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**ADDENDUM TO  
MASTER MAINTENANCE AGREEMENT  
(OPEX CORPORATION)**

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**Important Notice: County Purchase Orders and Agreements constitute expenditures of public funds, and all vendors are hereby placed on notice that any quotes, invoices or any other forms that seek to unilaterally impose Contractual or quasicontractual terms are subject to the extent authorized by Texas law, including but not limited to the Texas Constitution, the Texas Government Code, the Texas Local Government Code, the Texas Transportation Code, the Texas Health & Safety Code, and Opinions of the Texas Attorney General relevant to local governmental entities.**

**THIS ADDENDUM** (hereinafter “Addendum”) is made and entered into by and between **Williamson County, Texas** (“County”), a political subdivision of the State of Texas, acting herein by and through its governing body, and **OPEX Corporation** (hereinafter “Vendor”), both of which are referred to herein as the “parties.” Subject to the changes herein, the parties have accepted Vendor’s Master Maintenance Agreement (“Agreement”), attached hereto as **Exhibit “A.1,”** and the following changes shall be incorporated as if part of the Agreement.

**I.**

**Services:** The Vendor shall provide services, as more fully described in **Exhibit “A.1”** *as an independent contractor*. Should the County choose to add services in addition to those described in **Exhibit “A.1,”** such services shall be described in a separate written amendment to this Agreement wherein the additional services shall be described, and the parties shall set forth the amount of compensation to be paid by the County for the additional services. Vendor shall not begin any additional services and the County shall not be obligated to pay for any additional services unless a written amendment to this Agreement has been signed by both parties.

**II.**

**Effective Date and Term:** This Agreement shall be in full force and effect as of the date of the last party’s execution below and shall continue until September 30, 2024, unless terminated earlier pursuant to this Agreement. This Agreement shall not automatically renew but may be subsequently renewed in writing upon mutual agreement of the parties.

**III.**

**Consideration and Compensation:** Vendor will be compensated based on a fixed sum for the Services described in **Exhibit “A.1.”** The amount of compensation paid to Vendor for the Services shall be capped and paid in the amount not to exceed Twenty-Four Thousand Six Hundred and Forty-Five Dollars (\$24,645.00), unless amended by a change order and approved by Williamson County Commissioners Court.

Payment for services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date the County receives the goods under the Agreement; (2) the date the performance of the service under the Agreement is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by the County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of the County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. For avoidance of confusion, this Section III controls in the event there is a conflict between this Section III and Section 3.7 Invoicing of Exhibit A.1 attached hereto.

The County is a political subdivision under the laws of the State of Texas and claims exemption for sale and use taxes. The County agree to provide exemption certificates to Vendor upon request. Likewise, the County is neither liable for any taxes, charges, or fees assessed against Vendor for the supplies or products provided or any services rendered.

#### IV.

**No Agency Relationship & Indemnification:** It is understood and agreed that Vendor shall not in any sense be considered a partner or joint venturer with the County, nor shall Vendor hold itself out as an agent or official representative of the County. Vendor shall be considered an independent contractor for the purpose of this Agreement and shall in no manner incur any expense or liability on behalf of the County other than what may be expressly allowed under this Agreement. The County will not be liable for any loss, cost, expense, or damage, whether indirect, incidental, punitive, exemplary, consequential of any kind whatsoever for any acts by Vendor or failure to act relating to the services being provided.

#### V.

**INDEMNIFICATION - EMPLOYEE PERSONAL INJURY CLAIMS:** TO THE FULLEST EXTENT PERMITTED BY LAW, THE VENDOR SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF THE COUNTY'S CHOOSING), AND HOLD HARMLESS THE COUNTY, AND THE COUNTY'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") AND SHALL ASSUME ENTIRE RESPONSIBILITY AND LIABILITY (OTHER THAN AS A RESULT OF INDEMNITEES' SOLE NEGLIGENT ACTS, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT) FOR ANY CLAIM OR ACTION BASED ON OR ARISING OUT OF THE PERSONAL INJURY, OR DEATH, OF ANY EMPLOYEE OF THE VENDOR, OR OF ANY SUBCONTRACTOR, OR OF ANY OTHER ENTITY FOR WHOSE ACTS THEY MAY BE LIABLE, WHICH OCCURRED OR WAS ALLEGED TO HAVE OCCURRED ON THE WORK SITE OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK. VENDOR HEREBY INDEMNIFIES THE INDEMNITEES EVEN TO THE EXTENT THAT SUCH PERSONAL INJURY WAS CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY THE SOLE, COMPARATIVE OR CONCURRENT NEGLIGENCE OF THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY. THE COUNTY AND VENDOR AGREE THAT VENDOR'S INDEMNITY OBLIGATION AND LIABILITY FOR DAMAGES HEREUNDER WILL BE REDUCED TO THE EXTENT BY WHICH ANY CLAIM, LIABILITY, LOSS DAMAGES, OR EXPENSE RESULTS FROM THE NEGLIGENCE OR MISCONDUCT OF ANY INDEMNIFIED PARTY, OR THE EMPLOYEES, SERVANTS, OFFICIALS AGENTS OR SUBCONTRACTORS OR ANOTHER PARTY, CLIENT OR CONTRACTOR OR NON-PARTIES TO THIS CONTRACT (OTHER THAN VENDOR'S SERVANT OR

EMPLOYEES). NOTWITHSTANDING THE FOREGOING, VENDOR'S OBLIGATIONS AND LIABILITIES SET FOR IN THE SECTION V SHALL NOT APPLY TO LIABILITY OR DAMAGES RESULTING FROM THE INDEMNIFIED PARTY'S SOLE NEGLIGENT ACTS, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT. FOR THE AVOIDANCE OF DOUBT, THIS SECTION V SHALL BE SUBJECT IN ACCORDANCE TO THE TERMS AND CONDITIONS SET FORTH IN PARAGRAPH 7.2, GENERAL LIMITATIONS, OF EXHIBIT A.1 ATTACHED HERETO.

