

**AGREEMENT BETWEEN OWNER AND ARCHITECT**

This contract, 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 37B West Concho, San Angelo, Tom Green County, Texas 76903, (hereinafter referred to as the "Architect"), is made and entered into as of the 4th day of June, 2013.

**WITNESSETH**

WHEREAS, the County and Kinney Franke Architects previously entered into an Agreement Between Owner and Architect effective June 1, 2012, regarding the pre-architectural programming and schematic design for the first and second floors of the Edd B. Keyes building located at 113 West Beauregard;

WHEREAS, the County has determined to proceed with the Project, specifically the design and fund development phase and if adequate funding is available and the need still exists, proceed with the construction of the Project;

WHEREAS, the County and Kinney Franke Architects have determined to issue a new Agreement Between Owner and Architect to address the additional professional services as necessary;

WHEREAS, the County has previously paid the Architect under the Agreement Between Owner and Architect effective June 1, 2012, the total sum of Forty-Five Thousand Dollars (\$45,000.00) associated with the pre-architectural programming and schematic design for the first and second floors of the Edd B. Keyes building located at 113 West Beauregard;

WHEREAS, the County and Kinney Franke Architects have agreed the County shall receive credit for the sums paid to Kinney Franke Architects for professional services and reimbursable expenses incurred and paid by the County;

WHEREAS, the County has entered into a Standard Form of Agreement Between Owner and Construction Manager Where the Construction Manager is also the Constructor effective January 1, 2013 in regards to the Project;

WHEREAS, the County having previously reviewed the qualifications of the Architect, desires to contract with the Architect for architectural and engineering services in connection with design and construction 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 renovation of the first floor of the Edd B. Keyes building located at 113 West Beauregard, San Angelo, Tom Green County, Texas, and a partial renovation of the second floor. The scope of the Project may be modified by the County by and through the Commissioners Court.
- (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.
- (f) Bid Package - means a portion of the work to be bid by individual Contractor(s) which will be described by a detailed scope of work developed by the Architect.

## **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 in the design, review and approval, or construction of the Project. The Architect shall be responsible for insuring the Project is in full compliance with applicable building codes and standards as well as applicable

local, state and federal regulations and codes, local building code(s), and regulations as may be applicable to the Project.

2.1.3 The Architect shall submit for the County's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the County's review, obtaining funding and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by the schedule approved by the County shall not, except for reasonable cause, be exceeded by the Architect.

2.1.4 The Architect's Basic Services consist generally of the phases described below, and to include the complete architectural services and complete structural, electrical, mechanical, including design and plumbing, engineering services, for the Project within the financial limitations of the County as may be budgeted and in accordance with the standard of care required of other Architects on similar projects. This 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.

2.1.5 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 Working Drawings and specifications for the Project shall be suitable for their intended use and shall include plans and profiles as necessary for the required approvals by the City of San Angelo (if any). Information on existing utilities shall be provided by County to Architect.

2.1.6 Architect's Working Drawings and Specifications for the Project which shall be represented by the Bid Documents shall meet applicable federal, state, and local standards, codes and specifications in effect at the time construction has been permitted (if applicable) and completed. The Architect shall endeavor to secure all applicable governmental approvals, except that no waiver shall be requested of any code, standard or specifications by Architect without the prior written consent of the Commissioners Court.

2.1.7 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**

90	Design Development Phase
120	Fund Development Phase

90	Construction Document Phase
60	Bidding Phase
200	Construction Phase

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 has developed a detailed functional/space program due to interviews with key personnel and elected officials of Tom Green County.

**2.3 Schematic Design Phase**

2.3.1 Architect has consulted with key personnel and elected officials of Tom Green County regarding the design and layout to clarify the scope of Project.

2.3.2 Architect has prepared for the consideration of the County, the Schematic Design Studies, and other documents which illustrate the scale and relationship of the Project components.

2.3.3 Architect has provided to the County a statement of probable construction cost based on the schematic design.

2.3.4 Architect has submitted statements to the County for the payment of the professional services provided and expense items incurred during this phase. The County has paid to Kinney Franke Architects the total sum of \$45,000.00 for all sums due and owing which were incurred in the performance of the Pre-Architectural Programming and Schematic Design Phases as provided for in the Agreement Between Owner and Architect effective June 1, 2012.

