

AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT FOR ENGINEERING SERVICES ("Agreement") is made and entered into by and between **Williamson County**, a body corporate and politic under the laws of the State of Texas, hereinafter "County", and Talex, Inc., hereinafter "Engineer".

RECITALS

The County intends to investigate plumbing, heating, air conditioning and ventilation elements of the Williamson County Justice Center, hereinafter called the "Project"; and

The County desires that the Engineer perform certain professional engineering services in connection with the Project; and

The Engineer represents that it is qualified and desires to perform such services;

NOW, THEREFORE, the County and the Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

SECTION I

SCOPE OF AGREEMENT

The Engineer agrees to perform professional engineering services in connection with the Project as stated herein, and for having rendered such services, the County agrees to pay to the Engineer compensation as stated in the sections to follow.

SECTION II

CHARACTER AND SCOPE OF SERVICES

A. In consideration of the compensation herein provided, Engineer shall perform professional engineering Basic Scope of Services (sometimes referred to herein as the "Basic Scope of Services", "Basic Services" or the "Scope of Services") for the Project, which are acceptable to the County, based on standard engineering practices and the scope of work described on the **Exhibit I** attached to this Agreement. The detailed Scope of Services for the Project is set forth herein as **Exhibit I** to this Agreement, and is expressly incorporated and made a part hereof by reference.

Engineer shall also serve as County's professional engineer in those phases of the Project to which this Agreement applies and will consult with and give advice to County during the performance of Engineer's services.

B. Engineer shall not commence work until Engineer has been thoroughly briefed on the scope of the Project and has been notified in writing to proceed, as evidenced by a Notice to Proceed.

C. County shall provide Engineer with all existing plans, maps, studies, reports, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this particular Project at no cost to Engineer; however, any and all such information shall remain the property of County and shall be returned, if the County so instructs Engineer.

SECTION III

ADDITIONAL SERVICES AND CHARGES

For the performance of the services not specifically described as Basic Services under Section II above (sometimes referred to herein as "Additional Services"), County shall pay and Engineer shall receive, under a negotiated written contract modification executed prior to the performance of any such Additional Services, Additional Services compensation based upon the method and rates set forth **Exhibit II**.

The Engineer shall not, however, be compensated for work made necessary by Engineer's negligent errors or omissions. In the event of any dispute over the classification of Engineer's services as Basic or Additional Services under this Agreement, the decision of the County shall be final and binding on Engineer.

It is expressly understood and agreed that Engineer shall not furnish any Additional Services unless such Additional Services are negotiated and set forth in a written contract modification executed by both parties prior to Engineer's performance of any such Additional Services. The County shall have no obligation to pay for such Additional Services which have been rendered without a written contract modification executed by both parties prior to Engineer's performance of any such Additional Services, as hereinabove required. Furthermore, in no event will the County be obligated to compensate the Engineer for any Additional Services and charges in an amount in excess of **Fifty Thousand and No/100 Dollars (\$50,000.00)**.

SECTION IV

TIME FOR PERFORMANCE AND LIQUIDATED DAMAGES

A. Time for Performance. Engineer agrees to complete the services called for in **Exhibit I**, of this Agreement within Ninety (90) calendar days from the date of County's Notice to Proceed. The above time limit may for good cause be extended, in writing, by the County as the Project proceeds.

B. Liquidated Damages. Engineer specifically acknowledges that County will sustain damages for each day beyond the required dates of completion of the Basic Services that the work has not been completed and approved. Because of the impracticality and extreme difficulty of fixing and ascertaining County's actual damages, Engineer agrees that **Fifty and No/100**

Dollars (\$50.00) per day shall be retained by County from any amounts due Engineer for every day that Engineer does not meet the time allotted, as set forth above.

Periods of time (i) during which County suspends work, or (ii) during which a submitted and complete Work Product is in technical review, as described below, or (iii) during which a delay directly related to matters caused by "Acts of God", non-county governmental processes, national emergency, or any other causes beyond the reasonable control of Engineer and County, shall not be taken into account in computing the amount of liquidated damages. In the event that a Work Product received by County is found to be incomplete, as defined below, the period of time from the original submittal of the Work Product to the receipt of subsequent submittal necessary to produce a completed submittal will be taken into account in computing the number of days and the amount of liquidated damages.

