

23

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Authorize the County Judge to sign a maintenance contract with Ban-Koe Companies for full printer, software and phone support and amend the budget accordingly.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	September 3, 2013	\$1,095

#### LINE ITEM NUMBER

001-680-00.5429

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: BILL HERZOG

REQUESTED BY	SPONSOR	CO-SPONSOR
Baen	COBB	N/A

#### SUMMARY

This hardware and software prints Hays County ID badges for employees, interns, attorneys and visitors. The contract is for 13 months beginning September 3, 2013 if approved. Funds will be moved to the IT budget for consistency as all other maintenance agreements that are hardware/software related are budgeted here.

##### FY13 Budget Amendment:

Decrease - HR Printer Plan Maint/Supplies - 001-677-00.5412 (85)  
Increase - IT - Software Maintenance - 001-680-00.5429 85

##### FY14 Budget:

Add \$1,010 to IT Software Maintenance budget

FILED:

09 03 13  
HAYS COUNTY COMMISSIONERS' COURT

Resolution #

25270 VOL V PG 226



## SALES AGREEMENT

9100 W Bloomington Fwy | Minneapolis, MN 55431  
T 952.888.6688 | F 952.888.3344 | bankoe.com

CUSTOMER PO:  
SALESPERSON: Nick Loeschke

JOB NAME:  
DATE: 8/28/2013

SOLD TO: Hays County  
ADDRESS: 712 S. Stagecoach Tr., Suite 1063  
CITY, STATE ZIP: San Marcos, Tx 78666  
EMAIL: susan.davis@co.hays.tx.us

ATTENTION: Susan Davis  
PHONE: 512-393-2232 ext.  
FAX:

SHIP TO: Hays County  
ADDRESS: 712 S. Stagecoach Tr., Suite 1063  
CITY, STATE ZIP: San Marcos, Tx 78666  
EMAIL: susan.davis@co.hays.tx.us

ATTENTION: Susan Davis  
PHONE: 512-393-2232 ext.  
FAX:

**\*\*SYSTEM DESCRIPTION\*\*** This is a 13 month Contract for both Printer and IDImage support. It runs from Sept 2013 through Oct 2014.

TERMS OF SALE: 100% Due With Order

☐ Check  
☐ Lease

☐ Visa/Mastercard/Am. Express #  
Expiration Date  
Security Code

QTY	PART#	DESCRIPTION	EACH	EXT.
1	VXIMG-TSP-002	IDImage Corp Ed. Full service and Support Sept13-Oct2014	395.00	395.00
1	P430i-TSP	Full Service and Support for P4301 SN: J103700012 phone support for P330i	700.00	700.00

SUB-TOTAL	1,095.00
EST. SALES TX	plus tax
EST. FREIGHT	plus shipping
TOTAL	1,095.00
DEPOSIT	
BALANCE	1,095.00

The attached proposal is valid for thirty (30) Days. After thirty (30) Days, the proposal may be withdrawn at any time. By signing this Agreement, customer agrees to all the Agreement Terms & Conditions including , pages 2 and 3. BAN-KOE COMPANIES will commence final connections, check-out, certification, and training upon receipt of 90% of the total order. Finance charges will apply on any past due amounts at a rate of 1.5% \*18% APR or \$25.00 whichever is greater.

BAN-KOE COMPANIES CORPORATE APPROVAL:

APPROVED ON: \_\_\_\_\_  
APPROVED BY: \_\_\_\_\_  
DATE: \_\_\_\_\_

Please Remit Checks to: BAN-KOE COMPANIES  
9100 WEST BLOOMINGTON FREEWAY  
MINNEAPOLIS, MN 55431

CUSTOMER:

BY (X): \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

## BAN-KOE COMPANIES – TECHNICAL SUPPORT PROGRAM (TSP) TERMS & CONDITIONS

Customer and Ban-Koe Systems, Inc. ("Ban-Koe") agree that the terms and conditions contained in section A of this Agreement apply to TSP service for any equipment (hardware) and any software specified in Addendum A. In addition to the terms and conditions in Section A of this Agreement, (a) Section B terms and conditions apply to the equipment, if any, specified in Addendum A; and (b) Section C applies to the software, if any, specified in Addendum A.