**2.4 Design Development Phase**

2.4.1 Architect shall prepare Design Development Documents based on the approved Schematic Design Documents to include adequate specifications for elements of the Project for consideration and approval by the County. Design Development Documents shall fix and describe the size, cross sections and character of the Project as to Architectural, structural, vertical transportation, mechanical, life safety, electrical, plumbing, and other systems, materials, and such other essentials as may be necessary and appropriate. The Design Development Phase shall be completed within the agreed performance schedule.

2.4.2 Architect shall submit three (3) complete sets of the proposed Design Development

Documents to the County and Construction Manager for review and approval by the County.

2.4.3 Architect shall submit outline specifications for all major elements of construction including but not limited to: Architectural, structural, ADA, plumbing, mechanical, life safety and electrical systems and signage.

2.4.4 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. Twenty-five percent (25%) of the Architect's Basic Services fee shall be authorized for this phase of the work.

## **2.5 Fund Development Phase**

2.5.1 Architect acknowledges that the County shall seek funding as necessary for the construction and furnishing of the Project. County anticipates on having available for the construction of the Project the total sum of \$3,000,000.00 (Construction Cost). In the event County is unable to obtain the total Construction Cost for this Project, Architect shall be entitled only to the fees and reimbursable expenses incurred through the Design Development Phase which in no event shall exceed \$38,750.00 plus reimbursable expenses.

## **2.6 Construction Documents Phase**

2.6.1 Architect shall prepare from the approved Design Development Documents, for consideration and approval by the County, Working Drawings and Specifications which documents shall set forth in detail the requirements of the Project. Architect shall submit to the Texas Department of Licensing and Regulation a complete set of plans, specifications and documents necessary for that regulatory authority to ensure the County's full compliance with the Architectural Barrier Plans Review. The County and Architect acknowledge the existing facility may require a change or modification in the scope of work to ensure compliance with the appropriate regulatory authorities. Architect shall further submit such plans, specifications and documents to any other state or federal agency or regulatory authority to ensure that the Project is in full compliance with the applicable laws, rules and regulations.

2.6.2 Architect in consultation with the Construction Manager shall prepare a written statement of probable Construction Cost based on the Construction Documents and submit the same to the County. Should the Architect's statement of probable Construction Cost exceed the Project budget or available funding, the Architect shall work with the County's Representative and make changes to bring the Project into budget, and the Architect shall present the County with the appropriate cost reduction options prior to completion of the construction documents phase.

2.6.3 Architect shall submit at least three (3) complete sets of Proposed Construction Documents to the County and Construction Manager for review and official approval prior to the advertisement of bids for the construction of the Project, and within the agreed performance schedule following approval of the Design Development Documents. Following approval, Architect shall provide to

County at said time, the following items:

- (i) Reproducibles of the Project Title Sheet, signed by Architect, with seal affixed.
- (ii) Three (3) copies of approved specifications.
- (iii) A complete set of drawings with seal affixed.

2.6.4 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. Forty-five percent (45%) of the Architect's Basic Services fee shall be authorized for this phase of the work. In the event the County is unable to obtain the total Construction Cost for this Project, Architect shall be entitled only to the fees and reimbursable expenses incurred through the Construction Documents Phase.

## **2.7 Bidding Phase**

2.7.1 Following County's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, Architect shall assist County in putting the Project out for bid. During the bid process, Architect shall assist County as follows:

- (i) Participate in the pre-bid conference, including on-site visits as required, to facilitate bidders understanding of the Construction Documents, the various on-site conditions, and the coordination and scheduling requirements.
- (ii) Prepare required addenda to Contract Documents.
- (iii) Participate in pre-award conference when necessary.

2.7.2 Architect's assistance to the County shall include review and comment on the guaranteed maximum price proposal as submitted by the Construction Manager. Architect's reviews and comments shall also consider the conformity with Bid Documents.

2.7.3 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. Five percent (5%) of the Architect's Basic Services fee shall be authorized for this phase of the work.

## **2.8 Construction Phase-Administration of the Construction Contract(s)**

2.8.1 The Construction Phase will commence with the award of the construction contract(s) and will terminate 90 days after acceptance by County of the Project as described herein. It is understood, however, that the Architect shall continue to assist the County in correction of defects in Project materials and workmanship, resolution by the Contractor(s) of defects in Project materials and workmanship, and resolution of Project-related claims and disputes, but in no case past the warranty

period of the Contractor(s).

2.8.2 When requested by the County, Architect will render interpretations necessary for the proper execution or progress of the work with reasonable promptness as required by the demands of the Project.