SECTION V

SUBMITTAL PROCESS AND REVISIONS TO ENGINEER WORK PRODUCT

A. Submittal Process. Engineer's Work Product will be reviewed by County under its applicable technical requirements and procedures, as follows:

1. Reports, plans, surveys, field notes, original drawings, computer tapes, graphic files, tracings, calculations, analyses, reports, specifications, data, sketches and/or schematics prepared by Engineer and supporting documents (collectively referred to herein above and hereinafter as the "Work Product(s)").
2. Upon receipt of the Work Products, the submission shall be checked for completion. "Completion" shall be defined as: all of the required items (as defined by the Scope of Services described herein) have been included in the Work Products in compliance with the requirements of this Agreement. The completeness of any Work Product submitted to County shall be determined by County within fourteen (14) days of such submittal and County shall notify Engineer in writing within such time period if such Work Product has been found to be incomplete.
3. If the submission is Complete, County's technical review process will then begin. If the submission is incomplete, County shall notify Engineer, who shall perform such professional services as are required to complete the work and resubmit it to County within seven (7) days. This process shall be repeated until a submission is complete.
4. Within seven (7) days of determining that a particular Work Product is Complete, County shall review the completed work for compliance with the Scope of Work and determine whether or not to accept such Work Product. If necessary, the completed work shall be returned to Engineer, who shall perform any required work and resubmit it to County. This process shall be repeated until the work is accepted. "Acceptance" shall mean that, in the County's opinion, substantial compliance with the requirements of this Agreement has been achieved.
5. After Acceptance, Engineer shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive final

approval by the County. "Approval" in this sense shall mean formal recognition that the work has been fully carried out.

B. Revision to Work Product. Engineer shall make, without expense to County, such revisions to the Work Product as may be required to correct negligent errors or omissions so the Work Product meets the needs of County, but, after the Approval of the Work Product, any revisions, additions or other modifications made at County's request, which involve extra services and expenses to Engineer, shall entitle Engineer to additional compensation for such extra services and expenses; provided, however, Engineer hereby agrees to perform any necessary corrections to the Work Products which are found to be in negligent error or omission as a result of the Engineer's development of the Work Product, at any time, without additional compensation. If it is necessary due to such error or omission by Engineer to revise any Work Product in order to make the Project constructible, Engineer shall do so without additional compensation. In the event of any dispute over the classification of Engineer's Work Products as Complete, Accepted or Approved under this Agreement, the decision of the County Judge shall be final and binding on Engineer, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

C. Days. All references to a "day" in this Agreement shall mean a calendar day unless otherwise specified.

SECTION VI

THE ENGINEER'S COMPENSATION

For and in consideration of the Basic Services rendered by the Engineer, and subject to the limit of appropriation under Section X, the County shall pay to the Engineer a maximum not-to-exceed fee of **Forty Thousand and No/100 Dollars (\$40,000.00)** hereinafter called the "Basic Fee", plus the amount payable under Section III (Additional Services and Charges).

SECTION VII

TIME OF PAYMENT AND RIGHT TO AUDIT

During the performance of the services provided for in this Agreement for under **Exhibit I**, payments shall be made based upon the actual hours expended and actual non-labor and subcontract expenses incurred by the Engineer. The basis of compensation for the services of principals and employees engaged in the performance of the services shall be the hourly rates set forth in attached **Exhibit II**. Engineer shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Agreement.

On or about the last day of each calendar month during the performance of the services to be provided under this Agreement, the Engineer shall submit a sworn statement to the County, along with time sheets detailing hours worked, receipts detailing expenses incurred and other support documentation, in a form acceptable to the Williamson County Auditor, setting forth the services provided for by this Agreement which were completed during such calendar month, the compensation which is due, plus the amounts payable under Section III (Additional Services and

Charges) which have not been previously billed or paid. In the event the statement includes charges based upon hourly billing rates for services or any other rates based upon the amount of time worked by an individual or individuals in performing services, whether the charges are being billed directly to the County or whether they are the basis of invoices from subcontractors for which the Engineer seeks reimbursement from the County, the charges shall be accompanied by an affidavit signed by an officer or principal of the Engineer certifying that the work was performed, it was authorized by the County and that all information contained in the invoice that is being submitted is true and correct.

