

AGREEMENT BETWEEN OWNER AND ARCHITECT

This agreement, hereinafter referred to as the "Contract," by and between the Owner TOM GREEN COUNTY, a political and legal subdivision of the State of Texas with its general offices located at 122 West Harris, San Angelo, Tom Green County, Texas 76903, (hereinafter referred to as "County"), and KINNEY FRANKE ARCHITECTS, INC., d/b/a Kinney Franke Architects whose offices are located at 528 Orient, San Angelo, Tom Green County, Texas 76903, (hereinafter referred to as the "Architect"), is made and entered into to be effective as of the 1st day of June, 2012.

WITNESSETH

WHEREAS, the County having reviewed the qualifications of the Architect, desires to contract with the Architect for architectural and engineering services in connection with the schematic design of the Project, the scope of which is more fully described in Section 1.1(d) below;

WHEREAS, Architect has agreed to provide such professional services for the compensation provided herein;

NOW, THEREFORE, County and Architect, in consideration of the terms, covenants, and conditions herein contained, do hereby contract as follows:

ARTICLE 1

Definitions

- 1.1 (a) Architect - means Kinney Franke Architects and its engineers and consultants.
- (b) County's Representative - means the individual appointed and designated by the Tom Green County Commissioners Court to facilitate and coordinate Project issues.
- (c) Day - means the calendar day unless otherwise specifically designated.
- (d) Project - means the schematic design for the first and second floors of the Edd B. Keyes Building located at 113 West Beauregard.
- (e) Contractor - means a firm or individual performing the construction work who has a contractual agreement directly with the County which shall include the Construction Manager.

ARTICLE II

Architect's Services and Responsibilities

2.1 Basic Services

2.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees, Architect's consultants, and Architect's engineers as enumerated and set forth within this Contract.

2.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the work so as not to cause any delay unreasonable in the schematic design.

2.1.3 The Architect's Basic Services shall include but not be limited to Architect's employment of sufficient qualified personnel, engineers and consultants to fully and timely accomplish the services promised and agreed to in this Contract.

2.1.4 Architect shall perform its professional services agreed hereunder in a manner satisfactory and acceptable to the County, in keeping with the professional standard of care provided by Architects in similar projects. Architect's design and specifications for the Project shall be suitable for their intended use and shall include plans and profiles as necessary for the required approvals and consideration by the County. Information on existing utilities shall be provided by County to Architect.

2.1.5 Architect's Basic Services shall be in accordance with the following schedule except as adjusted for approved extensions in writing. Architect shall not be penalized for delays in this schedule beyond his control or delays occasioned by action or inaction of County.

Project Performance Schedule

Calendar Days

100	Pre-Architectural Programming
100	Schematic Design Phases - Define Priorities and Prepare Schematic Design studies.

The time schedule for the completion of the architect services as set forth within the Project Performance Schedule shall commence upon the issuance of a written notice to proceed for each phase by the County.

2.2 Pre-Architectural Programming Phase

2.2.1 Architect shall develop a detailed functional/space program. This service will be provided by means of interviews with key personnel for the County and elected officials of Tom Green County.

2.2.2.1 Specific services to be provided in this phase shall include meeting with various department heads to review their space requirements. The department heads which will be interviewed will include Elections, Vehicle Registration, Purchasing, County Treasurer, County Auditor, AG Extension Office, Human Resources, Risk Management, Environmental Health and the Commissioners' Court or its individual members.

2.2.2.2 Meet with Don Killam, Tom Green County Facilities Maintenance Director, to review the mechanical, electrical and plumbing requirements as may be necessary for the first and second floor.

2.2.2.3 Meet with engineers and consultants to review the requirements for mechanical, electrical and plumbing systems for the Project.

2.2.3 Architect in consultation with the Construction Manager will make recommendations to the County.

2.2.4 Architect will submit each month a statement, in triplicate, to the County for payment of the percentage of work done during this phase of the Contract. Thirty-five percent (35%) of the Architect's fee shall be authorized for this phase of the work.

2.3 Schematic Design Phase

2.3.1 Architect shall consult with Don Killam regarding the design and layout of the Edd B. Keyes Building to clarify the scope of Project.

2.3.2 Architect shall prepare, for consideration of and approval by the County, the Schematic Design Drawings, and submit copies as necessary of the drawings and other documents as may be required which illustrate the scale and relationship of the Project components. The Schematic Design Drawings shall consist of the following:

1. Schematic demolition plans that would reference any asbestos abatement studies as such may be required.
2. Schematic drawings for the first floor which would show a layout of the spaces as required by the various departments including offices, work stations, restrooms, hallways, corridors, etc. and such schematic drawings shall reflect a ceiling plan.

