



Agenda Commentary

Item Title/ Subject: Architectural contracts for the new Fire Station and Police Rehab.

Staff Source: City Manager, Steve Hewitt

Date: September 2, 2011

History/Background Information: Council approved staff to begin negotiating contracts with GLMV for our Fire and Police Projects.

Item/Subject Summary: (see attached summaries) I have been working with Jeff Weiford on numbers/details. This is a standard AIA document. The projects have been separated. Police will be approximately 12 months to complete and Fire 18 months.

Fire-

Programming	1.5 month
Design/construction docs	4.5 months
Bidding/contracts	2 months
Construction	10 months

Police-

Schematic design	1 month
Construction Docs	3 months
Bidding/ contracts	2 months
Construction	6 months

Price/Cost: See summary for A/E Fees... Total Fire Fees \$332,622; Police \$71,200 (please note that includes inspection, survey, testing, etc)

Project Budget: \$4.4M Fire; \$600,000 Police (See estimated Budget Summary)

Recommendation: Staff recommends approval. I have broken down all costs/fees for Council to see what this project will cost.

FEE BUDGET
Clinton, Oklahoma Police and Fire Station

Fire Station - based on a 13,000-square-foot facility

Architectural Services	\$	157,424
Engineering Services (includes civil, structural, mechanical, and electrical)	\$	79,800
Subtotal "Basic" A/E Services	\$	237,224
LEED Services	\$	21,200
Travel Time (36 trips) (includes design through construction phases)	\$	35,200
Total Professional Fees	\$	293,624
Expenses	\$	13,850
Printing	\$10,000	
Travel Expenses	\$3,850	
Total A/E Compensation:	\$	307,474
Owner Costs:		
Survey	\$	6,948
Geotechnical Engineering (soils report)	\$	6,200
Soil Conductivity Test*	\$	12,000
Total Owner Costs:	\$	25,148
TOTAL	\$	332,622

Included in this fee proposal:

- Landscape Architectural Services.
- Interior Design, including color and finish selections.
- Furniture selection and specifications are included. If this service is not desired, reduce fee by \$3,000.
- Site visits during construction will be up to twice per month.
- Bid documents will be issued electronically.

Not included:

- Environmental services of any kind, including but not limited to the discovery and abatement of soil or water contamination, asbestos, lead paint, or other hazardous materials.

* Required test if the City elects to pursue a geothermal heat pump mechanical system.

FEE BUDGET
Clinton, Oklahoma Police and Fire Station

Police Station

Fee Allowance	\$	55,000
Reimbursable Expenses Allowance	\$	5,000
Travel Time (10 trips) (includes design through construction phases)	\$	11,200
Total A/E Compensation	\$	71,200

- Services will be further defined as the scope of work is developed.
- Work in the detention cells will be limited to painting. If the State of Oklahoma requires additional work in the detention cells, services can be provided with a mutually agreed upon amendment.
- Additional trips beyond what is included above will be scheduled to coordinate with Fire Station design and construction meetings.
- Landscape architectural services and sitework are not included.
- Furniture selection and specification are included. If this service is not desired, reduce fee by \$2,000.
- Bid documents will be issued electronically.
- This does not include owner costs such as hazardous material discovery and abatement.

Estimated New Fire Station / Police Rehab Budget

Total (8 years sales tax 52% of 95% approved) \$5,000,000+

Fire

A/E + Services	\$332,622	
Land	\$175,000	
Project Construction	\$3,000,000	(includes FFE)
10% Contingency	\$300,000	
Debt Service	\$595,000	
(\$3.5M 4% 8 years)		

Total Cost Fire \$4,402,622

Police

A/E Services	\$71,200	
Project Construction	\$450,000	
10% Contingency	\$45,000	
FFE	\$35,000	
(5% Contingency to add to FFE)		

Total Cost PD \$601,200

Combined Both Projects: Total \$5,003,822

AIA[®] Document B104[™] – 2007

Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope

AGREEMENT made as of the Thirty-first day of August in the year Two Thousand Eleven
(*In words, indicate day, month and year.*)

BETWEEN the Architect's client identified as the Owner:
(*Name, legal status, address and other information*)

Steve Hewitt
City Manager
City of Clinton, Oklahoma
City Hall
415 W. Gary Boulevard
Clinton, OK 73601

and the Architect:
(*Name, legal status, address and other information*)

GLMV Architecture, Inc.
420 S. Emporia
Wichita, KS 67202

Architect's Project Number 11106.000

for the following Project:
(*Name, location and detailed description*)

Remodel the existing Clinton Police Department located at 401 W. Gary Boulevard,
Clinton, Oklahoma 73601

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)

The budget for the Project is \$500,000, which includes contingency and FF&E. Work in the detention cells is limited to painting. The Owner will provide a set of existing condition drawings to the Architect for their use. The Architect's consultants will be Professional Engineering Consultants, P.A. (PEC). Furniture selection and specifications are included. If not requested by the Owner, the Fee will be reduced by \$2,000.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, interior design, mechanical, and electrical engineering services.