The County shall review the statements within thirty (30) days of receipt and approve them with such modifications, if any, as it deems appropriate. The County shall pay each statement within thirty (30) days after the County's approval; provided, however, that the approval or payment of any statement shall not be considered to be evidence of performance by the Engineer to the point indicated by such statement or of receipt or acceptance by the County of the services covered by such statement.

Furthermore, the Engineer agrees to maintain, for a period of three (3) years after final payment under this Agreement, detailed records identifying each individual performing the services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual and the total amount billed for all persons, and provide such other details as may be requested by the County Auditor for verification purposes. Engineer agrees that County or its duly authorized representatives shall, until the expiration of three years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Engineer which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Engineer shall retain its records within the boundaries of Williamson County or a contiguous county and further agrees that County shall have access during normal working hours to all necessary Engineer facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give Engineer reasonable advance notice of intended audits.

SECTION VIII

SUSPENSION AND TERMINATION

A. Suspension. County may suspend the work at any time for any reason without terminating this Agreement by giving written Notice of Suspension and the work may be reinstated and this Agreement resumed in full force and effect within thirty (30) calendar days of receipt by Engineer of written Notice of Reinstatement from County. In the event such suspension of the Project or the Engineer's services hereunder extends for a period of one hundred eighty (180) consecutive calendar days or more, Engineer may terminate this Agreement in writing.

B. Termination. County may terminate this Agreement at any time, for convenience, by notice in writing to the Engineer. Upon receipt of such notice, the Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement. Within sixty (60) days after receipt of notice of termination, the Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of

termination. The County shall then pay the Engineer that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made. Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated.

SECTION IX

NOTICE

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the County or the Engineer at the following addresses. If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To the Engineer: Talex, Inc.
6300 La Calma Drive
Suite 100
Austin, Texas 78752-3825

To the County: Williamson County Judge
Dan A. Gattis (or successor)
710 Main Street, Suite 101
Georgetown, Texas 78626

With a copy to: Robert B. Daigh, P.E.
Williamson County
Senior Director of Infrastructure
3151 S. E. Inner Loop, Suite B
Georgetown, Texas 78626

Either party may designate a different address by giving the other party ten days written notice.

SECTION X

LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, Engineer has been advised by County, and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that County shall have available the total maximum sum of **Ninety Thousand and No/100 Dollars (\$90,000.00)** specifically allocated to fully discharge any and all liabilities, including all Basic Fees, Additional Services compensation and compensation of any other sort to the Engineer and consultants, and any and all costs for any and all things or purposes inuring under or out of this Agreement, irrespective of the nature thereof, shall not exceed said specifically allocated sum, notwithstanding any word, statement or thing contained in or inferred from the preceding provision of this Agreement which might in any light by any person be interpreted to the contrary.

SECTION XI

SUCCESSORS AND ASSIGNS

The County and the Engineer bind themselves and their successors and assigns to the other party of this Agreement and to the successors and assigns of such other party, in respect to all covenants of this Agreement. Neither the County, nor the Engineer shall assign or transfer its interest in this Agreement without written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

SECTION XII

INSURANCE REQUIREMENTS

Engineer shall maintain in full force and effect worker's compensation insurance, professional liability insurance, and general liability insurance during the entire term of this Agreement, in the amount set forth in **Exhibit III** - Insurance Requirements, and shall instruct and authorize insurer to immediately notify County directly in the event that any said policy coverage is changed or terminated. Said liability insurance policy shall be purchased from a reliable company licensed or authorized to do business in Texas. Proof of required insurance shall be submitted on Certificate(s) of Insurance and Endorsement (s) issued to County, as required in **Exhibit III**.