3. Schematic drawings for the second floor which would reflect a layout of the spaces by departments, offices, work stations, restrooms, hallways, corridors, etc. and would reflect a ceiling plan.
4. Provide specifications and notations that would help describe and clarify the scope of work necessary.
5. Provide elevations of special elements that might clarify and be helpful in describing the scope of work involved and the services necessary.
6. Identify and set forth the considerations as necessary to properly address building code issues such as the number of bathrooms necessary and required, toilet counts, fire exiting and accessibility including identification of items as required to be in compliance with American Disabilities Act.

2.3.3 Architect shall provide to the County a statement of probable construction cost based on the schematic designs after consultation with the Construction Manager. The Architect shall present to the County the following:

1. Provide specifications in notes that would help describe and delineate the scope of work for the Project.
2. Provide elevations of special elements that might be helpful in describing the scope of work.
3. Provide direction and recommendation on various phases for the scope of the Project for future development as and when monies may become available to the County.

2.3.4 Architect will submit each month a statement, in triplicate, to the County for payment of the work done during this phase of the Contract. Sixty-five percent (65%) of the Architect's fee shall be authorized for this phase of the work.

ARTICLE III

Reimbursable Expenses

3.1 Reimbursable Expenses are in addition to the compensation for Basic Services and include expenditures made by the Architect and the Architect's employees for the expenses listed in the following paragraphs:

- (a) Expense of photographic reproduction techniques when used in connection with Additional Service, if any;

- (b) Expense of renderings and models requested by the County in writing;
- (c) Reimbursable fees and expenses if approved in advance and in writing by the County;
- (d) Fees, permits and regulatory approval costs;
- (e) Plan duplication up to three sets per phase;
- (f) Overnight delivery services; and
- (g) Items requested by County which are not the norm for Architectural Services.

3.2 Reimbursable expenses as described in paragraph 3.1 shall be reimbursed to the Architect by the County at a multiple of one point zero five (1.05) times the expense actually incurred and paid by the Architect, the Architect's employees, and consultants in the Project.

3.3 Payments for reimbursable expenses are due and payable 30 days from the date the County receives the Architect's invoice and supporting documentation.

ARTICLE IV

Compensation and Payments to the Architect

4.1 The fee amount for compensation for the Architect's Basic Services as described in Article II is based on the scope of the Project described in Article I. The compensation for the Architect's Basic Services shall not exceed Forty-Five Thousand Dollars (\$45,000.00) exclusive of reimbursable expenses which shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00). Reimbursable expenses shall not include consultants or engineer which shall be the responsibility of Architect unless utilized in connection with Additional Service.

4.2 Payments on account of the Architect's Basic Services shall be made monthly in proportion to the degree of completion of each phase of the work.

4.3 Payment for authorized reimbursable expenses for Architect, as hereinabove referred to, shall be made following presentation, review and approval of the Architect's detailed invoice including supporting documentation in triplicate.

4.4 If any work designed or specified by the Architect during any phase is abandoned or suspended by County, in whole or in part, Architect is to be paid for the services performed prior to receipt of written notice from the County of such abandonment or suspension.

4.5 Architect's invoices to County shall provide complete information and documentation to substantiate Architect's charges. Payments to the Architect shall be made on the basis of the invoices submitted by the Architect and approved by the County. Such invoices shall conform to the services and costs in connection therewith. All Reimbursable Expenses shall be clearly shown. Should additional backup material be requested by the County, Architect shall promptly comply with such request. In this regard, should the Commissioners Court determine it necessary, Architect shall make all records and books relating to this Contract available to the County or its representative for inspection and auditing purposes.

4.6 County reserves the right to correct any error that may be discovered in any invoice that may have been paid to the Architect and to adjust the same to meet the requirements of the Contract. Following approval of invoices, County will pay Architect within thirty (30) days after receipt by County of a conforming invoice; however, under no circumstances shall Architect be entitled to receive interest on amounts due.

ARTICLE V

Architect's Accounting Records

5.1 Records of Architect's direct personnel, Architect and reimbursable expenses pertaining to the Project and records of accounts between County and Architect shall be kept on a generally recognized accounting basis and shall be available to County or its authorized representatives at mutually convenient times for a minimum of three (3) years after the completion of services to the County.