§ 3.1.1 The Architect shall be entitled to rely on (1) the accuracy and completeness of the information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services in effect at the date of this Agreement.

§ 3.2.2 The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the Project requirements.

§ 3.2.3 The Architect shall consider the relative value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner a preliminary estimate of the Cost of the Work.

§ 3.2.5 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.6 The Architect shall submit the Design Documents to the Owner, and request the Owner's approval.

§ 3.3 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

§ 3.3.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.3.3 The Architect shall update the estimate for the Cost of the Work.

§ 3.3.4 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.3.5 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in awarding and preparing contracts for construction. Bid Documents will be issued electronically by the Architect.

§ 3.4 CONSTRUCTION PHASE SERVICES

§ 3.4.1 GENERAL

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. If the Owner and Contractor modify AIA Document A107-2007, those modifications

shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.4.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.4.1.3 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.4.2 EVALUATIONS OF THE WORK

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.1, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.4.2.4 When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.4.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.4.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents.

§ 3.4.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.4.4 SUBMITTALS

§ 3.4.4.1 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures.

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

§ 3.4.5 CHANGES IN THE WORK

The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.4.6 PROJECT COMPLETION

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, value analysis, quantity surveys, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement.

(Insert a description of each Additional Service the Architect shall provide, if not further described in an exhibit attached to this document.)

§ 4.2 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect has included in Basic Services ten (10) site visits over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service. Additional site visits beyond Basic Services will be scheduled to coordinate with the Fire Station design and construction meetings.

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§ 4.2.2 The Architect shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by Change Orders and Construction Change Directives prepared by the Architect as an Additional Service.

§ 4.2.3 If the services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, tests for hazardous materials, and abatement, if needed.

§ 5.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of

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the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the program and scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the bidding has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's current budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Owner acknowledges the Architect's Drawings, related analysis and Construction Documents, including electronic files, as Instruments of Professional Service. Nevertheless, the final Construction Documents prepared under this Agreement shall become the property of the Owner upon completion of the services and payment in full of all monies due to the Architect. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, employees and subconsultants (collectively, Architect) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the Drawings and Construction Documents by the Owner or any person or entity that acquires or obtains the Construction Documents from or through the Owner without the written authorization of the Architect.

§ 7.2 In the event the Owner, the Owner's contractors or subcontractors, or anyone for whom the Owner is legally liable makes or permits to be made any changes to any reports, Drawings, Plans, Specifications or other Construction Documents prepared by the Architect without obtaining the Architect's prior written consent, the Owner shall assume full responsibility for the results of such changes. Therefore the Owner agrees to waive any claim against the Architect and to release the Architect from any liability arising directly or indirectly from such changes. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the

Architect from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense arising from such changes.

§ 7.3 In addition, the Owner agrees to include in any contracts for construction appropriate language that prohibits the Contractor or any subcontractors of any tier from making any changes or modifications to the Architect's construction documents without the prior written approval of the Architect and that further requires the Contractor to indemnify both the Architect and the Owner from any liability or cost arising from such changes made without such proper authorization.

(Paragraphs deleted)

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ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive against the other consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Clinton, Oklahoma, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation and venue exclusively shall be in the District Court of Custer County, Oklahoma

Other *(Specify)*

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(Paragraphs deleted)

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ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than 30 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 Either party may terminate this Agreement upon not less than 30 days' written notice to the other party for convenience and without cause, subject to payment to the Architect for the value of services rendered up to the time of termination.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

(Paragraph deleted)

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ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Oklahoma, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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

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§ 10.6 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services as described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

| A lump sum amount of \$66,200, plus estimated Reimbursable Expenses of \$5,000.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

| A lump sum amount to be agreed upon by both parties prior to beginning the Additional Services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

| A lump sum amount to be agreed upon by both parties prior to beginning the Additional Services.

| § 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus fifteen percent (15%), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Design Development Phase	twenty-five	percent (25	%)
Construction Documents Phase	fifty-five	percent (55	%)
Construction Phase	twenty	percent (20	%)
<hr/>				
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

Init.

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10%) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3 or 9.5, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

An amount to be determined by the Architect, plus receipt of a signed release, paid prior to the release of the Instruments of Service. The Instruments of Service shall include all engineering disciplines included in this Agreement.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty-one (31) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

1.5% per month

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to off set sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

Init.

12.1 Sales Tax. In the event the laws of the State of Kansas should change in such a way so as to require the Architect to charge sales tax for the Services and Reimbursable Expenses to be invoiced to the Owner under this Agreement, any such sales tax due shall be payable by the Owner in addition to the Compensation otherwise due under this Agreement.

12.2 Mutual Indemnity. The Architect agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Architect's negligent performance of Professional Services under this Agreement and that of its subconsultants or anyone for whom the Architect is legally liable. The Architect's indemnity and hold harmless liability shall be subject to the Limitation of Liability amount set forth in Section 12.3.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, director and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Owner's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Owner is legally liable.