**INDEMNIFICATION - OTHER THAN EMPLOYEE PERSONAL INJURY CLAIMS:** TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF THE COUNTY'S CHOOSING), AND HOLD HARMLESS THE COUNTY, AND THE COUNTY'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR ALLEGED TO BE RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT OR THE WORK DESCRIBED HEREIN, TO THE EXTENT CAUSED BY THE NEGLIGENCE, ACTS, ERRORS, OR OMISSIONS OF VENDOR OR ITS SUBCONTRACTORS, ANYONE EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE COUNTY AND VENDOR AGREE THAT VENDOR'S INDEMNITY OBLIGATION AND LIABILITY FOR DAMAGES HEREUNDER WILL BE REDUCED TO THE EXTENT BY WHICH ANY CLAIM, LIABILITY, LOSS, DAMAGE, OR EXPENSE RESULTS FROM THE NEGLIGENCE OR MISCONDUCT OR ANY INDEMNIFIED PARTY, OR THE EMPLOYEES, SERVANTS, OFFICIALS AGENTS OR SUBCONTRACTORS OR ANOTHER PARTY, CLIENT OR CONTRACTOR OR NON-PARTIES TO THIS CONTRACT. NOTWITHSTANDING THE FORGOING, VENDOR'S OBLIGATIONS AND LIABILITIES SET FORTH IN SECTION V SHALL NOT APPLY TO LIABILITY OR DAMAGES RESULTING FROM THE INDEMNIFIED PARTY'S SOLE NEGLIGENCE ACTS, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT. FOR THE AVOIDANCE OF DOUBT, THIS SECTION SHALL BE SUBJECT AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH IN PARAGRAPH 7.2, GENERALS LIMITATIONS, OF EXHIBIT A.1 ATTACHED HERETO.

## VI.

**No Waiver of Sovereign Immunity or Powers:** Nothing in this Agreement will be deemed to constitute a waiver of sovereign immunity or powers of the County, the Williamson County Commissioners Court, or the Williamson County Judge.

The parties agree that under the Constitution and laws of the State of Texas, the County cannot enter into an agreement whereby the County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding, or saving harmless Vendor for any reason are hereby deleted.

## VII.

**Compliance With All Laws:** Vendor agrees and will comply with all local, state, or federal requirements with respect to the services rendered. Any alterations, additions, or deletions to the terms of the Agreement that are required by changes in federal, state, or local law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designed by such law or by regulation.

## VIII.

**Cancellation and Termination:** The Vendor must notify the County in the event the

Vendor is unable to perform the scheduled Services. Except as otherwise provided herein, this

Agreement may be terminated at any time at the option of either party, without future or prospective liability for performance, upon giving thirty (30) days written notice thereof. In the event that the County or Vendor terminates this Agreement pursuant to this Section IX, the County shall compensate the Vendor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination.

**IX.**

**Intentionally Omitted:**

**X.**

**Conflict:** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls to the extent of the conflict.

**XI.**

**Venue and Applicable Law:** Venue of this Agreement shall be Williamson County, Texas, and the laws of the State of Texas shall govern all terms and conditions.

**XII.**

**Intentionally Omitted:**

**XIII.**

**Right to Audit:** Vendor agrees that the County or its duly authorized representatives shall, until the expiration of three (3) 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 Vendor which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Vendor agrees that the County shall have access during normal working hours to all necessary Vendor facilities and shall be provided adequate and appropriate workspace to conduct audits in compliance with the provisions of this section. The County shall give Vendor reasonable advance notice of intended audits.

**XIV.**

**Good Faith Clause:** Vendor agrees to act in good faith in the performance of this Agreement.

**XV.**

**Foreign Terrorist Organizations:** To the best Vendor's knowledge, Vendor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**XVI.**

**Confidentiality:** Vendor expressly agrees that he or she will not use any incidental

confidential information that may be obtained while working in a governmental setting for his or her own benefit, and agrees that he or she will not enter any unauthorized areas or access confidential information and he or she will not disclose any information to unauthorized third parties, and will take care to guard the security of the information at all times. For the avoidance of doubt, this section XVI shall be subject to the terms and conditions set forth in paragraph 4.3 of Exhibit A.1 attached hereto.

**XVII.**

**Public Information:** Vendor understands that County will comply with the Texas Public Information Act as interpreted by judicial ruling and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Vendor shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

**XVIII.**

**Damage to County Property:** Vendor shall be liable for all damage to county-owned, leased, or occupied property and equipment caused by Vendor and its employees, agents, subcontractors, and suppliers, including any delivery, or transporting company, in connection with any performance pursuant to this Agreement. Vendor shall notify County in writing of any such damage within one (1) calendar day.

**XIX.**

**Intentionally Omitted:**

**XX.**

**County Judge or Presiding Officer Authorized to Sign Agreement:** The presiding officer of the County's governing body who is authorized to execute this instrument by order duly recorded may execute this Agreement on behalf of the County.