### A. TERMS AND CONDITIONS APPLICABLE TO EQUIPMENT (HARDWARE) AND SOFTWARE

1. Term of Agreement and Termination: This Agreement is effective on the date the last party to the Agreement signs the Agreement. It shall remain in effect until termination by either party. Either party may terminate this Agreement by providing written notice of termination to the other, not less than thirty (30) days prior to the stated termination date. Notice of termination may be provided by posting notice certified mail addressed to the party at the address contained in this Agreement. Individual equipment (hardware) or software may be withdrawn from support by either party with a written notice of amendment provided in the manner of notice of termination without affecting the balance of this Agreement. Individual equipment (hardware) or software may be added by Agreement, as provided above. This Agreement may be terminated by Ban-Koe without notice, if payment is not received prior to any renewal date as set forth in paragraph 3 below.
2. TSP Service Availability:
  - Regular Service will be made during Ban-Koe's Service Hours, excluding weekends and Ban-Koe Holidays. For contract-covered onsite service visits, one hour of travel time per call is included. Additional travel time will be billed at the discounted base hourly rate. After Hours Service on weekdays between 5:00 p.m. and 8:00 a.m. and on Saturdays shall be billed at one and a half times the discounted base hourly rate. Service on Sundays and Holidays shall be billed at two times the discounted base hourly rate.
  - All parts are covered unless specifically excluded under Section A5. Customer will be charged a minimum of two hours' applicable rate for non-business hour telephone calls or onsite visits (plus mileage and/or rip charges and any applicable fuel surcharges).
3. Payment Terms: The fees for TSP service are annual and payable in advance for the initial term of the Agreement. Subsequent renewal fees for annual support will be invoiced sixty (60) days prior to the end of the then-current annual TSP term for prepayment. Charges under this Agreement are payable in advance (except for charges incurred outside of the applicable TSP service availability) and are payable thirty (30) days after date of invoice. Customer is responsible for any sales or similar taxes, however designated, levied or based on the sale price of the product or service sold, or its use (including state and local privilege or excise taxes), unless it provides Ban-Koe with an exemption certificate. Ban-Koe reserves the right to adjust pricing of annual TSP service, the designation of serviceable locations, and the equipment or software serviced.
4. Addition of Equipment or Software: Customer may request that equipment and/or software other than that specified in Addendum A be added to this Agreement. If Ban-Koe agrees to any such addition, Customer agrees to pay the prorated charges for such addition, and any such addition shall be automatically renewed as provided in this Agreement.
5. TSP Exclusions: TSP service does NOT include:
  - a. repair of damage or replacement of spare parts resulting from electrical work external to the equipment or software or support of accessories.
  - b. repair of damage or increase in service time caused by accident, neglect or misuse; alterations including but not limited to installation or removal of equipment or software; foreign material dropped into equipment; or modifications to equipment or software.
  - c. repair of damage or increase in service time resulting from failure to provide a suitable installation environment with all facilities prescribed by the appropriate installation manual, including, but not limited to, adequate electric power, or from use of supplies or material not meeting specifications for such installation.
  - d. repair of damage or increase in service time resulting from any fire, wind, water, or storm damage; riot, vandalism, an act of God, or the like.
  - e. major program changes.
  - f. Customer's personal computer malfunctions.
  - g. service necessary to comply with government requirements or regulations arising after the date of this Agreement.
  - h. service on equipment that has had its serial numbers tampered with or removed.
  - i. replacement of any fire system device considered to be disposable, including but not limited to: smoke detectors, heat detectors, manual pull stations, and horn/strobe signal devices.
  - j. repair or replacement of any device considered to be disposable, including but not limited to: ribbons, batteries, paper products, thumbprint scanners and cameras or camera equipment.
  - k. repair or replacement of any device considered to be disposable, including but not limited to: door access system card readers, door contacts, request to exist devices.
  - l. repair or replacement of any device considered to be disposable, including but not limited to: video surveillance cameras, camera brackets.
  - m. repair or replacement of any device to be considered part of the building: electric locks.

