

AGREEMENT BETWEEN OWNER AND ARCHITECT
TOM GREEN COUNTY DETENTION FACILITY

This agreement, hereinafter referred to as the “Contract” or “Agreement”, by and between 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” or “Owner”), and Kinney Franke Architects, Inc. d/b/a Kinney Franke Architects AIA 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 to be effective as of the 26th day of January, 2016.

WITNESSETH

WHEREAS, the County and Architect entered into an Agreement Between Owner and Architect effective the 2nd day of December, 2014, regarding the preparation of a Needs Assessment and Long-Range Planning Study to assess the current and future detention and facility needs of Tom Green County;

WHEREAS, the Needs Assessment and Long-Range Planning Study was completed by Architect on May 12, 2015 which determined a need exists for the construction of a new detention facility;

WHEREAS, the County in accordance with its contractual obligation issued payment to Architect for the professional services rendered in the preparation of a Needs Assessment and Long-Range Planning Study in the amount of One Hundred Twelve Thousand Dollars (\$112,000.00) with said payment being inclusive of expenses;

WHEREAS, based upon the findings reflected within the Needs Assessment and Long-Range Planning Study, Tom Green County and Architect entered into an Amendment No. 1 to the Agreement Between Owner and Architect for the schematic design of a remotely located jail facility with said Amendment No. 1 to the Agreement Between Owner and Architect being effective the 17th day of November, 2015;

WHEREAS, the Architect proceeded with the schematic design for the remotely located jail facilities with the County approving the site plan, schematic design and floor plan;

WHEREAS, the Architect on November 23, 2015, presented the site plan, schematic design and floor plan to the Texas Commission on Jail Standards in Austin, Texas, which approved the site plan, schematic design and floor plan;

WHEREAS, the County in accordance with its contractual obligation within Amendment No. 1 Between Owner and Architect issued payment to the Architect for the professional services rendered under Amendment No. 1 to the Agreement Between Owner and Architect in the sum of Two Hundred Thirty Thousand Four Hundred Eighty-Eight Dollars (\$230,488.00)

which is inclusive of all expenses and costs associated with the site plan, schematic design and floor plan of the remotely located detention facilities;

WHEREAS, the County has made a determination to proceed with the design development phase, construction document phase, bidding phase and construction phase for the construction of the detention facilities;

WHEREAS, the County approved of a tentative location for the remotely located detention facility for the housing of prisoners within Tom Green County by the Tom Green County Sheriff's Office;

WHEREAS, the County is currently conducting geotechnical and other testing of the location for the detention facility in order that the Architect may determine the proper manner and means of the construction of the detention facility;

WHEREAS, the County and Architect desire to enter a new Agreement Between Owner and Architect to address the professional services as necessary in association with the architectural services associated with the detention facility;

WHEREAS, the County and Architect have agreed that the information obtained and set forth within the Needs Assessment and Long-Range Planning Study and the site plan, schematic design and floor plan as approved by the Tom Green County Sheriff's Department, Tom Green County Commissioners' Court and the Texas Commission on Jail Standards shall be considered and to the extent necessary be incorporated herein by reference within this Agreement;

WHEREAS, the County and Architect have agreed the County shall receive credit for the sum of Two Hundred Thirty Thousand Four Hundred Eighty-Eight and No/100 Dollars (\$230,488.00) previously paid to Architect for professional services rendered and expense items incurred by the County in accordance with Amendment No. 1 to the Agreement Between Owner and Architect;

WHEREAS, the County is seeking to retain a construction manager and shall make a determination as to the Construction Manager At Risk in reference to the Project;

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

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

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 design of a new 563 bed detention facility located in Tom Green County. The 563 bed detention facility shall utilize the direct-supervision model and shall meet the program requirements as set forth within the Needs Assessment Study dated May 12, 2015 as well as further modifications as approved by the County and the Tom Green County Sheriff's Office and which were included within the Schematic Design (site plan and floor plan) submitted to the Texas Commission on Jail Standards on November 23, 2015.