ARTICLE VI

Termination, Default, Time of the Essence, and Force Majeure

6.1 In connection with the work outlined in this Contract, it is agreed and fully understood by Architect that County may cancel or indefinitely suspend further work hereunder or terminate this Contract upon seven (7) days written notice to Architect with the understanding that immediately upon receipt of said notice, all work and labor being performed under this Contract shall cease. Architect shall invoice the County for all work satisfactorily completed and shall be compensated in accordance with the terms of this Contract for all work accomplished prior to the receipt of said notice. No amount shall be due for loss of anticipated profits. Reproducible schematic design plans, field surveys, maps, cross sections and other data, designs and work related to the Project shall become the property of the County and upon termination of this Contract and payment therefor, and shall be promptly delivered to County in a reasonable organized form without restriction on future use. Should County subsequently contract with a new Architect for continuation of services on the Project, Architect shall cooperate in providing information and documentation as requested by the County or its authorized representative(s).

6.2 Nothing contained in paragraph 6.1 above shall require the County to pay for any work under the terms of this agreement which is not performed in accordance with this Contract or which is not submitted in compliance with the terms of this Contract. The County shall not be required to make any payments to the Architect when the Architect is in default under this Contract, nor shall this Article constitute a waiver of any right, at law and at equity, which the County may have if the Architect is in default, including the right to bring legal action for damages or to enforce specific performance of this Contract.

6.3 If the Project is stopped for a period of 30 days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, through no act or fault of the Architect, or if the Architect's work should be stopped for a period of 30 days by the County's failure to make payment thereon, then Architect may, upon 10 days written notice to the County, terminate this agreement and recover from the County payment for all work approved and completed.

6.4 Architect understands and agrees that time is of the essence and that any failure by Architect to complete the services of this Contract within the agreed Project Performance Schedule set forth within paragraph 2.1.6, adjusted for approved time extensions, will constitute a material breach of this Contract. The Architect shall be fully responsible for its delays or for failures to use its best efforts in accordance with the terms of this Contract. Where damage results to the County due to the Architect's failure to perform in these circumstances, the County may withhold, to the extent of such damages, Architect's payments hereunder without waiver of any of County's additional legal rights or remedies.

6.5 Neither County or Architect shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible or circumstances beyond its control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

ARTICLE VII

Ownership of Documents

7.1 All plans and drawings will be prepared and submitted by Architect to County for approval on a minimum 30-inch by 42-inch drafting sheet, with all lettering processed in ink or pencil and clearly legible when the sheets are reproduced and reduced to half size.

7.2 All Architect's design and work products under this Contract including, but not limited to, tracings, drawings, estimates, specifications, studies and other documents, completed or partially completed, shall be the property of the County; and Architect specifically waives and releases any proprietary rights or ownership claims therein. Architect may retain a reproducible copy of all work products; however, the County reserves the right, so long as such work products exist, to obtain

copies, reproducible or otherwise, from Architect at County's expense but without any additional fee or charge by Architect.

7.3 Architect shall be liable to County for any loss or damage to any such documents while they are in the possession of or while being worked upon by the Architect, or anyone connected with the Architect, including agents, employees, consultants, or subcontractors. All documents damaged shall be replaced or restored by Architect without cost to County.

7.4 The documents referenced in this Article are not intended or presented by the Architect to be suitable for reuse by the County or others on extensions of this Project or on other unrelated projects. Any adaptation or use by the County of these documents on extension of this Project or other unrelated projects shall be the County's sole risk. The County agrees to hold harmless the Architect against all damages, claims and losses arising out of such reuse of the plans .

ARTICLE VIII

General, Supplementary and Special Conditions: **Contract Administration**

8.1 County's general conditions are to be used by Architect with such adjustments as may be necessary for specific cases or instances.

8.2 This Contract shall be administered on behalf of the County by its representative, and Architect shall comply with instructions from said representative. Any dispute arising hereunder shall be submitted to the Commissioners Court, whose decision in the matter shall be final and binding.

8.3 Architect may not engage any consultant for any portion of the Work which Architect seeks reimbursement without prior written consent and approval by the County. A request by the Architect for County's consent and approval shall be submitted in writing. If granted, such consent and approval shall not relieve Architect of any of its duties, obligations, liabilities or responsibilities under this contractual agreement.

