

**RESOLUTION AUTHORIZING AND APPROVING THE MAINTENANCE
SERVICE CONTRACT WITH KOVA CORP.**

WHEREAS, the Harrison County Emergency Communications Commission, hereinafter referred to as the HCECC, was created by the Board of Supervisors under authority of §19-5-305, Mississippi Code Annotated, and the Harrison County Emergency Communications Commission is governed and empowered according to §§ 19-5-301, et seq., Mississippi Code Annotated, as amended; and

WHEREAS, Harrison County, Mississippi is a governmental unit, body politic, and subdivision of the State of Mississippi governed by its Board of Supervisors and vested with certain statutory powers and general powers, including without limitation those powers vested under Sections 19-3-40, et seq, Mississippi Code of 1972 Annotated, as amended; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission have found that the county-wide integrated communications system includes various types of equipment which must be periodically monitored, maintained, upgraded, and/or replaced; and

WHEREAS, the Harrison County Emergency Communications Commission has a Audiolog recorder, which is a centralized recording system used to record all 911, administrative telephone communications, emergency radio traffic, and Public Safety Answering Position "PSAP" equipment, which periodically needs maintenance and technical support services; and

WHEREAS, staff of the Harrison County Emergency Communications Commission, has entered into negotiations with Kova Corp., for a Maintenance Service Contract for Kova Corp. to maintain and provide services for the County's Audiolog recorder(s) which is necessary to provide recording resources of all 911 and PSAP communications; and

WHEREAS, The Commissioners of the Harrison County Emergency Communications Commission find that the maintenance of the Audiolog recorder, which is the subject of the Maintenance Agreement attached hereto as Exhibit "A" is reasonable and necessary for carrying out the purposes and intent of §§ 19-5-301 through 19-5-319 of the Mississippi Code of 1972 Annotated, as amended; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that the proposed Maintenance Agreement between the Harrison County Emergency Communications Commission/Harrison County and Kova Corp., attached hereto and incorporated herein as Exhibit "A", is reasonable and necessary for the purpose of maintaining the County's Audiolog recorder(s) and is necessary to provide recording resources of all 911 and PSAP communications; and

WHEREAS, the Commissioners of the Harrison County Emergency Communication Commission find that it is in the best interest of the management, operation, development, and safety of Harrison County, to enter into the Maintenance Service Contract with Kova Corp, to maintain the County's Audiolog recorder(s). Kova Corp.'s fees for their services are as follows:

- \$1,100.00 Ticket Opening Fee (applies for all initial service requests and includes up to four (4) hours of service)
- \$1,550.00 after hours Ticket Opening Fee
- \$225.00 per hour for Technical Support (normal business hours, Mon. - Fri. 9-5)
- \$337.50 per hour for Technical Support (after hours, weekends, and holidays)
- \$.50 (fifty cents) per mile travel surcharge

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that the terms and conditions set forth in the Maintenance Contract (Contract

#ID#12-1120A), attached hereto and incorporated herein collectively as Exhibit "A", contains certain language that is not enforceable under Mississippi law as to a governmental entity; and

WHEREAS, General Counsel for the Harrison County Emergency Communications Commission has notified Kova Corp., in her letter of November 21, 2012, that the language is void under Mississippi law, as to governmental entities, as stated in said letter, a copy of which is attached hereto and incorporated herein as Exhibit "B"; and

WHEREAS, Kova Corp., will not execute the Maintenance Contact (Contract ID#12-1120A) without such language, but will execute the Maintenance Contact (Contract ID#12-1120A) with such language, even with the knowledge the language is void; and

NOW THEREFORE, BE IT RESOLVED by the Commissioners of the Harrison County Emergency Communications Commission as follows:

SECTION 1

The Maintenance Agreement between Harrison County and Kova Corp., a copy of which is attached hereto and incorporated herein as Exhibit "A", is authorized and approved, subject to and contingent upon approval by the Harrison County Board of Supervisors.

That the Harrison County Emergency Communications Commission recommends to the Harrison County Board of Supervisors that it authorize, approve and sign the aforesated Agreement.

RESOLVED on this the 28th day of November, 2012.