The scope of work will involve the following phases:

- Schematic Design - previously completed on November 23, 2015
- Assistance in the selection of the Construction Manager at Risk
- Design Development
- Construction Documents
- Bid and Negotiations
- Contract Documents
- Construction Administration

The scope of work involved shall include the following disciplines and work:

- Architectural
- Civil Site Work
- MEP (Mechanical, Electrical & Plumbing)
- Structural
- Fire Protection System
- Kitchen design and equipment
- Detention electronic systems and equipment
- Detention doors, windows and glazing
- Detention furniture directly used by inmates

The scope of the Project may be modified by the County by and through the Commissioner's Court.

- (e) Contractor - means a firm or individual performing the construction work who has a contractual agreement 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 and 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 in the design, review and approval, or construction of the Project. The Architect shall be responsible for ensuring the Project is in full compliance with applicable building codes and standards as well as applicable local, state and federal regulations, rules, standards 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, civil including design and plumbing engineering services, detention services, fire protection and kitchen design for the Project taking into consideration financial limitations of the County. The Architect's Basic Services shall be 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

75	Design Development Phase
150	Construction Document Phase
TBD	Bidding Phase to be established by Construction Manager
TBD	Construction Phase to be established by Construction Manager

The time schedule (calendar days) 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 Needs Assessment

2.2.1 Architect has prepared and submitted to the County a Needs Assessment Study which was approved by the County.

2.3 Schematic Design Phase

2.3.1 Architect has consulted with key personnel, employees and elected officials of Tom Green County and the Tom Green County Sheriff's Department regarding the design of the detention facility to clarify the scope of Project.

2.3.2 Architect has prepared for the consideration of the County, the Schematic Design of the detention facility and the site plan, schematic design and floor plan has been submitted to and approved by the County, Tom Green County Sheriff's Office and the Texas Commission on Jail Standards.

2.3.3 Architect has submitted to the County for the payment of the professional services provided and expense items incurred during this phase. The County has paid to Architect the total sum of \$230,488.00 which sum is credited as compensation for the Architect's Basic Services associated with the Project. This sum is for all sums due and owing which were incurred in the performance of the professional services in reference to the Amendment No. 1 to the Agreement Between Owner and Architect effective the 17th day of November, 2015.

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, civil, vertical transportation, mechanical, life safety, detention, fire protection, kitchen, 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, civil, ADA, plumbing, mechanical, life safety, detention, fire protection, kitchen 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. Eighteen percent (18%) of the Architect's Basic Services fee shall be authorized for this phase of the work.

2.5 Construction Documents Phase

2.5.1 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 and other agencies a complete set of plans, specifications and documents (construction) necessary for that regulatory authority to ensure the County's full compliance with the Architectural Barrier Plans Review. Architect shall further submit to the Texas Commission on Jail Standards a complete set of plans, specifications and documents necessary for that entity to approve and to ensure County's full compliance with the rules and regulations as may be promulgated by the Texas Commission on Jail Standards. The County and Architect acknowledge the proposed facility may require a change or modification in the scope of work to ensure compliance with the appropriate regulatory authorities and agencies. 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.

2.5.2 The Construction Manager in consultation with the Architect shall prepare a written statement of probable Construction Cost based on the Construction Documents and submit the same to the County. Should the statement of probable Construction Cost exceed the Project budget or available funding, the Architect shall work with the County's Representative, the Tom Green County Sheriff's Department, Commissioners' Court and Construction Manager and make changes to bring the Project into budget, and the Architect shall present the County with the pricing alternate options prior to completion of the construction documents phase.

2.5.3 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.

2.5.4 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. Fifty-four and 43/100 percent (54.43%) 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.

2.6 Bidding Phase

2.6.1 Following County's approval of the Construction Documents and of the latest statement of probable Construction Cost, Architect shall assist the Construction Manager and the County in putting the Project out for bid. During the bid process, Architect shall assist the Construction Manager and the 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.