Engineer shall require that any and all other contractors and/or consultants engaged or employed by Engineer carry and maintain the same insurance and coverages required in **Exhibit III**. Engineer shall submit to County proof of such insurance. The maintenance in full current force and effect of such form and amount of insurance, in such amount as County shall have accepted, shall be a condition precedent to the Engineer's exercise or enforcement of any rights under this Agreement. The insurance policies shall incorporate a provision requiring written notice to the County at least thirty (30) days prior to any cancellation, non-renewal or material modification of the policies.

SECTION XIII

PUBLIC CONTACT

Contact with the news media, citizens of Williamson County or governmental agencies shall be the responsibility of the County. Under no circumstances shall the Engineer release any material or information developed in the performance of its services hereunder without the express written permission of the County.

SECTION XIV

COMPLIANCE AND STANDARDS

The Engineer shall render the services hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the engineering profession to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered hereunder, and Engineer's performance.

SECTION XV

OWNERSHIP OF DOCUMENTS, COPYRIGHT

The County shall be the absolute and unqualified owner of all Work Product prepared pursuant to this Agreement by the Engineer and its subcontractors with the same force and effect as if the County prepared same. Copies of all completed or partially completed Work Product prepared pursuant to this Agreement by the Engineer shall be delivered to County when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first. The Engineer may retain one (1) set of reproducible copies of such documents and such copies shall be for the Engineer's sole use in preparation of studies or reports for Williamson County only. The Engineer is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, without the prior express written permission of the County.

SECTION XVI

INDEMNIFICATION

EXCEPT FOR EXPENSES OR LIABILITIES ARISING FROM THE NEGLIGENCE OR INTENTIONAL ACTS OF THE COUNTY, THE ENGINEER HEREBY EXPRESSLY AGREES TO INDEMNIFY AND HOLD THE COUNTY AND ITS OFFICERS, AGENTS, OFFICIALS, REPRESENTATIVES AND EMPLOYEES HARMLESS AGAINST ANY AND ALL EXPENSES AND LIABILITIES ARISING OUT OF THE NEGLIGENT PERFORMANCE, ACTION OR INACTION OF THE ENGINEER IN CONDUCT OF THIS AGREEMENT, AS FOLLOWS:

FOR MATTERS OTHER THAN THOSE ARISING FROM THE RENDERING OR FAILURE TO RENDER PROFESSIONAL SERVICES, THE ENGINEER EXPRESSLY AGREES TO THE EXTENT THAT THERE IS A CASUAL RELATIONSHIP BETWEEN ITS NEGLIGENCE, ACTION OR INACTION, OR THE NEGLIGENCE, ACTION OR INACTION OF ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY THE ENGINEER AND ANY DAMAGE, LIABILITY, INJURY, LOSS OR EXPENSE (WHETHER IN CONNECTION WITH BODILY INJURY OR DEATH OR PROPERTY DAMAGE) THAT IS SUFFERED BY THE COUNTY AND/OR ITS OFFICERS OR EMPLOYEES OR BY ANY MEMBER OF THE PUBLIC, TO INDEMNIFY AND SAVE THE COUNTY AND ITS OFFICERS

AND EMPLOYEES HARMLESS AGAINST ANY AND ALL LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS, AND EXPENSES ARISING OUT OF THE NEGLIGENCE, ACTION OR INACTION OF THE ENGINEER. SUCH COSTS ARE TO INCLUDE WITHOUT LIMITATION, DEFENSE, SETTLEMENT AND REASONABLE ATTORNEY'S FEES INCURRED BY THE COUNTY AND ITS OFFICERS AND/OR EMPLOYEES. THIS PROMISE TO INDEMNIFY SHALL INCLUDE, WITHOUT LIMITATION, BODILY INJURIES OR DEATH OCCURRING TO THE ENGINEER'S EMPLOYEES AND ANY PERSON, DIRECTLY OR INDIRECTLY EMPLOYED BY THE ENGINEER (INCLUDING WITHOUT LIMITATION ANY EMPLOYEE OF ANY SUBCONTRACTOR), THE COUNTY'S OFFICERS OR EMPLOYEES, THE EMPLOYEES OF ANY OTHER INDEPENDENT CONTRACTORS, OR OCCURRING TO ANY MEMBER OF THE PUBLIC. WHEN THE COUNTY SUBMITS NOTICE OF A CLAIM THAT INITIATES THIS INDEMNITY, THE, ENGINEER SHALL PROMPTLY DEFEND ANY AFOREMENTIONED ACTION AT ITS OWN COST AND EXPENSE.