The above and foregoing Resolution was introduced by Commissioner Weatherford who moved the adoption of same. Said Motion was seconded by Commissioner Brisolara. Upon being put to vote, the results were as follows:

Sheriff MELVIN BRISOLARA, Harrison County at Large

AYE

Chief JOHN MILLER, City of Biloxi

AYE

CLAY JONES, City of D'Iberville

AYE

Chief JOHN DUBUISSON, City of Pass Christian

AYE

Chief GEORGE BASS, City of Long Beach

AYE

Chief ALAN WEATHERFORD, City of Gulfport

AYE

STEVE DELAHOUSEY, Emergency Medical Services

AYE

WHEREUPON, Chairman Delahousey declared the motion carried
and the resolution adopted on the 28th day of November, 2012.

**HARRISON COUNTY EMERGENCY
COMMUNICATIONS COMMISSION**

BY:

Steve J. Delahousey

ATTEST:

Paula E. Chisholm



MAINTENANCE CONTRACT ID#12-1120A

Whereas, Harrison County, Mississippi and Harrison County Emergency Communications Commission, hereinafter referred to as "the Customer", desires to secure a maintenance contract to maintain previously purchased Audiolog recorder(s) in good working order; and

Whereas, KOVA, Corp, hereinafter referred to as KOVA, having a place of business at 102 East Bay Avenue, Suite J, Manahawkin, NJ, 08050, is a manufacturer authorized Platinum level distributor and service provider for Audiolog recording systems;

Therefore, KOVA and the Customer agree that KOVA will provide the Customer with its technical support services based on this contract, subject to the "Terms and Conditions" listed on page two (2) of this Agreement. In return, the Customer agrees to pay to KOVA the corresponding fees as detailed below, plus any applicable sales tax. Full payment shall be paid within 45 days from the date the invoice is received.

Rates shall be calculated on an individual basis, each consisting of the four Components below:

1. New Ticket Service Fee per Incident: \$1100 Ticket Opening Fee applies for all initial service requests opened during normal business hours, and is billed on a per incident basis. If opened after hours, it is an initial fee of \$1550. This initial fee includes up to 4 hours of support. Thereafter, hourly rates are as described below. Any parts that may be required are billed at additional cost.

2. Hourly Support As Required Per Incident Beyond Initial 4 Hours:

Normal Business Hours Support: Technical Support Services for all assistance performed between the hours of 9:00 AM and 5:00 PM, Monday-Friday, excluding Legal Holidays, is billable at *\$225.00 per hour.

After Hours Phone/Onsite Support: Technical Support Services for all assistance performed between the hours of 5:01PM and 8:59AM Monday-Friday, All Day on Saturdays and Sundays, and All Day on Legal Holidays is billable at *\$337.50

** For all onsite repairs, there is a \$.50 (fifty cents) per mile travel surcharge, plus the cost of any parts required for repair.*

3. Any Parts Necessary for Repair per Incident: All parts used for replacement are new when commercially available. All parts shall be charged in accordance with the latest released catalog pricing, with the prior approval of the customer.

4. Current Version Requirement: The Audiolog should be within the Manufacturer's guidelines for support, prior to KOVA providing any support. If the version is not within one version of the latest available software release by the Manufacturer, as applicable to the facility, then KOVA can attempt to provide support, but it is understood that the Manufacturer will not generate any new hot-fixes or patches that may be required for continued functionality at that version. Should a patch/hotfix be required, then the system must first be upgraded to a supported version at the Customer's expense.

Acceptance of this agreement, as indicated by the undersigned, acknowledges and agrees to all terms and conditions as articulated in this agreement. Notices, pursuant to this agreement, will be sent to the undersigned. Furthermore, by signing below, the customer agrees to abide by the guidelines set forth in "Addendum A", hereinafter referred to as "System Administration Policy for Audiolog and MIQ Systems".