WITNESS that this Addendum shall be effective as of the date of the last party's execution below.

**WILLIAMSON COUNTY:**

\_\_\_\_\_  
Judge Bill Gravell, Jr.  
County Judge

Date: \_\_\_\_\_, 20\_\_\_\_

**SERVICE PROVIDER:**

OPEX Corporation  
Name of Vendor

\_\_\_\_\_  
*Diana Grable*  
Authorized Signature

\_\_\_\_\_  
*Diana Grable*  
Printed Name

Date: June 15, 2013

**EXHIBIT A.1**  
**MASTER MAINTENANCE AGREEMENT**



**MASTER MAINTENANCE AGREEMENT ("Agreement")**  
By and between OPEX CORPORATION ("Vendor") and  
Williamson County Tax("Customer")

10/1/2022 ("Effective Date")

**1. BASIC TERMS.**

**1.1 Equipment Covered.** The machines specifically identified by serial number on Exhibit "A" shall be covered by this Agreement (collectively "Equipment"). Vendor shall furnish "Maintenance Service" (as defined in Paragraph 2.1 below) on Equipment at Customer's various Equipment "Sites" (as defined in Paragraph 2.2 below). Upon mutual agreement between the parties, and pursuant to the terms herein, Equipment may be added or deleted from the Exhibit "A" from time to time. All Maintenance Service shall be provided in consideration for the payment of Vendor's maintenance charges set forth herein, plus all sales and use taxes and such other governmental charges as may be imposed on the provision of goods and services hereunder. Service rates for the first year of this Agreement are detailed within Exhibit "B."

**1.1.1 Equipment Software License Terms.** The Software license terms are provided in Exhibit "C" to this Agreement.

**1.2 Effective Date; Renewals.** Maintenance Service shall begin on the Effective Date listed above and shall continue for one year ("Initial Term"). This Agreement may be renewed from year-to-year upon the mutual agreement of both parties ("Renewal Term"). Payment by Customer of Vendor's invoicing for any Renewal Term shall be deemed as mutual agreement by the parties to renew this Agreement. Rates during any Renewal Term are subject to Vendors then current pricing.

**1.3 Equipment Not Previously Covered.** Any machine which Customer seeks to add to this Agreement that has not been continuously covered by a maintenance agreement with Vendor since the expiration of its warranty period, shall be subject to inspection by Vendor. After such inspection, if Vendor, in its sole discretion, determines that the machine is not operating in conformity with the "Published Specifications (as defined in Paragraph 1.4 below), the machine shall be restored to good operating condition at Customer's expense, subject to Vendor's then current rates, as a condition of adding the machine to Exhibit "A."

**1.4 Routine Cleaning.** The day-to-day routine cleaning and minor adjustments on the Equipment, as described in both Vendor's equipment operating manuals and other supplementary material ("Published Specifications") which may be furnished by Vendor to Customer from time to time, shall be performed by Customer. Vendor will notify Customer in writing if the Customer fails to perform routine cleaning on the Equipment.

**2. MAINTENANCE SERVICE.**

**2.1 Maintenance Service, Generally.** Maintenance Service is defined as all labor and replacement parts necessitated by normal wear and tear from operation of the Equipment in accordance with Vendor's Published Specifications, in order to maintain the Equipment in good operating condition ("Maintenance Service").

**2.2 Definition of Customer's Equipment Site(s).** "Site" is defined as the one (1) floor within Customer's premises specified in Exhibit "A." Equipment moved to a different Site is subject to the limitations described in Paragraph 7.1(1) below.

**2.3 Service Calls.** Preventive Maintenance Service calls are those periodic calls initiated by Vendor to keep the Equipment operating in accordance with Vendor's Published Specifications ("PM's"). Demand Maintenance Service calls are those calls initiated by Customer to request that Vendor repair Equipment that is malfunctioning or not operating in accordance with the Published Specifications ("Demand Calls"). (A PM may be performed in conjunction with a Demand Call placed by Customer, depending upon, and at the discretion of, Vendor's service technician.) The minimum number of PM's and maximum number of Demand Calls for each piece of Equipment are outlined in the chart below.

<b>Machine Type</b>	Models 72;51;60; 50	AS180	AS3600; AS3690; AS7200i; Falcon; Falcon +; FalconV; FalconV +	Eagle; System 150; IEM; MPE 5.0/ 7.5	MPS 30; 40	Omaton	DS1225/ DS2200	Mail Matrix
<b>Demand</b>	unltd	unltd	unltd	unltd	unltd	unltd	unltd	Unltd
<b>Preventive Maintenance</b>	12	12	6	12	12	4	4	2

Demand Calls in excess of the maximum may be billed at Vendor's then current rates. Additionally, if Vendor, in its sole discretion, determines that the number of "unlimited" calls becomes unreasonable, Vendor reserves the right to charge for excessive Demand Calls after providing written notice to Customer.

**2.4 Field Service Reports.** Vendor shall furnish a summary of the Maintenance Service provided to the Customer upon completion of each Maintenance Service call ("Field Service Report"). The Field Service Report shall contain the following information: (i) date and time of arrival; (ii) specific identification of Equipment serviced; (iii) time of Maintenance Service; (iv) description of the malfunction (if any); and (v) list of parts replaced.