FOR MATTERS ARISING OUT OF THE RENDERING OR FAILURE TO RENDER PROFESSIONAL SERVICES, THE ENGINEER WILL INDEMNIFY AND SAVE THE COUNTY AND ITS OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF THE ENGINEER OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY THE ENGINEER IN THE RENDERING OR FAILURE TO RENDER PROFESSIONAL SERVICES UNDER THIS AGREEMENT. SUCH COSTS ARE TO INCLUDE, WITHOUT LIMITATION, DEFENSE, SETTLEMENT AND REASONABLE ATTORNEYS' FEES INCURRED BY THE COUNTY AND ITS OFFICERS AND/OR EMPLOYEES. THIS PROMISE TO INDEMNIFY SHALL INCLUDE, WITHOUT LIMITATION, BODILY INJURIES OR DEATH OCCURRING TO THE ENGINEER'S EMPLOYEES AND ANY PERSON, DIRECTLY OR INDIRECTLY EMPLOYED BY THE ENGINEER (INCLUDING WITHOUT LIMITATION ANY EMPLOYEE OF ANY SUBCONTRACTOR), THE COUNTY'S OFFICERS OR EMPLOYEES, THE EMPLOYEES OF ANY OTHER INDEPENDENT CONTRACTORS, OR OCCURRING TO ANY MEMBER OF THE PUBLIC. WHEN THE COUNTY SUBMITS NOTICE, THE ENGINEER SHALL PROMPTLY DEFEND ANY AFOREMENTIONED ACTION.

THE LIMITS OF INSURANCE REQUIRED IN THIS AGREEMENT AND/OR AGREEMENT EXHIBITS SHALL NOT LIMIT THE ENGINEER'S OBLIGATIONS UNDER THIS SECTION. THE TERMS AND CONDITIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT AND/OR AGREEMENT EXHIBITS OR THE SUSPENSION OF THE WORK HEREUNDER. TO THE EXTENT THAT ANY LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARE CAUSED IN PART BY THE ACTS OF THE COUNTY OR THIRD PARTIES FOR WHOM THE ENGINEER IS NOT LEGALLY LIABLE, THE ENGINEER'S OBLIGATIONS SHALL BE REDUCED IN PROPORTION TO THE COUNTY'S FAULT. THE OBLIGATIONS HEREIN SHALL ALSO EXTEND TO ANY ACTIONS BY THE COUNTY TO ENFORCE THIS INDEMNITY OBLIGATION.

IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST THE COUNTY IN WHICH THE CONTRACTOR ALLEGES DAMAGES AS A RESULT OF ANY ACTS, ERRORS OR OMISSIONS OF THE ENGINEER OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY THE ENGINEER, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS IN THE CONSTRUCTION DOCUMENTS OR IN THE ADMINISTRATION OF THE AGREEMENT BY THE ENGINEER OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY THE ENGINEER, AND/OR INADEQUATE SERVICES PURSUANT TO THE CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT AS DEFINED AND REQUIRED BY THIS AGREEMENT, AGREEMENT EXHIBITS AND THE CONSTRUCTION CONTRACT DOCUMENTS, THEN THE COUNTY SHALL HAVE THE RIGHT TO JOIN THE ENGINEER IN ANY SUCH PROCEEDINGS. ENGINEER SHALL ALSO HOLD THE COUNTY HARMLESS AND INDEMNIFY THE COUNTY TO THE EXTENT THAT ENGINEER OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY THE ENGINEER CAUSED SUCH DAMAGES TO CONTRACTOR, INCLUDING ANY AND ALL COSTS AND LEGAL FEES INCURRED BY THE COUNTY IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS INVOLVING THE ALLEGATIONS AGAINST THE ENGINEER OR ANY OF ITS EMPLOYEES OR ANY PERSON, FIRM OR CORPORATION DIRECTLY OR INDIRECTLY EMPLOYED BY THE ENGINEER.