2.8.3 Architect shall keep the County fully informed in writing of the progress of the Project, on a monthly basis, during the Construction Phase; and after issuance of the “work order” to proceed with the work, all of the County’s instructions to the Contractor(s) will be issued through the Architect. Instructions which modify the drawings and specifications shall be issued by the Architect to the Contractor(s).

2.8.4 Architect shall provide, during construction, on-site construction observation, periodically visiting the site to the extent necessary to generally familiarize itself with the progress and quality of the work, and to determine if the work is proceeding in accordance with the Contract Documents. Architect shall not, however, be required to make continuous on-site inspections to check the work. Field Reports of each visit shall be prepared by Architect and submitted to County by the 10<sup>th</sup> of each month. The Architect shall submit a written report which shall constitute a representation by Architect to the County, based on observations at the site that to the best of the Architect’s knowledge, information and belief, the quality of the work is in accordance with the Contract Documents, (subject to an evaluation of the work as a functioning whole upon substantial completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to Project completion, and to any specific qualifications stated in the Architect’s report). Architect shall, upon request of the County, make oral presentations to the Commissioners Court to keep the Court fully informed of the status of the Project.

Architect shall employ all reasonable measures to safeguard County against defects and deficiencies in the work of the Contractor(s). Architect shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the work. However, Architect will promptly inform the County’s Representative, and County whenever defects and deficiencies in the work are observed, or when any observed actions or omissions are undertaken by the Contractor(s) which are not in the best interest of the County and the Project.

2.8.5 Architect shall have authority through the County’s Representative to reject work which does not conform to the Contract Documents, it being understood that no such action will be taken without the prior consultation and approval with the County for such work rejection. No prior consultation shall be necessary by the Architect whenever in Architect’s reasonable opinion failure to reject the work constitutes an immediate hazard to the Project or its workers. Architect shall make recommendations on all claims and disputes of County or Contractor(s) relating to the execution and progress of the work or the interpretation of the Contract Documents, based upon such review and analysis by Architect as may reasonably be required. In the event of litigation, where Architect is

named as an additional party with the County, such assistance will include the availability of knowledgeable witnesses in the employ of Architect for expert testimony.

2.8.6 Architect shall review shop drawings, samples and other submissions of the Contractor(s) for conformance with the design concept of the Project and with the information given in the Contract Documents. Within ten (10) days of receipt from Contractor(s), Architect shall notify the Contractor(s) of any exceptions, revisions, corrections or defects, so that appropriate action can be taken. Architect shall establish and implement procedures, for expediting the processing and review of these submissions without delay. Prompt review by Architect of submissions is of prime importance to County under the time constraints of the Project.

2.8.7 Architect shall prepare Change Orders to the construction contract, in six (6) copies, after review and approval by County. Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. Change Orders shall be submitted through the County's Representative for consideration prior to the submission to the County.

2.8.8 Architect shall determine the dates of substantial completion and final completion, shall receive written guarantees and related documents assembled by the Contractor(s) for submittal with the final Certificate for Payment, and shall prepare and present a final Certificate for Payment to the County for their approval and payment. In addition, Architect shall make a site visit of the Project at least thirty (30) days before expiration of the one (1) year Warranty contained in the Contractor(s) Performance Bond and shall submit a written report of such site visit to the County within five (5) days from the date of the visit.

2.8.9 Architect shall attend regularly scheduled progress meetings with the Contractor(s) at a site in Tom Green County. Minutes of these meetings shall be prepared by the Construction Manager with copies submitted to all attendees and County.

2.8.10 Architect shall have authority, through the County, to recommend minor changes in the construction work, consistent with the Contract Documents, and not involving an adjustment in the Contractor(s) bid price or an extension of the Project schedule. Such changes shall be accomplished by Field Order. In addition, Architect may issue written clarifications which interpret the Plans and specifications, with copies submitted to County's Representative.

2.8.11 Upon completion of the construction work, the Architect shall prepare and deliver to County a set of reproducible Record Construction Drawings and Record Construction specifications which conform to the marked-up prints, drawings and other data furnished to the Architect by the Contractor(s). This set of Record Construction Drawings and Record Construction specifications will show the reported location of the various project elements and significant changes made during the construction process and shall include the location of mechanical and electrical service lines and outlets and of water, sewer, gas and storm drainage lines. The Architect cannot warrant the accuracy

of the information set forth in the Record Construction Drawings and Record Construction specifications due to the fact that said information is based upon unverified information provided by third parties. However, Architect represents that it will use its best efforts to verify the accuracy of the information during the construction phase.