ARTICLE IX

Insurance

9.1 During the period of this Contract, Architect shall maintain at its sole expense, insurance with limits no less than those prescribed below:

- (a) General Liability (including Contractual Liability)

	Bodily Injury and Property Damage	\$1,000,000.00 Limit per Occurrence
	Aggregate	\$2,000,000.00
(b)	<u>Automobile Liability</u>	
	Bodily Injury and Property Damage	\$1,000,000.00 Limit per Occurrence
(c)	<u>Workers' Compensations</u>	Statutory Benefits plus \$500,000.00 Employer's Liability

9.2 With respect to the required insurances listed in Section 9.1 (a), (b) and (c), Architect shall:

- (a) Name Tom Green County as an additional insured as its interest may appear;
- (b) Provide Tom Green County a waiver of subrogation;
- (c) Provide Tom Green County with a 30 day advance written notice of cancellation or material change to said insurance; and
- (d) Provide Tom Green County with Certificates of Insurance evidencing required coverages upon acceptance of this Contract by Commissioners Court.

9.3 During the period of this Contract Architect shall maintain, at its expense, Architect's Errors and Omissions Insurance with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and shall name Tom Green County as an additional insured.

9.4 All policies of insurance shall be written by an insurance carrier authorized to do business in the State of Texas. Architect shall furnish the County with certificates of insurance issued by the insurer. Architect shall obtain and provide to the County evidence of its purchase of 12 months extended coverage in the event said policies of insurance are occurrence policies. The extended coverage relates to discovery of unknown, undiscovered and unreported claims that may be filed after the termination of this Contract.

9.5 The County and Architect waive all rights against each other for damages caused by perils covered by insurance.

9.6 The County and Architect waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance.

ARTICLE X

Responsibility for Work and Indemnification

10.1 Approval by the County shall not constitute nor be deemed a release of the responsibility and liability of Architect, its employees, subcontractors, agents, engineers and consultants for the accuracy and competency of their designs, specifications or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the County for any defect, error or omission in the designs, and specifications or other documents prepared by Architect, its employees, subcontractors, agents and consultants.

10.2 ARCHITECT SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICERS, AGENTS, EMPLOYEES AND ELECTED OFFICIALS FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEYS FEES, COST OF LITIGATION AND EXPENSES, ON ACCOUNT OF DAMAGE TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ALL PERSONS, INCLUDING EMPLOYEES OF ARCHITECT OR ANY OF ITS CONSULTANTS, WHICH MAY ARISE FROM AN ACT, ERROR OR OMISSION, DEFECT OR NEGLIGENCE ON THE PART OF ARCHITECT, ITS EMPLOYEES, AGENTS, CONSULTANTS, ENGINEERS OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT, OR ANY BREACH OF ANY OBLIGATION UNDER THIS CONTRACT.

ARTICLE XI

Assignment

11.1 The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Contract. Architect shall not assign, sublet or transfer any interest in this Contract without the prior written authorization of County.

ARTICLE XII

Amendments

12.1 This Contract, representing the entire agreement between the parties, may be amended or supplemented by mutual agreement of the parties hereto in writing.

ARTICLE XIII

Compliance With Laws

13.1 The Architect, its consultants, engineers, agents, employees and subcontractors shall comply with applicable federal, state and local laws and ordinances where applicable, as amended. Architect will endeavor to obtain all permits and licenses required in the performance of the professional services contracted for herein.

13.2 Architect will pay all taxes, if any, required by law arising by virtue of the services performed hereunder. The County is qualified for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act found in the Tax Code.

13.3 Architect shall not be required to sign any documentation which would result in the Architect having to certify, guarantee or warrant the existence of a condition which the Architect cannot ascertain upon inspection.

ARTICLE XIV

Non-Discrimination

14.1 As a condition of this Contract, Architect hereby covenants that it will take all necessary action to ensure that, in connection with any work under this Contract, it and its consultants and subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. In this regard, Architect shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period, following completion of services to the County for three (3) years, with full access allowed to authorized representatives of the County upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

ARTICLE XV

Enforcement, Venue, Governing Laws and Notices

15.1 This Contract shall be enforceable in Tom Green County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Tom Green County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

15.2 Any notice, demand, or request required by or made pursuant to this Contract shall be deemed properly made if made in writing and delivered by hand-delivery, facsimile, or deposited in the

United States mail, postage prepaid, addressed to the respective representative and to the respective address as set forth below. The notice shall be effective on the date of receipt, unless notice is received on a Saturday, Sunday, or legal holiday, it shall be deemed received on the next business day.