For KOVA, Corp:

For The Customer:

By: _____

By: _____

Printed Name _____

Printed Name _____

Date _____

Date _____

102 East Bay Avenue, Suite J
Manahawkin, New Jersey 08050
(609) 597-1498

Address _____

City/State/Zip _____

Telephone _____

TERMS AND CONDITIONS

- 1. TERM:** This Agreement shall become effective on the date of the last signature of this contract and shall be valid through 12/31/13. KOVA shall have the right, from time to time, to revise the rates for service being charged there under by providing the customer with written notice at least sixty days (60) prior to the expiration of the term then in effect. Such revised rates shall then apply to the services to be provided in the next renewal term.
- 2. FACILITY LOCATION:** The services provided hereunder shall be provided exclusively at the customer's location where the Audiolog equipment is installed.
- 3. STANDARD REPAIR SERVICE:** KOVA will respond to requests for all calls placed to (877) 700-KOVA (5682). KOVA will respond to a request for service by the next business day. The response for a service request may be done electronically or via physical visit to the customer's site. The customer agrees to furnish a POTS (plain old telephone service) line for each recorder in use. Analog DID lines provided through customer's PBX are not acceptable. The customer also agrees to have the necessary software and modem attached to the recorder. Further the customer agrees to allow the service technician access to the recorder, without delay, temporary access to the facility (via full time escort or access control card) and temporary parking (within walking distance).
- 4. FEES:** The Fees for the initial term are listed elsewhere in this agreement. The customer shall pay all invoices under this Agreement within forty-five (45) of receipt of the invoice. All amounts mentioned in this Agreement are in U.S. Dollars. Any amount payable pursuant to this Agreement and not paid when due shall thereafter be delinquent. If the customer disputes, in good faith, any items on an invoice, the customer shall promptly notify KOVA of the dispute with specific information regarding the reason for the dispute and the customer shall timely pay all undisputed items on such invoice. The customer shall promptly attempt to resolve any such dispute and no late payment charge shall apply to the disputed amount pending resolution of the dispute.
- 5. MODIFICATIONS MADE BY THE CUSTOMER:** The customer shall inform KOVA in writing of any modification in the applicable Licensed Products made by others.
- 6. TERMINATION:** In the event of termination of the License Agreement, this Agreement shall terminate on the same date. Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with its terms (other than the required payment of money) if such failure arises out of causes beyond the control and without the fault or negligence of such party. Such causes may include, but are not restricted to, acts of God or of a public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform must be beyond the reasonable control and without fault or negligence by the party failing to perform. Either KOVA or THE CUSTOMER may terminate this Agreement upon thirty (30) days written notice in the event the other violates any material provision of this Agreement; provided, however, if the defaulting party cures such violation within the 30 day notice period, the notice of termination shall be withdrawn. Termination by either party shall be in addition to any other legal or equitable remedies available to such party.
- 7. GENERAL:** To the extent that Mississippi law allows, the customer agrees that notwithstanding the form in which any legal or equitable action may be brought, the liability of KOVA, if any, arising out of or in any way related to its performance of the services provided herein shall be limited to general money damages in an amount not to exceed the total amount paid for such services. To the extent that Mississippi law allows, neither party shall be liable to the other for loss of profits, special, consequential or exemplary damages, even if such party has been advised of the possibility of such damages, except for a violation of paragraph 14 "Employment". If KOVA provides maintenance training, the customer and the respective employees will sign and abide by KOVA's non-compete agreement (if applicable, addendum C). Titles and paragraph headings are for convenient references and are not a part of this Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to this subject matter hereof. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof and no waiver shall be effective unless made in writing. In the event that any provisions of this Agreement shall be determined to be illegal or otherwise unenforceable, such provision shall be severed and the balance of the Agreement shall continue in full force and effect; provided, however, that either party may terminate this Agreement if any material provision of this Agreement is deemed to be illegal or otherwise non-enforceable by giving thirty (30) days written notice to the other party within thirty (30) days after such determination, except for a violation of paragraph 8 "Employment", which shall continue in force for the term specified. The customer agrees that all equipment provided by KOVA will be used in a manner consistent with local, state, and federal laws and regulations. To the extent that Mississippi law allows, the customer will indemnify and hold harmless KOVA from any litigation arising out of the equipment misuse.
- 8. EMPLOYMENT:** During the term of this agreement, and for a twelve (12) month period thereafter, KOVA and THE CUSTOMER each agrees that it will not solicit for employment directly or indirectly any employee of the other who is or has been engaged in the development, maintenance, implementation or marketing of the Equipment, without written consent of the other, which consent shall not be unreasonably withheld.
- 9. ASSIGNMENT:** Either party without the written consent of the other, which consent shall not be unreasonably withheld, may not assign this agreement.
- 10. NOTICES:** All notices which either party hereto is required to give the other party shall be mailed, postage prepaid, by registered or certified mail. Notices shall be mailed to the respective party at the address listed on the face of this agreement.
- 11. GOVERNING LAW:** The laws of the State of Mississippi shall govern this agreement and any issue arising there from.