2.8.12 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. Twenty-five percent (25%) of the Architect's Basic Services fee shall be authorized for this phase of the work.

### **ARTICLE III**

#### **Construction Cost**

3.1 The fixed limit of Construction Cost for this Project shall not be more than Three Million Dollars (\$3,000,000.00) which shall include the compensation and fees to the Architect for architectural services (\$200,000.00), architectural reimbursable expenses (\$10,000.00), fees and expenses incurred for the retention of special consultants as authorized by the County, and insurance costs attributable to the Project. The Construction Cost of this Project shall include the Construction Manager's fees, costs, and expenses and the cost of construction of the Project. This amount is established as a condition of this Contract, and shall provide the basis for Architect's design decisions. Architect, in consultation with the County, County's Representative, and Construction Manager shall determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and will make reasonable adjustments in the scope of the Project to bring it within the fixed limit. With County approval, Architect may also include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit.

3.2 If the lower responsible bid or bids is within the fixed limit of total budgeted Construction Cost for the Project, or in the case that the Project is not bid, and the Architect's latest detailed estimate of Probable Construction Cost is still less than the fixed limit of total budgeted Construction Cost for the Project established as a condition of this Contract, County shall pay the Architect fees for Basic Services through the Bidding Phase in accordance with this Contract.

3.3 If the lower responsible bid exceeds its portion of the fixed limit total budgeted Construction Cost for the Project, and as a result thereof, or otherwise, the latest estimate of Probable Construction Cost exceeds such fixed limit of total budgeted construction cost for the Project established as a condition of this Contract, County at its option may either (1) give written approval of an increase in such fixed limit, with no obligation to increase Architect's fee unless there has been a material change in scope of the Project, or (2) authorize rebidding within a reasonable time, and cooperate in revising the Project scope and quality as required to reduce the Probable Construction Cost. In the case of (2), Architect, without additional charge, shall promptly modify the Drawings and Specifications as necessary to bring the Project cost within the budgeted fixed limit, or within any higher fixed limit subsequently authorized by County. The providing of this service shall be the limit of Architect's responsibility in this regard, and having done so, Architect shall be entitled to

the Architect fees through the Bidding Phase in accordance with this Contract.

#### ARTICLE IV

##### Reimbursable Expenses

4.1 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.

4.2 Reimbursable expenses as described in paragraph 4.1 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.

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

#### ARTICLE V

##### Compensation and Payments to the Architect

5.1 The Construction Costs shall be the total out-of-pocket cost to the Owner of all elements for the construction of the Project designed or specified by the Architect and approved by the County.

5.2 Construction Costs does include the compensation of the Architect and Architect's consultants, Architect reimbursable expenses, insurance costs attributable to the Project, Construction Manager's fees, costs, and reimbursable expenses.

5.3 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. Completion of the Project, and compensation for the Architect's Basic Services shall not exceed Two Hundred Thousand Dollars (\$200,000.00) exclusive of reimbursable expenses which shall not exceed Ten Thousand Dollars (\$10,000.00). Reimbursable expenses shall not include consultants.

5.4 In the event County authorizes the expenditure of additional funds for Construction Cost for the Project in excess of \$3,000,000.00 the Architect shall be entitled to additional compensation for architectural services and reimbursable expenses incurred. The Architect shall be entitled to an additional seven percent (7%) compensation for the Construction Cost in excess of \$3,000,000.00. By way of example, if the Construction Cost for the Project is \$3,500,000.00 as authorized and approved by County, Architect shall be entitled to additional compensation of \$35,000.00 above the \$200,000.00 fee referenced within paragraph 5.3 (\$3,500,000.00 less \$3,000,000.00 equals \$500,000.00 of additional Construction Cost times the architectural fee of 7%).

5.5 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. On any phase of the work which takes less than one month to complete, the Architect may submit his invoice immediately and receive payment as authorized by law. Payment shall be made on percentages of the Basic Fee as follows:

Schematic Design Phase	\$45,000.00	( 0%)
Design Development Phase	\$38,750.00	( 25%)
Fund Development Phase	\$-0-	( 0%)
Construction Documents Phase	\$69,750.00	( 45%)
Bidding Phase	\$ 7,750.00	( .5%)
Construction Phase	<u>\$38,750.00</u>	<u>( 25%)</u>
TOTAL	\$200,000.00	(100%)

5.6 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.

5.7 No deduction shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractor(s).

5.8 No addition shall be made to the Architect's compensation based upon Project construction claims, whether paid by the County or denied.