IF TO COUNTY:

Name: Honorable Michael D. Brown
Title: County Judge
Address: 122 W. Harris
San Angelo, Texas 76903
Telephone: 325/653-3318
Facsimile: 325/659-3258

IF TO ARCHITECT:

Name: Craig Kinney
Title: President
Address: 528 Orient
San Angelo, Texas 76903
Telephone: 325/653-2900
Facsimile: 325/653-2910

ARTICLE XVI

Relationship of Parties

16.1 Architect undertakes performance of the work as an independent contractor. Nothing herein shall create a relationship of employer and employee, joint venture, or partnership between the County and Architect, its agents, representatives, employees, engineers, consultants or subcontractors, for any purpose whatsoever. Nothing herein shall create a relationship of principal and agent between County and Architect, its agents, employees, representatives, engineers, consultants or subcontractors. Neither party shall have the authority to bind nor obligate the other in any manner as a result of the relationship created hereby.

16.2 County shall not have the right to control the manner(s) or prescribe the method(s) by which Architect performs the work. Architect shall be wholly responsible for the architectural services. Architect is entirely and solely responsible for its acts and the acts of its agents, employees, representatives, engineers, consultants and subcontractors engaged in the performance of the work.

16.3 Architect's personnel shall be and remain solely the employees of Architect, and at no time or in any manner shall Architect's personnel, employees, agents, representatives, engineers, consultants or subcontractors be considered as or deemed to be employees of County.

ARTICLE XVII

Term

17.1 Unless sooner terminated in accordance with the applicable provisions hereof, or extended by mutual agreement approved by Commissioners Court, the term of this Contract shall be from the date hereof until completion of services to the County.

ARTICLE XVIII

Financial Interest Prohibited

18.1 Architect covenants and represents that Architect, its officers, employees, agents, engineers, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

ARTICLE XIX

Additional Services

19.1 The following services are not included in Basic Services unless specifically identified in this agreement. They shall be provided if in connection with the Project and if authorized and confirmed in writing by Commissioners Court and they shall be paid for by the County as provided in this agreement in addition to the compensation for Basic Services.

- (a) Providing consultation concerning replacement of any work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such work.
- (b) Preparing to serve or serving as a witness in connection with any public hearing, arbitration proceeding or legal proceeding.
- (c) Providing any other services not otherwise included in this agreement.

19.2 For any other additional services by Architect, if any be authorized in advance in writing by County, compensation shall be computed as follows:

- (a) Principals' and employees' time at a fixed rate per hour. For the purpose of this agreement, the disciplines are:

Principal	\$175.00 per hour
Intern Architect/Technician	\$100.00 per hour

Administrative Staff \$ 60.00 per hour

- (b) Additional Service of Basic Consultants (including structural, mechanical, electrical and civil engineering) shall be computed at one point zero five (1.05) times the amounts billed and paid by Architect.

ARTICLE XX

Miscellaneous Provisions

20.1 It is understood that the employees and elected officials of the County are not authorized to receive any type of personal payment, reimbursement, compensation, commission, gratuity or gift for services provided under this Contract. Architect warrants that no employee or agent of the County has been retained to solicit or secure this agreement and that Architect has not paid or agreed to pay any employee or elected official of the County any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon the making of this agreement or as an inducement for entering into this agreement. The unauthorized offering or receipt of such payments will subject this agreement to immediate termination by Commissioners Court.

20.2 The Owner has designated Don Killam, Tom Green County Facilities Maintenance Director, as the County's Representative for the Project.

20.3 Architect agrees to furnish to the County such information as may be requested which relates to the services described in this Agreement. Architect shall permit the County to audit-inspect records and reports, reviews services, and/or evaluate the performance of services at any time. Architect shall provide reasonable access to all the records, books, reports, and other necessary data and information requested by the County for the purpose of accomplishing reviews, inspections, and/or audits of activities, services and expenditures.

20.4 Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

20.5 The parties represent that they have the legal power and have taken the requisite action to enter into this Contract. The parties executing this Contract certify by their signatures that they have the legal power, right, and actual authority to bind their respective organizations to the terms and conditions of this Contract, and that any resolutions necessary to create such authority have been duly passed and are now in full force and effect.

EXECUTED to be effective this 1st day of June, 2012.

OWNER:

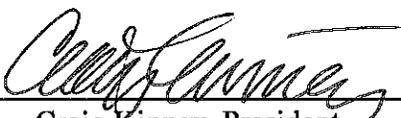
TOM GREEN COUNTY

By: 
Michael D. Brown, acting in his official
capacity as County Judge and not in his
individual capacity

Date: 6-12-12

ARCHITECT:

KINNEY FRANKE ARCHITECTS, INC.

By: 
Craig Kinney, President

Date: 6-14-12