**2.5 Response Times.** For Eagle, System 150, IEM, MPS 30/40, Mail Matrix, and MPE 5.0/7.5 Equipment (collectively "Capital Equipment"), Vendor shall exert all reasonable efforts to respond to Demand Calls within two (2) hours after such call is received by Vendor, during the designated "Coverage Hours" (as defined in Paragraph 3.3 below). For all other Equipment, Vendor shall exert all reasonable efforts to respond to Demand Call requests within four (4) hours after such call is received by Vendor, during the designated Coverage Hours.

**2.6 On-Site Coverage.** For a Site with Eagle or System 150 and IEM Equipment, Maintenance Service may be provided on an "On-Site" basis, defined as Maintenance Service provided by a service technician physically located at, and solely dedicated to, the Site. On-Site coverage availability will be determined at the sole discretion of Vendor, and shall be subject to Vendor's then current rates.

**2.7 Parts.** Only new standard parts or factory certified parts shall be used in providing Maintenance Service. Title to all replacement parts provided during the course of providing Maintenance Service pursuant to this Agreement will pass to Customer upon installation.

**2.8 Restricted Access to Equipment by Vendor.** For the avoidance of confusion, all the Equipment will be installed physically at a Site designated by Customer and the Equipment will be used and/or operated exclusively by Customer. As such, the process of accessing and operating the Equipment installed at the Site is determined, controlled and/or managed exclusively by Customer. Furthermore, the process of how the data is transferred once Customer scans its mail and/or its documents using the Equipment is exclusively determined, controlled and/or managed by Customer. Furthermore, Vendor does not remotely and/or physically access, process, transport, transmit, log, gather, archive, receive, exchange, create, and/or store any confidential data that is scanned on the Equipment by Customer. Moreover, and notwithstanding anything in this Agreement to the contrary, Customer is responsible for ensuring its own compliance with any and all applicable legal, regulatory, business, industry, security, compliance and storage requirements relating to retention, protection, destruction, and access that is scanned on the Equipment by Customer and its personnel.

### 3. GENERAL TERMS.

**3.1 Standard Maintenance Charge.** Vendor's standard maintenance charge provides for Maintenance Service to Equipment covered during any mutually agreed upon Coverage Hours, subject to the terms and conditions set forth in Paragraph 3 below ("Standard Maintenance Charge").

**3.2 Equipment Usage Charge.** Actual Equipment usage shall be measured by Vendor every three (3) months or thirteen (13) weeks ("Quarterly Basis"). Any particular piece of Equipment which processes envelopes in excess of the volumes specified below shall be subject to an additional charge ("Additional Usage Charge"). Additional Usage Charges shall be calculated on half-shift increments; and shall be invoiced based upon 25% of Vendor's Standard Maintenance Charge.

To the extent that the number of envelopes processed by a particular piece of Equipment exceeds the numbers set forth below on a Quarterly Basis, an Additional Usage Charge shall apply:

<u>Equipment</u>	<u>Envelopes per quarter</u>
Eagle	6,500,000
System 150	4,550,000
IEM	4,550,000
MPS 30	11,375,000
MPS40	16,380,000
MPE5.0	1,820,000
MPE 7.5	2,275,000
AS180/DS1225/DS2200	N/A*
AS3600/AS3690/AS7200	N/A*
Falcon/Falcon +/FalconV/FalconV +	N/A*
Models 50/51/60/72	N/A*
Mail Matrix	N/A*
Omaton Equipment	N/A*

\*NOTE: In the event that Equipment usage is extraordinary, Vendor, in its sole discretion, reserves the right to establish an Additional Usage Charge for this Equipment after providing Customer written notice.

**3.3 Maintenance Service Coverage Hours, Generally.** All Equipment located at a particular Site must be maintained during the same Maintenance Service schedule ("Coverage Hours"). Coverage Hours shall be governed by the terms and conditions set forth below.

**3.3.1 Coverage Hours for a Site with an Eagle or System 150.** For a Site with an Eagle or System 150, Coverage Hours shall be one (1) consecutive five (5) day per week period, eight (8) consecutive hours per day, excluding "Vendor Holidays" (as defined in Paragraph 3.5 below). Customer shall designate the Coverage Hours, which shall be the same each day, and for all Equipment located at the particular Site. Upon thirty (30) days written notice, Customer may shift the eight (8) consecutive Coverage Hours.

**3.3.2 Coverage Hours for a Site without an Eagle or System 150.** For a Site without an Eagle or System 150, Coverage Hours shall be 7:00 am to 3:00 pm (Site local time), Monday through Friday, excluding Vendor Holidays.

**3.4 Altering Coverage Hours.** Customer shall be able to increase, decrease or shift, the Coverage Hours for a Site. However, in no event, may the Coverage Hours be decreased to less than forty (40) hours per week.

**3.4.1 Increasing Coverage Hours.** Upon thirty (30) days written notice, Customer may increase the Coverage Hours for a particular Site. Any increase in the Coverage Hours shall be subject to Vendor personnel availability and subject to Vendor's then current rates based upon half shift increments.

**3.4.2 Decreasing Coverage Hours.** Upon sixty (60) days written notice, Customer may decrease the Coverage Hours for a particular Site. This 60-day notice period applies to any decrease in Maintenance Service, including removing Equipment or Equipment options, reducing the number of covered shifts, or total termination of Maintenance Service for a Site. The notice period shall begin to run from the date on which Vendor receives the written notification. Upon receipt of the 60-day notice, Customer will be provided a credit for any unused Maintenance Service towards future Equipment or Maintenance Service, calculated from the date of the expiration of the sixty (60) day period.

