upon between the CONTRACTOR and WATCh.

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 dowr ne shall be scheduled during regular(rking hours for replacement to be made.

E. Keep machinery and equipment thoroughly cleaned and painted as necessary to prevent rust and/or corrosion (The interior of the car shall be cleaned and maintained by DEPARTMENT).

F. During the month of **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.

G. All routine scheduled maintenance must be performed Monday through Friday between 8:00 am and 4:00 pm. (Except on holidays)

2.8 Check Charts (logs)

The CONTRACTOR will be required to maintain a check chart for the elevator, 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.

2.9 Emergency Callbacks

Upon failure of the elevator 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 contract prices. CONTRACTOR includes overtime emergency callback service not to exceed 1 hour at site per request. In the event the service call exceeds 1 hour, CONTRACTOR will invoice for the overtime portion of the call at the CONTRACTORS standard billing rate. 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 elevator 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.

2.10 Claims

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

2.11 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.

2.12 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 the 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 a CONTRACTOR to remedy defects caused by the owner's abuse of that work.

2.13 Site Requirements/Cleanup

The CONTRACTOR shall adequately protect the work, adjacent property, and the public in all phases of the work. The CONTRACTOR shall be responsible for all damages or injury due to their action or neglect.

The CONTRACTOR shall maintain access to all phases of the project pending inspection by DEPARTMENT or its representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The CONTRACTOR shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the CONTRACTOR fail to respond to the notice or not remedy the defects, DEPARTMENT may have the work corrected at the expense of the CONTRACTOR. In terms of cleanup, the CONTRACTOR shall:

- keep the premises free from debris and accumulation of waste;
- remove all construction smears and stains from finished surfaces;
- remove all construction equipment, tools and excess materials.

2.14 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. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services, provided pursuant to Section 2, in the following manner:

A. DEPARTMENT shall pay CONTRACTOR **$900.00** per quarter (January, April, July, October) not to exceed three thousand six hundred and 00/100 Dollars ($3,600.00) per Fiscal Year.

B. DEPARTMENT agrees to pay CONTRACTOR within 30 days following receipt of a correct invoice.

C. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.

D. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. 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 telephone service (e.g., Montana State Prison and Montana Women's Prison do not allow wireless phones within facility).

5. TIME OF PERFORMANCE

This Contract shall take effect upon receipt of final contract signature and shall terminate on March, 31, 2008, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of five (5) additional years.

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

6. LIAISONS AND NOTICE

A. Michelle Jenicek (406-444-4910), 1539 11th Avenue, Helena, Montana 59620, or successor serves as DEPARTMENT'S liaison.

B. Dennis Martin, Branch Manager (406-543-6382), 1900 West Broadway, Missoula Montana 59808 or successor serves as CONTRACTOR'S liaison.

C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither CONTRACTOR nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Fiscal Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. HOLD HARMLESS AND INDEMNIFICATION

A. CONTRACTOR agrees that he is financially responsible (liable) for any audit exceptions or other financial loss to DEPARTMENT due to the negligence, intentional acts, or failure for any reason to comply with terms of this Contract.

B. CONTRACTOR agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of CONTRACTOR and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

10. INSURANCE

A. **General Requirements:** CONTRACTOR shall maintain for the duration of the 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.

Primary Insurance: CONTRACTOR'S insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

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

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 must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverages, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

B. **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.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered 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; premises owned, leased, occupied, or used.

11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

12. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

14. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

15. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, 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. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

16. TERMINATION AND DEFAULT

A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.

B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.

C. DEPARTMENT, in its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.

D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

17. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning 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 (Ref. 18-1-401, MCA).

18. LICENSURE

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

19. ARBITRATION

Any Claim arising out of, or related to, this Contract shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

20. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

21. SEVERABILITY

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

22. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Fiscal Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE

DEPARTMENT

Mike Ferriter, Administrator
Adult Community Corrections Division

3-23-06
Date

CONTRACTOR

Bruce Norden, Vice President
Service Sales
KONE Elevator Company

4.26.2006
Date
#4 0068055

Approved for Legal Content by:

Colleen A. White
Legal Counsel
Department of Corrections

3/21/06
Date