5.9 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.

5.10 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 schedule of service and costs in connection therewith set out hereinabove. 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.

5.11 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 VI

### Architect's Accounting Records

6.1 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 issuance of Final Completion.

## ARTICLE VII

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

7.1 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 original 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).

7.2 Nothing contained in paragraph 7.01 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.

7.3 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.

7.4 Architect understands and agrees that time is of the essence and that any failure by Architect to complete the services for each phase of this Contract within the agreed Project Performance Schedule set forth within paragraph 2.1.7, 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.

7.5 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 VIII**

### **Ownership of Documents**

8.1 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.

8.2 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.

8.3 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.

8.4 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 .

8.5 Upon completion of the construction of the Project, Architect shall, within 30 calendar days following receipt from Contractor of record drawings, deliver to County the reproducible Record Drawings and Record Specifications as previously described in Section 2.8.11 hereinabove.

## **ARTICLE IX**

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

9.1 County's general conditions are to be used by Architect with such adjustments as may be necessary for specific cases or instances. Any special conditions pertaining to the Project will be included under the special conditions portion of the Construction Documents.

9.2 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.

9.3 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 X**

### **Insurance**

10.1 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) Automobile Liability
  - Bodily Injury and Property Damage                      \$1,000,000.00  
Limit per Occurrence
- (c) Workers' Compensations                      Statutory Benefits plus \$500,000.00  
Employer's Liability

10.2 With respect to the required insurances listed in Section 10.01 (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.

10.3 During the period of this Contract and for an additional two (2) year period after Final Completion of the Project, 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.

10.4 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.

10.5 The County and Architect waive all rights against each other, and Contractor(s) for damages caused by perils covered by insurance provided under the County's Builder's Risk Policy, except such rights as they may have to the proceeds of such insurance held by the County as trustee. The County shall require similar waivers from all Contractor(s).

10.6 The County and Architect waive all rights against each other, the Contractor(s) for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The County shall require similar waivers from the Contractor(s).

## ARTICLE XI

### Responsibility for Work and Indemnification

11.1 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, working drawings, 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, working drawings, and specifications or other documents prepared by Architect, its employees, subcontractors, agents and consultants.

**11.2 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 XII

### Assignment

12.1 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 XIII**

#### **Amendments**

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

### **ARTICLE XIV**

#### **Compliance With Laws**

14.1 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.

14.2 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 Limited Sales, Excise, and Use Tax Act found in the Tax Code.

14.3 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 XV**

#### **Non-Discrimination**

15.1 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 Final Completion, of 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 XVI**

#### **Enforcement, Venue, Governing Laws and Notices**

16.1 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.

16.2 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: 37B West Concho  
San Angelo, Texas 76903  
Telephone: 325/653-2900  
Facsimile: 325/653-2910

**ARTICLE XVII**

**Relationship of Parties**

17.1 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.

17.2 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.

17.3 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 XVIII**

### **Term**

18.1 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 the final one (1) year warranty inspection or resolution of any outstanding Project related claims or disputes, whichever is later.

## **ARTICLE XIX**

### **Financial Interest Prohibited**

19.1 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 XX**

### **Additional Services**

20.1 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 except as provided in Section 2.8.5 herein.

- (c) Providing any other services not otherwise included in this agreement.

20.2 For any other additional services by Architect or Consulting Engineer, 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
Engineers	\$175.00 per hour
Intern Architect/Technician	\$ 95.00 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. Additional Services of Special Consultants shall be computed at one point zero five (1.05) times the amount billed Architect for such services.

## ARTICLE XXI

### Miscellaneous Provisions

21.1 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.

21.2 The Owner has designated Michael D. Brown or his designee, as the County's Representative for the Project. The County's Representative shall be fully acquainted with the Project and has the authority to: (1) approve changes in the Project not to exceed Ten Thousand Dollars (\$10,000.00) per change order and only if the change order does not extend the date of substantial completion by more than five (5) days; (2) render decisions promptly consistent with the Project schedule; and (3) furnish information expeditiously as requested by the Architect.

21.3 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.

21.4 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.

21.5 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 4th day of June, 2013.

**OWNER:**

TOM GREEN COUNTY

By: \_\_\_\_\_



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



Date: June 4, 2013

**ARCHITECT:**

KINNEY FRANKE ARCHITECTS, INC.

By: \_\_\_\_\_



Craig Kinney, President

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

6-4-13

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