**3.4.3 Shifting Coverage Hours.** Upon thirty (30) days written notice, Customer may shift the Coverage Hours for a particular Site. Any shift in the Coverage Hours shall be subject to Vendor personnel availability and subject to Vendor's then current rates.

#### 3.4.4

**3.5 Vendor Holidays.** Vendor observes the following holidays ("Vendor Holiday(s)"): New Year's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Eve; and Christmas Day. Upon thirty (30) days written notice, Customer may obtain Maintenance Service coverage on Vendor Holidays. Vendor Holiday coverage shall be subject to Vendor personnel availability and subject to Vendor's then current rates. When one of the above designated Vendor holidays is on a Saturday or Sunday, the Vendor Holiday will be observed on the date observed by the federal government and/or by Vendor. Vendor reserves the right to modify the holiday list upon providing at least ninety (90) calendar days' advance written notice to Customer.

**3.6 "Weekend" Coverage.** Upon thirty (30) days written notice, Customer may obtain Maintenance Service coverage on the two days per week not covered pursuant to either Paragraph 3.3.1 or Paragraph 3.3.2 above, whichever is applicable ("Weekend Coverage"). Weekend coverage shall be subject to Vendor personnel availability and subject to Vendor's then current rates.

**3.7 Invoicing.** Vendor shall invoice Customer annually in advance for the Standard Maintenance Charge. Any additional service charges (eg machine restoration pursuant to Paragraph 1.3, Weekend Coverage, etc.) shall be invoiced quarterly in arrears. Terms of payment are net thirty (30) days from date the invoice is issued. Late payments shall bear interest at the lesser of (i) 2% per month or (ii) the highest permissible rate by law, payable monthly.

**4. PROPRIETARY TECHNOLOGY AND DIAGNOSTICS: CONFIDENTIALITY.**

**4.1 Technology.** Vendor holds intellectual property rights in the Equipment, which includes the Equipment's computer operating system, software components and mechanical components (collectively "Technology"). No licenses, either express or implied, under any patents are granted by Vendor to Customer hereunder, except as expressly stated herein. Customer agrees that it shall not copy, remove, use (except for operation of the Equipment in accordance with the Published Specifications), or disclose Technology to any third party.

**4.2 Diagnostics.** In providing Maintenance Service, Vendor utilizes certain software diagnostics ("Diagnostics"). Vendor holds intellectual property rights in the Diagnostics, and the Diagnostics are for Vendor's exclusive use. Except with the express written consent of Vendor, Customer shall not use, copy, remove, or alter the Diagnostics. It is understood and agreed by Customer that upon termination of this Agreement, Customer shall either: (i) Return the Diagnostics to Vendor at Vendor's expense; or (ii) Purchase, according to Vendor's then current rates, a non-exclusive, non-transferable and personal limited license to use the Diagnostics.

**4.3 Confidential Information.** During the term of this Agreement, either party may have access to, or be given, certain technical information or data, customer information or data, manuals, drawings, sketches, models, samples, tools, or the like, of the other party, which are of a confidential and/or proprietary nature (collectively "Information"). All Information furnished to the receiving party, whether written, oral or otherwise, shall remain the sole and exclusive property of the disclosing party. Upon request, all Information shall be returned to the disclosing party. Unless such Information: (i) was previously known to the receiving party free of any obligation to keep it confidential; (ii) is subsequently made public by the disclosing party or by a third party, other than by breach of agreement; or (iii) is required to be disclosed to any governmental agency or court of competent jurisdiction by written order or decree (in which case the disclosing party shall be given prompt notice by the receiving party of such order or decree, and shall be given an opportunity to contest or direct such disclosure); the Information shall be kept confidential by the receiving party and shall be used solely for the purposes of fulfilling the terms of this Agreement.

**5. WARRANTY: WARRANTY LIMITATIONS.**

Vendor warrants that all work required to be performed hereunder shall conform to the descriptions contained in this Agreement and will be performed in a professional manner according to generally accepted industry standards. THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND THERE ARE NO WARRANTIES WHICH ARE NOT CONTAINED IN THIS AGREEMENT.

**6. INFRINGEMENT AND GENERAL INDEMNIFICATION.**

**6.1 Patent, Copyright and Trademark Infringement Indemnification.** Vendor will (i) indemnify, hold harmless and defend Customer, at Vendor's expense, from and against any claim brought against Customer alleging that any portion of the Equipment infringes a European Union, Canadian or United States patent, copyright, trademark, or other intellectual property right, of any third party; and (ii) hold Customer harmless from and against all costs and damages finally awarded, provided that Vendor is given prompt written notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim.

**6.1.1 Infringement Defense.** In the defense or settlement of a claim pursuant to Paragraph 6.1 above, Vendor may: (i) obtain for Customer the right to continue using the Equipment; (ii) replace or modify the Equipment so that it becomes non-infringing; or (iii) if remedies (i) and (ii) are not reasonably available, grant Customer a depreciated refund pro-rata based upon a sixty (60) month life, measured from the original installation date of the Equipment.

**6.1.2. Infringement Indemnification Limitations.** Vendor shall not have any liability if the alleged infringement is based upon the use or sale of the Equipment in combination with other products or devices not furnished or approved by Vendor. VENDOR DISCLAIMS ALL OTHER LIABILITY FOR PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, INCLUDING ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND THE RIGHTS STATED HEREIN ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY.