KOVA INITIALS AND DATE INITIALED _____ CUSTOMER INITIALS AND DATE INITIALED _____

ADDENDUM A
System Administration Policy for Audiolog and MIQ Systems

The policy/rules articulated below are necessary for the continuing proper operation of the Audiolog systems. Any deviation without permission from KOVA will cause billable time for system troubleshooting and restoration.

- Security, Domain, Shares, Computer or User policies should not be pushed and/or assigned to any Audiolog, MIQ, MIR or Veri-Scribe Server or user account.
- The Windows Computer name is vital to the functionality of both the server and client software. It should not be changed without KOVA's service.
- Any local user accounts may not be altered. This includes, but is not limited to, the password, account disabling, user rights or user name.
- Absolutely no Service Packs/Updates for Windows or SQL should be applied except by trained KOVA technicians.
- No Security patches should be applied without contacting KOVA first. This includes, but is not limited to, Microsoft Windows Security Patches, Internet Explorer Security Patches, AntiVirus Updates.
- KOVA provides and installs AntiVirus software for each machine and is specifically configured for use with KOVA products. The customer must not alter the settings of the AntiVirus software or update it without contacting KOVA first.
- KOVA does allow for integration into corporate AntiVirus control using products such as products from Symantec, McAfee or TrendMicro. However, there are strict guidelines that must be followed for this integration and KOVA must be involved in the setup and installation:
- Only software installed by KOVA technicians should exist on any Audiolog, MIQ, MIR or Veri-Scribe Server. Most software is untested to work with our products and may cause unforeseen problems with machine or recording reliability. If the customer requires a product installed on the Audiolog, the software must be presented to KOVA for evaluation and study.
- Any change to any related subsystem (i.e., Computer Telephony Interface –CTI, SMDR feed, PBX, etc) that provides data and/or audio to the recording systems, must be noticed to KOVA (within reasonable time) before any change is done.
- Customers are expected to maintain integration tables with add, move, and deletes. Additionally, if archiving to DVD is enabled, customers must reasonably change the DVDs as required. Customers are also expected to periodically (as necessary) clean dust filter and DVD drives with DVD cleaning disk on a monthly basis.

KOVA INITIALS AND DATE INITIALED _____ CUSTOMER INITIALS AND DATE INITIALED _____

LAW OFFICES OF

DUKES, DUKES, KEATING & FANECA, P.A.

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November 21, 2012

*also licensed in TX
**also licensed in CA
***licensed in AL only

Alisha Bradley
KOVACORP
102 East Bay Avenue, Suite J
Manahawkin, NJ 08050

VIA US MAIL & E-MAIL


RE: Harrison County Emergency Communications Commission
Proposed Maintenance Contract for Audiolog recorder(s) Contract ID#12-1120A
Our File No.: 1829.0001

Dear Mrs. Bradley:

As counsel for the Harrison County Emergency Communications Commission, I am notifying you that Mississippi law prohibits Harrison County and the Harrison County Communications Commission from waiving or limiting any legal remedies or damages they have under Mississippi law. Mississippi law also prohibits these entities from agreeing to indemnify and hold harmless another person and/or company for liability. Therefore, such provisions found in Section 7 of the Proposed Terms and Conditions of the Maintenance Contract violate Mississippi law and are void and not enforceable. Subject to this notice prior to your signing, I will recommend that Harrison County and the Harrison County Emergency Communications Commission approve the Agreement.

Sincerely,

DUKES, DUKES, KEATING & FANECA, P.A.


Haley N. Broom

HNB/vlj

cc: Executive Director, Rupert Lacy
Commissioner Chair, Steve Delahousey