2.6.2 Architect's assistance to the Construction Manager and 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.

2.6.3 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. Two and 52/100 percent (2.52%) of the Architect's Basic Services fee shall be authorized for this phase of the work.

2.7 Construction Phase-Administration of the Construction Contract(s)

2.7.1 The Construction Phase will commence with the award of the construction contract(s) and will terminate 120 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).

2.7.2 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.

2.7.3 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).

2.7.4 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 and Construction Documents. Architect shall not, however, be required to make continuous on-site inspections to check the work. Field Reports as requested or required shall be prepared by Architect and submitted to County by the 10th 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 and Construction 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 and Construction Documents, to minor deviations from the Contract and Construction 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.

2.7.5 Architect shall have authority through the County's Representative to reject work which does not conform to the Contract and Construction 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 and Construction 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.

2.7.6 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 and Construction Documents. Within forty-five (45) 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.

2.7.7 The Architect in consultation with the Construction Manager shall prepare Change Orders to the construction contract, in four (4) 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.

2.7.8 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 Warranty Period 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.

2.7.9 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.

2.7.10 Architect shall have authority, through the County, to recommend minor changes in the construction work, consistent with the Contract and Construction 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. Any Field Order issued by the Architect shall be provided to the County's Representative. In addition, Architect may issue written clarifications which interpret the Plans and specifications, with copies submitted to County's Representative.

2.7.11 Upon completion of the construction work, the Architect shall deliver to County a set of reproducible Record Construction Drawings and Record Construction specifications prepared by the Construction Manager 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 Administration Phase.

2.7.12 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. Seventeen and 88/100 percent (17.88%) of the Architect's Basic Services fee shall be authorized for this phase of the work.

ARTICLE III

Construction Cost

3.1 The total budgeted Construction Cost for this Project shall not be more than Forty-One Million Dollars (\$41,000,000.00) which shall not include the compensation and payment to the Architect for architectural services and reimbursable expenses associated with this Project. The Construction Cost of this Project shall include the Construction Manager's fees, costs, and expenses and all direct and out-of-pocket costs and expenses as incurred by the County associated with the Project. This amount is established as a condition of this Contract, and shall provide the basis for the Architect's design decisions. Architect, in consultation with County's Representative, the Tom Green County Sheriff's Office, Commissioners' Court and Construction Manager shall determine what materials, equipment, component systems and types of construction are to be included in the Contract and Construction Documents, and will make reasonable adjustments in the scope of the Project to bring it within the established budget. With County approval, Architect may also include in the Contract and Construction 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 and expenses, 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 or cost to the County, 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 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 at each design phase;
- (f) Overnight delivery services; and
- (g) Items requested by County which are outside 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 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 not include the compensation of the Architect and Architect's engineers and consultants, Architect's reimbursable expenses, insurance costs incurred by the County and attributable to the Project, testing (geotechnical), testing and inspection performed by third party testing labs as may be required by the County, environmental studies, and survey expense.

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 a flat fee amount of Three Million Two Hundred Fifteen Thousand Nine Hundred and No/100 Dollars (\$3,215,900.00) exclusive of reimbursable expenses. 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 \$41,000,000.00 the Architect shall not be entitled to additional compensation for architectural services and reimbursable expenses incurred.

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	\$230,488	(7.17%)
Design Development Phase	\$578,712	(18.00%)
Construction Document Phase	\$1,750,550	(54.43%)
Bidding Phase	\$81,150	(2.52%)
Construction Phase	<u>\$575,000</u>	<u>(17.88%)</u>
TOTAL	\$3,215,900	(100.00%)

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 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 this detention facility only. Should County subsequently contract with a new Architect for continuation of services on this Project, Architect shall cooperate in providing information and documentation as requested by the County or its authorized representative(s) with the understanding that these materials are to be used for this detention facility only and not used or sold for use on any other unrelated projects.