**6.2 General Indemnity.** Each party shall indemnify and hold harmless the other party, its affiliates, and its and their directors, officers, employees and agents from and against all losses, liabilities, judgments, awards, settlements, damages, fines, injuries, penalties and costs (including legal fees and expenses) to or in favor of others, as well as all claims, causes of action and suits by others; including without limitation employees, subcontractors or agents of the indemnified party and its affiliates for personal injury (including death) or real and/or tangible property damage, arising out of acts or omission to act under this Agreement.

**6.3 Defense of Claim.** In the event of any such claim set forth in Paragraph 6.2 above, at the request of the indemnified party, the indemnifying party shall at its sole expense defend all claims, suits or proceedings arising out of the foregoing. The indemnifying party shall be notified promptly of any such claims, suits or proceedings in writing, and shall have full and complete authority, information and assistance for the defense of such claim; provided, however, the indemnifying party shall have no authority to enter into any settlement or compromise on behalf of the indemnified party without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld. In all events, the indemnified party shall have the right to participate in the defense of any proceedings with counsel of its own choosing, at its expense.

## **7. LIMITATIONS.**

**7.1 Maintenance Service Limitations.** Notwithstanding anything herein to the contrary, Vendor shall have no obligation hereunder to provide Maintenance Service to Equipment which has deteriorated to such an extent that it cannot, in the reasonable discretion of Vendor, be maintained and needs to be replaced. Vendor shall provide written notice of any such deterioration prior to suspending Maintenance Service. Furthermore, Vendor shall have no implied or expressed obligation hereunder to diagnose, troubleshoot, maintain and/or repair Customer's environmental systems (e.g., HVAC), computer networks, computer systems, computer servers or other networks, or items external to the Equipment or not delivered by Vendor. Vendor's obligations to provide Maintenance Service shall also terminate if Customer:

- (a) fails to provide Vendor with safe and sufficient access to the Equipment, subject to Customer's reasonable site security policies and procedures;
- (b) stores, handles, operates, alters or modifies the Equipment in a negligent manner, otherwise damages the Equipment, or uses the Equipment for purposes other than those set forth in Published Specifications;
- (c) fails continuously or repeatedly to provide routine cleaning after being provided notice by Vendor pursuant to Section 1.4 above;
- (d) fails continuously or repeatedly to provide a suitable environment with regard to facilities (including without limitation HVAC system, humidity, and/or power) as prescribed in the Published Specifications;
- (e) uses or operates the Equipment beyond its intended design parameters;
- (f) damages the Equipment through its use in conjunction with machinery, software, or third-party supplies not covered by this Agreement;
- (g) performs maintenance or repairs on the Equipment not authorized in writing by Vendor, or allows a third party not authorized in writing by Vendor to perform the same;
- (h) alters or modifies in any way the Equipment safety mechanisms;

(i) operates the Equipment with envelopes or enclosures other than those specified in the Published Specifications;

(j) fails to install or allow installation of any Updates (as defined in Exhibit "C" Section 7) that are required in order to allow the Equipment to perform in accordance with the Published Specifications;

(k) fails to use follow routine cleaning instructions and/or prohibitions (i.e., use of flammable gases, compressed or canned air) in the process of performing the routine cleaning of the Equipment or if the Equipment is damaged due to fire, water, electrical power loss or disruption, or other external causes or other similar causes; or

(l) relocates Equipment to a Site other than that defined in this Agreement; provided, however, that should Vendor and Customer agree to continue Maintenance Service on Equipment moved to another Site, Customer's Equipment shall be subject to inspection by Vendor, at Vendor's published rates and terms then in effect for such service, prior to Vendor resuming Maintenance Service on Customer's Equipment.

Any period of suspension or termination referenced shall not relieve Customer of its obligation to make timely payment for the Maintenance Service and/or Software License fees that accrued up to the effective date of termination.

**7.2 General Limitations.** In no event shall either party be liable to the other, whether in an action in negligence, contract or tort or based on a warranty or otherwise, for loss of profits, revenue, or loss or inaccuracy of data, or any indirect, incidental, punitive, special or consequential damages incurred by the other party or any third party, even if the party has been advised of the possibility of such damages. Further, except to the extent that liability arises from: (i) a breach by either party of its confidentiality obligations in Paragraph 4.3; or (ii) instances of either party's gross negligence or willful misconduct; each party's liability for damages under this Agreement, whether in an action in negligence, contract or tort or based on a warranty, shall not exceed the annual fees payable for the Maintenance Service. Or (iii) instances of personal injury to or the death of persons or damage to tangible property resulting from, or connected with, the performance of the Agreement and to the extent caused by the negligence, and/or willful misconduct or failure to comply with terms or conditions of this Agreement by Vendor and its employees (and in which event Vendor shall be responsible for such claim under this Paragraph 7.2(iii) in an amount not to exceed \$300,000.00), each party's liability for damages under this Agreement, whether in an action in negligence, contract or tort or based on a warranty, shall not exceed the annual fees payable for the Maintenance Service. Additionally, Vendor and Customer agree that Vendor's indemnity obligation hereunder will be reduced to the extent by which any claim, liability, loss, damage, or expense results from the negligence or misconduct of any employee, servant, officials, client and/or agent of Customer, or the employees, servants, officials agents or subcontractors of another party, client and/or contractor or non-parties to this Agreement (other than Vendor's servants or employees).