SECTION XVII

MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XVIII

AUTHORITY OF COUNTY JUDGE

The County Judge or his/her designee and/or agent as designated by the County Judge (individually or collectively the "County Judge") shall decide any and all questions which may arise as to the interpretation of this Agreement and all questions as to the acceptable fulfillment of this Agreement by the Engineer. The County Judge's decision shall be final. It is mutually agreed by both parties that the County Judge shall act as referee in all questions arising under the terms of this Agreement between the parties hereto and that the decisions of the County Judge in such shall be final and binding alike on both parties hereto. But nothing contained in this section shall be construed to authorize the County Judge to alter, vary or amend any of the terms or provisions of this Agreement.

SECTION XIX

MERGER

The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

SECTION XX

SEVERABILITY

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

SECTION XXI

VENUE AND GOVERNING LAW

This Agreement shall be performable in Williamson County, Texas. Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

SECTION XXII

EQUAL OPPORTUNITY IN EMPLOYMENT

The parties to this Agreement agree that during the performance of the services under this Agreement they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The parties to this Agreement will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.

SECTION XXIII

NO THIRD PARTY BENEFICIARIES

This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.

SECTION XXIV

CONSTRUCTION

Each party to this Agreement acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.

SECTION XXV

RELATIONSHIP OF THE PARTIES

Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The

employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

SECTION XXVI

NO WAIVER OF IMMUNITIES

Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

SECTION XXVII

NO WAIVER

No action or inaction taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and such action or inaction will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.

SECTION XXVIII

EXHIBITS

The Agreement exhibits shall include the following, which are incorporated herein by reference:

- Exhibit I: Scope of Services for the Project**
- Exhibit II: Hourly Rates**
- Exhibit III: Insurance Requirements**

In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Agreement, the following shall control:

- a. As between this Agreement and its Exhibits or any other documents which make up this Agreement, this Agreement shall govern.
- b. In the event of any conflict, discrepancy, or inconsistency among any of the other Agreement Exhibits, the Engineer shall diligently review all such documents and notify the County immediately upon discovery of the same for resolution by the County.
- c. Any documents not included or expressly contemplated in this Agreement do not, and shall not, form a part of this Agreement. The Agreement Exhibits are intended to be complimentary, and a requirement in one document shall be deemed a requirement in all documents.

SECTION XXIX

EXECUTION

The County executes this Agreement by and through the County Judge acting pursuant to Order of the Commissioners' Court of Williamson County, Texas, so authorizing. This Agreement shall not become effective until executed by all parties hereto. The Engineer's duly authorized representative acknowledges by his/her signature below that he/she has read and understands the above paragraphs and that Engineer has the obligation to ensure compliance with its provisions by itself and its employees, agents, and representatives.

The parties execute this Agreement to be effective this the _____ day of _____, 20____.

WILLIAMSON COUNTY:

By: _____
Dan A. Gattis
Williamson County Judge

ENGINEER:

Talex, Inc

By: T.R. Alexander

Printed Name: T.R. ALEXANDER

Title: PRESIDENT, TALEX, INC.

Exhibit I

A. BASIC SCOPE OF SERVICES

The Engineer agrees to perform the following Basic Scope of Services, which will entail approximately the following:

1. Plumbing Investigation:

- Review the construction drawings and any other available construction documentation such as product submittal, operating and maintenance manuals and other such material;
- Trace out the piping on the drawings in order to try to determine the original design intent to verify it was appropriate for the project;
- Conduct an on-site investigation of the existing installation to determine configuration and condition of the existing systems;
- Examine existing failure sites to assess any similarities;
- Make pressure, and possibly flow measurements at various locations in the systems;
- Examine samples of piping pulled from existing failures as well as representative samples of piping that is presently installed (assistance from County maintenance staff may be needed to remove and repair piping sample locations);
- Evaluate findings to determine possible failure causations;
- Try to define locations of possible future failure;
- Attempt to define extent of existing system damage and possible useful system life remaining; and
- Determine possible remedies available;