7.2 Nothing contained in paragraph 7.1 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.

7.3 If the Project is stopped for a period of 60 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, representatives, 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 2.7.11 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 designated 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.

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 claim , One Million Dollars (\$1,000,000.00) annual aggregate.

10.4.1 The individuals or entities retained by Architect to perform architectural, structural, civil, plumbing, mechanical and detention services for this Project shall maintain the same insurance requirements as listed in Sections 10.1, 10.2, and 10.3 as defined above. These insurance requirements are in addition to that as provided by the Architect.

10.4.2 The individuals or entities retained by Architect to perform fire protection services for this Project shall maintain the insurance requirements as listed in Section 10.3 as defined above. These insurance requirements are in addition to that as provided by the Architect.

10.5 Owner and Architect shall consider additional and/or alternative insurance coverage in reference to the Architect's errors and omissions insurance policy up to a total of \$5,000,000.00 per claim with the cost and expense for such additional and/or alternative coverage to be on a shared basis between the parties. Time requirements prohibit the parties from finalizing any agreement as to additional and/or alternative coverage beyond what is set forth within paragraph 10.3. The parties have agreed to proceed with the execution of this Agreement subject to possible modifications at a subsequent date as to the errors and omissions insurance policy of Architect.

10.6 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 claims made policies. The extended coverage relates to discovery of unknown, undiscovered and unreported claims that may be filed after the termination of this Contract.

10.7 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).

10.8 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, representatives, 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, representatives, engineers 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, representatives, 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 a state district court 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 Stephen C. Floyd
Title: County Judge
Address: 122 W. Harris
San Angelo, Texas 76903
Telephone: 325/653-3318
Facsimile: 325/659-3258

IF TO ARCHITECT:

Name: Kye B. Franke
Title: Vice 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 warranty period 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,

representatives, 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 2.7.5 herein.
- (c) Providing any other services not otherwise included in this Agreement.

20.2 For any other additional services by Architect, Consulting Engineers or Consultants, 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 Architect	\$200.00 per hour
Architect	\$130.00 per hour
Engineers	\$200.00 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, civil engineering and detention) shall be computed at one point zero five (1.05) times the amounts billed and paid by Architect. Additional Services of 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 elected official, 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 Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78701-2337, telephone (512) 305-9000, has jurisdiction over individuals licensed as Architects under the Regulation of Architect and Related Practices, Chapter 1051 of the Texas Occupations Code.

21.3 The Owner has designated Don Killam 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 Twenty Thousand Dollars (\$20,000.00) per field request or owner contingency and only if the change order does not extend the date of substantial completion by more than three (3) days;
- (2) render decisions promptly consistent with the Project schedule; and
- (3) furnish information expeditiously as requested by the Architect.

21.4 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, review 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.

21.5 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.

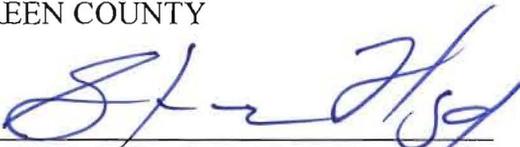
21.6 The parties represent that they have the legal power and have taken the requisite action to enter into this Contract. The parties executing this Contract certify by their signatures that they have the legal power, right, and actual authority to bind their respective organizations to the terms and 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 the 26th day of January, 2016.

OWNER:

TOM GREEN COUNTY

By: 
Stephen C. Floyd, acting in his official
capacity as County Judge and not in his
individual capacity

Date: JAN 29 2016

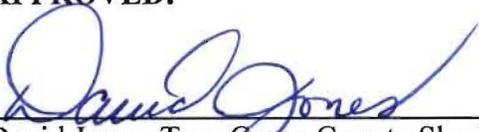
ARCHITECT:

KINNEY FRANKE ARCHITECTS, INC.

By: 
Kye B. Franke, Vice President

Date: 1/29/16

APPROVED:


David Jones, Tom Green County Sheriff