## **8. GENERAL PROVISIONS.**

**8.1 Governing Law.** This Agreement shall be construed in accordance with the laws of the State of New Jersey. Any claim arising out of or in connection with this Agreement shall be brought only in the district court in and for the State of New Jersey, and Customer agrees to personal jurisdiction over it in such court.

**8.2 Fees Due For Breach.** In the event that one of the parties hereto breaches or defaults on any of its obligations or responsibilities under this Agreement (the "Breaching Party"), then on behalf of the party not in default (the "Non-Breaching Party"), the Breaching Party shall indemnify, and be responsible for, the reasonable attorneys' fees, costs, and expenses incurred by the Non-Breaching Party in enforcing or remedying any breach hereunder by the Breaching Party.

**8.3 Assignment.** Neither party may assign this Agreement unless mutually agreed upon by the parties, such agreement not to be unreasonably withheld by either party. However, in no event shall this Agreement be assigned to a competitor of Vendor.

**8.4 Rights Cumulative; Non-Waiver.** All rights and remedies conferred under this Agreement or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. Failure or delay by either party to enforce any contract term herein shall not be deemed a waiver of future enforcement of that or any other term.

**8.5 Severability.** In the event any one or more of the provisions contained herein shall for any reason be held to be unenforceable in any respect under the law of any state or of the United States of America, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall then be construed as if such unenforceable provision or provisions had not been contained herein.

**8.6 Force Majeure.** Neither Vendor nor Customer shall be held responsible for any delay or failure in performance of this Agreement caused by fires, strikes, embargoes, government requirements, acts of God or public enemy or other similar causes beyond their reasonable control.

**8.7. Nondiscrimination Clause.** Vendor is an equal employment opportunity employer and is a federal contractor. Consequently, Vendor and Customer (as applicable) agree that they will comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Rehabilitation Act of 1973 and also agree that these laws are incorporated herein by this reference. The parties further agree that they will comply with the provisions of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), as applicable, relating to the notice of employee rights under federal labor laws.

**8.8 Order of Precedence.** Unless otherwise provided herein or agreed to in a signed writing, documents will apply in the following descending order of precedence: (i) main body of this Agreement and Exhibit C; (ii) Exhibits "A" and "B;" and (iii) all other transaction documents.

**8.9 Entire Agreement.** This Agreement, the Exhibits and documents incorporated herein, are the final, full and exclusive expression of the understandings of the parties and supersedes all prior agreements, understandings, writings, proposals, representations and communications, oral and written, of either party.

By signing below, the Parties agree to be bound by the terms of this Agreement and any attached Exhibits.

OPEX CORPORATION ("Vendor")	Williamson County Tax ("Customer")
By: <u>Deena Noonan</u>	By: _____
Printed Name: <u>Deena Noonan</u>	Printed Name: _____
Title: <u>Counsel, Corporate &amp; Legal Affairs</u>	Title: _____
Date: <u>June 15, 2023</u>	Date: _____

**EXHIBIT "A" EQUIPMENT SCHEDULE**

1) Customer's Name: Williamson County Tax

2) The Equipment covered by this Agreement is located at the following Site(s):

Williamson County Tax  
904 South Main Street  
Georgetown, TX 78626

3) The Equipment covered by this Agreement includes the machines described below:

(a) Machine Description: Falcon V+  
Serial Number(s): FVP05128

(b) Machine Description: Omaton  
Serial Number(s): ZA02151

By signing below, the Parties agree to be bound by the terms of the Agreement and this Exhibit "A."

OPEX CORPORATION ("Vendor")	Williamson County Tax ("Customer")
By: <u><i>Deena Noonan</i></u>	By: _____
Printed Name: <u>Deena Noonan</u>	Printed Name: _____
Title: <u>Council, Corporate Legal Affairs</u>	Title: _____
Date: <u>JUNE 15, 2023</u>	Date: _____



**EXHIBIT "8" SERVICE PRICING**

Pricing for the Initial and Renewal Terms of the Agreement is based on the current rates set forth herein, prepaid annually in advance, per shift, per site.

**Initial Term: October 1, 2022 - September 30, 2023**

<b>EQUIPMENT</b>	<b>S/N</b>	<b>Qty</b>	<b>UOM</b>	<b>EACH</b>	<b>TOTAL</b>
ALFFALCONV+MICR+	FVP05128	1	Each	\$ 840.00	\$840.00
FALCON V+"8494512	FVP05128	1	Each	\$ 8,235.00	\$8,235.00
FALCON V+IADJ HEIGHT T STANO	FVP05128	1	Each	\$ 640.00	\$640.00
OM206*68037	ZA02151	1	Each	\$ 2,130.00	\$2,130.00
Contract Total (Pre-Tax)					\$11,845.00

**Renewal Term: October 1, 2023-September 30, 2024**

<b>EQUIPMENT</b>	<b>S/N</b>	<b>Qty</b>	<b>UOM</b>	<b>EACH</b>	<b>TOTAL</b>
ALFFALCONV+MICR+	FVP05128	1	Each	\$ 910.00	\$910.00
FALCON V+"8494512	FVP05128	1	Each	\$ 8,895.00	\$8,895.00
FALCON V+IADJ HEIGHT T STAND	FVP05128	1	Each	\$ 695.00	\$695.00
OM206*68037	ZA02151	1	Each	\$ 2,300.00	\$2,300.00
Contract Total (Pre-Tax)					\$12,800.00

OPEX will invoice for maintenance during each additional year at the then current year's published rates. Upon conclusion of the Renewal (ending on September 30, 2024), the pricing schedule then in effect will apply. Terms of payment are net thirty (30) days from the date of invoice, and all prices quoted are pre-tax.