2. Kitchen Mechanical Investigation:

- Review the construction drawings and documentation similar to above;
- Sort out the air flow accounting to determine the original design intent and verify its validity;
- Site visit to determine configuration of the installation;
- Make flow measurements of the exhaust and supply air flows in the kitchen (this may involve hiring a testing and balancing firm to make the measurements);

- Review the kitchen (cooking) equipment capacities and locations to determine if the equipment is located appropriately to the hoods;
- Run a cooling load calculation to determine if the air conditioning and dehumidification equipment is appropriately sized;
- Evaluate the findings, physical layout and calculations to determine possible causation of the high humidity and resultant ice on the freezer floor; and
- Determine possible remedies available.

3. For all investigations

- Prepare a preliminary report of the findings, causes, remedies available and recommendations for solutions. Prepare an estimate of estimated cost for design of repairs and preliminary cost to construct the repairs.

B. ADDITIONAL SERVICES

The Scope of Services and the Basic Fee do not include the following Additional Services. If it is determined that these services are required by County, Engineer will obtain written authorization from County prior to performing any of these additional services, as required by the Agreement.

1. Travel and subsistence required of County and authorized by County to points other than local government agencies, consultants and project site.
2. Significant revisions to construction plans and specifications by County after receiving initial direction by County.
3. Any warranty phase services.
4. Expert witness testimony or appearances at public hearings or meetings concerning the projects or any of their elements.

Should Engineer and County agree that any of the above Additional Services, or other additional services are required, Engineer will prepare a cost proposal for such services and obtain written authorization from County prior to performing any such services.

C. DELIVERABLES

The following deliverables will be submitted to County:

1. A report of preliminary findings in both paper and electronic format.

Exhibit II

HOURLY RATES

<u>Position Classifications</u>	<u>Hourly Rates</u>
Principal	\$180.00 per hour
Senior Engineer	\$120.00 per hour
Staff Engineer/Sr. Designer	\$110.00 per hour
Designer/Drafter	\$ 85.00 per hour

Note 1: Hourly rates include office overhead, employee salary and benefits, and company profits.

Note 2: Hourly rates are applicable from the date of the last party's execution of this Agreement until eighteen months thereafter.

Exhibit III

INSURANCE REQUIREMENTS

During the term of this Agreement, Engineer agrees to provide and maintain the following insurance:

- A. Worker's Compensation in accordance with statutory requirements.
- B. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, including coverage on same for independent subcontractor(s). WILLIAMSON COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER THIS COVERAGE.
- C. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate. Engineer shall require any subcontractor(s) to provide Automobile Liability Insurance in the same minimum amounts.
- D. Professional Liability Errors and Omissions Insurance in the amount of \$1,000,000.00 per claim.

Engineer shall not commence any work under this Agreement until he has obtained all required insurance and such insurance has been approved by County. Engineer shall not allow any subcontractor(s) to commence work to be performed in connection with this Agreement until all required insurance has been obtained and approved and such approval shall not be unreasonably withheld. Approval of the insurance by County shall not relieve or decrease the liability of Engineer hereunder.

The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued. Engineer shall furnish County with a certification of coverage issued by the insurer. Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse. ALL INSURANCE CERTIFICATES SHALL INCLUDE A CLAUSE TO THE EFFECT THAT THE POLICY SHALL NOT BE CANCELED OR REDUCED, RESTRICTED OR LIMITED UNTIL TEN (10) DAYS AFTER COUNTY HAS RECEIVED WRITTEN NOTICE AS EVIDENCED BY RETURN RECEIPT OF REGISTERED OR CERTIFIED LETTER.

It is the intention of the County and agreed to and hereby acknowledged by the Engineer, that no provision of this Agreement shall be construed to require the County to submit to mandatory arbitration or mediation in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required under this Agreement and/or Exhibits which absolutely requires

arbitration or mediation of such claim, or as otherwise required by law or a court of law with jurisdiction over the provisions of this Agreement.