Any TSP service necessary as a result of Section A5 (a through m) shall be charged to Customer at Ban-Koe's hourly rates and terms then applicable.
6. Responsibilities of Customer: Customer agrees (a) to provide Ban-Koe personnel with full, free and safe access to equipment and software for purposes of TSP service, including use of the data communications facilities, if required; (b) to maintain and operate the equipment and software in an environment and according to procedures which conform to Ban-Koe's specifications; and (c) not to allow TSP service or repair of the equipment and software by anyone other than Ban-Koe without prior authorization from Ban-Koe.
7. Default: Ban-Koe reserves the right to terminate or suspend TSP service in the event Customer is in default under this or any other Agreement with Ban-Koe, and such default is not corrected within fifteen (15) days after written notice. In addition, this Agreement will terminate and all charges due hereunder will become immediately due and payable in the event Customer ceases to do business as a going concern or has its assets assigned by law.
8. Warranty Exclusion: SUBJECT TO THE WARRANTY (IES) PROVIDED IN THE SALES AGREEMENT (IF ANY), THE PARTIES AGREE THAT ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.
9. Limitation of Liability: Ban-Koe is not responsible for failure to render service due to causes beyond its control. IN NO EVENT SHALL BAN-KOE, ITS EMPLOYEES OR AGENTS BE LIABLE TO CUSTOMER FOR ANY LOSS OF PROFITS OR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF ANY DEFECT OR OPERATIONAL FAILURE OF THE EQUIPMENT AND/OR SOFTWARE, ANY DELAY IN THEIR REPAIR OR SUPPORT, OR CUSTOMER'S INABILITY TO USE OR REPLACE THE EQUIPMENT OR SOFTWARE. TSP SERVICE DOES NOT ASSURE UNINTERRUPTED OPERATION OF THE EQUIPMENT AND/OR SOFTWARE.
10. Additional Limitation of Liability: IN NO EVENT SHALL BAN-KOE'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER FOR THE TSP SUPPORT PROVIDED UNDER THIS AGREEMENT.
11. Non-Solicitation: During the term and for a two (2) -year period following expiration or termination of this Agreement: (a) Customer agrees for itself and for its affiliates not to (i) solicit for employment (directly or indirectly) any employee of Ban-Koe or (ii) solicit for employment any former employee of



Ban-Koe within one (1) year of the former employee's termination from Ban-Koe. (b) "Employment" is defined to include, but is not limited to, permanent, temporary, full-time and part-time work for the employer, as well as the employer's hiring of the employee as an independent contractor or consultant, or the employer's use of a third party such as an employment agency to obtain the employee's services.

12. General:

- a. Customer represents that it is the owner or the licensee of the equipment and/or software for which it has ordered TSP service, or if not the owner or licensee, that it is the user and has the authority from the owner or licensee to order service.
- b. Customer shall not assign this Agreement without the prior written consent of Ban-Koe and any purported assignment, without such consent, shall be void.
- c. All notices which must be given under this Agreement shall be in writing and sent to the attention of the Customer Support Manager at Ban-Koe, or to Customer at the billing address on Addendum A of this Agreement.
- d. This Agreement supersedes all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties. This Agreement constitutes the entire Agreement between Ban-Koe and Customer for TSP services. The terms and conditions of this Agreement will prevail notwithstanding any variance with the terms and conditions of any purchase order or release submitted by Customer.

13. Governing Law and Venue: The parties agree that any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrators shall apply Minnesota substantive law to the proceeding (without regard to the choice of law provisions of any jurisdiction) except to the extent federal substantive law would apply to any claim. Any arbitration proceeding under this Agreement shall be conducted in Minneapolis, Minnesota. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party may also, without waiving any remedy under this Agreement, seek from any court in Minnesota having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal, or pending the arbitral tribunal's determination of the merits of the controversy. The arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute.