## **EXHIBIT "C" SOFTWARE USE LICENSE TERMS FOR THE EQUIPMENT**

The following are the software license terms and conditions ("License") under which Vendor agrees to grant Customer use of all software programs ("Software") installed in or operational with the Equipment as identified in the applicable Exhibit "A" to this Agreement:

### **1. LICENSE**

**1.1 License Grant.** In consideration for timely annual payment of Vendor's Software licensing fees as identified in the applicable invoice(s), Vendor grants Customer a personal, non-transferable, and non-exclusive right to use the Software. The Software may be used only in connection with the Equipment specified in Exhibit A and/or the applicable invoice(s) for this Agreement.

**1.2 License Term; Payment.** The initial Software license term for the Software provided herein ("Initial Term") is defined as twelve (12) consecutive months after termination of the Equipment warranty period. As such, the Software license fees for the Initial Term are listed in Exhibit B above. Thereafter, the Software license will automatically renew for successive one (1) year terms on the anniversary of the date the License Initial Term began (each a "Renewal Term"). The rates for each Renewal Term shall be based on Vendor's then current published annual rates. Vendor shall invoice Customer annually in advance for the Software licensing fees. Terms of payment shall be based on the terms set forth in Paragraph 3.7 above titled "Invoicing" in the main body of this Agreement.

### **2. SOFTWARE OWNERSHIP**

All Software (except Software that Vendor licenses from a third party) is a proprietary product of Vendor and is protected by copyright laws and international treaties. Vendor retains all right, title, and interest in the Software, and all copies of the Software, regardless of the media or form on or in which the Software or other copies may exist, including copies which are made in violation of the terms of this License. Nothing contained herein shall constitute a sale by Vendor of any rights in the Software.

### **3. CUSTOMER OWNERSHIP**

Customer owns the media onto which the licensed Software is downloaded, but not the Software. This License is not a sale of the original Software or of any copy thereof.

### **4. RESTRICTIONS ON USE**

Customer may not:

- (a) transfer the Software to multiple pieces of Equipment or third-party machinery;
- (b) distribute copies of the Software or accompanying materials to others;
- (c) copy, modify, adapt, translate, reverse-engineer, decompile, disassemble, or create derivative software based on the Software; or
- (d) copy, modify, adapt, translate, or create derivative documentation based on the Vendor's written materials.

### **5. RESTRICTIONS ON ASSIGNMENT OR TRANSFER**

Customer shall not assign, rent, lease, sell, sublicense, pledge, encumber or otherwise transfer the Software to another party without the prior written consent of the Vendor, which shall not be unreasonably withheld or delayed. However, Customer shall be able to transfer its right of use of the Software to an "Affiliate," defined as an entity that controls, is controlled by, or is under common control with, Customer and is subject to obtaining Vendor's prior written consent which shall not be unreasonably withheld or delayed.

### **6. TERMINATION**

This License is effective until terminated and will automatically terminate if Customer fails to comply with any terms of this License, including without limitation, continued timely payment of Vendor's annual Software licensing fees. Upon termination, Customer shall immediately return all Software, all copies thereof, and all printed and written materials to the Vendor at Customer's expense.

**7. SOFTWARE UPDATES**

The Software is subject to change without notice to Customer. "Updates" shall mean updates (excluding Upgrades as defined below) for the Software that Vendor shall provide to Customer at no additional charge when Updates are directly made available by Vendor to Vendor's other similarly situated customers at no additional charge. "Upgrades" shall mean any enhancements, new version of the Software or newer version of the Software (containing a more fully featured version of Software currently licensed to Customer) that Vendor makes generally available to Customer and other similarly situated customers at a cost. Updates of the Software may be created or issued by the Vendor from time to time. At its sole option, Vendor may make such Updates available to Customer. If Vendor makes any Upgrades of the Software commercially available to similarly situated customers then Customer shall, at its sole discretion, purchase such Upgrade, in accordance with Vendor's then current rates.

**8. SPECIAL FUNCTION SOFTWARE**

Upon request by Customer, and at Vendor's sole discretion, Vendor may provide additional software services to modify the then existing functionality or to add additional functionality not contained in the Software ("Special Function Software"). Special Function Software shall be provided at an additional cost mutually agreed upon prior to Vendor's commencement of any additional software services.

**9. LIMITED WARRANTY**

For a period of thirty (30) calendar days following the delivery of the Equipment, all Software supplied pursuant to this License shall substantially conform to Vendor's written specifications. In the event that the Software does not so conform, Vendor will provide Customer programming services as may be required to correct documented program errors to the extent that such errors are not caused by: (i) defects or problems related to Customer's use of the Software or Equipment in a manner inconsistent with Vendor's written specifications or the terms of this License; or (ii) defects or problems relating to alteration of the Software or Equipment by Customer.

VENDOR DOES NOT WARRANT THAT THE OPERATION OF SOFTWARE SUPPLIED HEREUNDER WILL BE ERROR OR "BUG" FREE. EXCEPT AS PROVIDED HEREIN, THE SOFTWARE IS PROVIDED WITH NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE.

PLEASE REFER TO PARAGRAPH 7.2 TITLED "GENERAL LIMITATIONS" UNDER THE MAIN BODY OF THIS AGREEMENT FOR THE LIMITATIONS WHICH SHALL APPLY TO THE SOFTWARE.