**B. TERMS AND CONDITIONS APPLICABLE TO EQUIPMENT ONLY**

The following terms and conditions apply only to the equipment, if any, at the location(s) specified on Addendum A, attached to this Agreement.

1. Equipment TSP. Ban-Koe will provide TSP service to keep the equipment in or restore the equipment to good working order. TSP service will include lubrication, adjustments and repair or replacement of parts that Ban-Koe deems necessary. TSP parts, which will be new or reconditioned to perform as new, will be furnished on an exchange basis, and the exchanged parts will become the property of Ban-Koe.
2. Equipment TSP service. Ban-Koe shall provide:
  - a. telephone access to the Ban-Koe Global Support Center for problem reporting.
  - b. scheduled preventive maintenance based on the needs of the equipment, as determined by Ban-Koe.
  - c. remedial service performed at a Customer's site following Customer's telephone notification to the Ban-Koe Global Support Center (for any applicable systems) that the equipment is inoperative.
  - d. alterations required by Engineering Change Notices, which Ban-Koe determines are applicable to the equipment, if installed during the term of this Agreement.

**C. TERMS AND CONDITIONS APPLICABLE TO SOFTWARE ONLY**

The following terms and conditions apply only to the software, if any, at the location(s) specified on Addendum A, attached to this Agreement.

1. Software TSP. Ban-Koe shall provide:
  - a. remote diagnostic technical assistance to resolve software functional problems and user problems.
  - b. software maintenance releases and patches, if the new maintenance release or patch does not require a conversion of the software database. Customer agrees to pay for labor charges required to install such maintenance releases and patches.
  - c. a twenty-five percent (25%) discount on additional service required for Ban-Koe software because of changes in versions of third party software which render the Ban-Koe software obsolete; provided Customer's operating system and equipment meet minimum system configuration requirements as determined by Ban-Koe.
2. Software Exclusions. Any software support beyond that described in Sections C1 (a) through (c) above shall be charged to Customer at Ban-Koe's hourly rates and terms then applicable. In addition to the exclusions specified in Section A5 of this Agreement, software support excludes service required for application programs and conversions from products or software not supplied by Ban-Koe.

Name (Please Print): \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**AMENDMENT**  
**NO.FY2013-036 CC**  
**FY2013 BUDGET**  
**09/03/2013**

Dept	G/L Account Number	Account Description	Appropriation Before Amendment	Increase	Decrease	Appropriation After Amendment
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**GENERAL FUND (001):**

**Agenda Item #23:**

**Human Resources (677) to Info Technology (680):**

001-680-00.5429	IT - Software Maint	582,717	85		582,802
001-677-00.5412	Printer Plan Maint	2,064		(85)	1,979

\*Move funds for ID Badge printer maintenance plan.

**Agenda Item #28:**

**District Court (608):**

001-608-01.5551	Family Law-Cont Ed	213,980	758		214,738
001-608-00.5440_522	DC - Apptd Atty NCF	14,123		(758)	13,365

\*Amend for Advanced Family Law Training.

**ROAD & BRIDGE GENERAL FUND (020):**

**Agenda Item #29:**

**Transportation (710):**

020-710-00.5453	Maintenance & Repair	10,000	19,250		29,250
020-710-00.5551	Continuing Education	7,006		(3,004)	4,002
020-710-00.5714_700	Heavy Equipment_Cap	585,794		(15,176)	570,618
020-710-00.5718_700	Software_Capital	13,954		(1,070)	12,884

\*Amend for dam maintenance on the Upper San Marcos Watershed Dams.

**GENERAL FUND (001):**

**Agenda Item #40:**

**Constable Pct. 3 (637):**

001-637-00.5021	Staff Salaries	129,153	1,852		131,005
001-637-00.5101_100	FICA	11,488	115		11,603
001-637-00.5101_200	Medicare	2,687	26		2,713
001-637-00.5101_300	Retirement	20,783	210		20,993
001-645-00.5399	Co-Wide Contingencies	235,308		(2,203)	233,105
			2,203	(2,203)	

\*Move funds for temporary hours increase for Deputy Constable.