Neither the Owner nor the Architect shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

12.3 Limitation of Liability. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Architect and the Architect's officers, directors, insurers, partners, employees and subconsultants, and any of them, to the Owner and anyone claiming by or through the Owner, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total amount of the Architect's Fee. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

12.4 Availability of Professional Liability Insurance. The Architect agrees to attempt to maintain professional liability coverage for the period of design and construction of the Project, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the architects practicing the same professional discipline in the state where the project is located are able to obtain such coverage.

12.5 Attorneys' Fees. In the event of any dispute resolution arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation. In the even of a non-adjudicative settlement of litigation between the parties or a resolution of a dispute by mediation or arbitration, the term "prevailing party" shall be determined by that process.

12.6 Utilizing CAD Drawings. The Owner and the Architect agree that any CAD files prepared by either party shall conform to the specifications listed in the attached Exhibit. The electronic files submitted by the Architect to the Owner are submitted for an acceptance period of 30 days. Any defects the Owner discovers during this period will be reported to the Architect and will be corrected as part of the Architect's Basic Scope of Services. Correction of defects detected and reported after the acceptance period will be compensated for as Additional Services.

The Owner further agrees not to use these drawings and data, in whole or in part, for any purpose or project other than the Project which is the subject of this Agreement. The Owner agrees to waive all claims against the Architect resulting in any way from any unauthorized changes or reuse of the drawings and data for any other project by anyone other than the Architect.

In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost, including reasonable attorneys' fees and costs of defense, arising from any changes made by anyone other than the Architect or from any reuse of the drawings and data without the prior written consent of the Architect.

Init.

Under no circumstances shall transfer of the drawings and other instruments of service on electronic media for use by the Owner be deemed a sale by the Architect, and the Architect makes no warranties, either express or implied, of merchantability and fitness for any particular purpose.

12.7 Severability: Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted, and the remainder of this Agreement shall remain in full force and effect.

12.8 Survival: Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

12.9 Certifications, Guarantees and Warranties: The Architect shall not be required to sign any documents, no matter by whom requested, that would result in the Architects having to certify, guarantee or warrant the existence of conditions whose existence the Architect cannot ascertain. The Owner also agrees not to make resolutions of any dispute with the Architect or payment of any amount due to the Architect in any way contingent upon the Architect's signing any such certification. As used herein, the word "certify" shall mean an expression of the Architect's professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by the Architect.

12.10 Force Majeure: The Owner shall not hold the Architect responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the Architect, or that could not have been reasonably foreseen and prevented including, but not limited to, fire, weather, floods, earthquakes, epidemics, war, riots, terrorism, strikes, and unanticipated site conditions.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement incorporates the following documents listed below:
(List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)

Exhibit B – CADD Standards

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

Steve Hewitt, City Manager

Jeffrey W. Weiford, AIA, LEED AP BD+C
Vice President

(Printed name and title)

(Printed name and title)

Additions and Deletions Report for AIA® Document B104™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:28:50 on 09/01/2011.

PAGE 1

AGREEMENT made as of the Thirty-first day of August in the year Two Thousand Eleven

...

(Name, legal status, address and other information)

Steve Hewitt
City Manager
City of Clinton, Oklahoma
City Hall
415 W. Gary Boulevard
Clinton, OK 73601

...

GLMV Architecture, Inc.
420 S. Emporia
Wichita, KS 67202
Architect's Project Number 11106.000

...

Remodel the existing Clinton Police Department located at 401 W. Gary Boulevard, Clinton, Oklahoma 73601

PAGE 2

The budget for the Project is \$500,000, which includes contingency and FF&E. Work in the detention cells is limited to painting. The Owner will provide a set of existing condition drawings to the Architect for their use. The Architect's consultants will be Professional Engineering Consultants, P.A. (PEC). Furniture selection and specifications are included. If not requested by the Owner, the Fee will be reduced by \$2,000.

...

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, interior design, mechanical, and electrical engineering services.

PAGE 3

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's ~~services~~services in effect at the date of this Agreement.

...

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User Notes:

(2000832873)

§ 3.3.5 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in awarding and preparing contracts for construction. Bid Documents will be issued electronically by the Architect.

PAGE 5

§ 4.1 Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, ~~measured drawings of existing conditions~~, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, value analysis, quantity surveys, ~~interior architectural design~~, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement.

...

§ 4.2.1 The Architect has included in Basic Services ~~(—) ten (10)~~ site visits over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service. Additional site visits beyond Basic Services will be scheduled to coordinate with the Fire Station design and construction meetings.

PAGE 6

§ 4.2.3 If the services covered by this Agreement have not been completed within ~~(—) twelve (12)~~ months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

...

§ 5.5 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, ~~and tests for hazardous materials, materials, and abatement, if needed.~~

PAGE 7

§ 7.1 ~~The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.~~ Owner acknowledges the Architect's Drawings, related analysis and Construction Documents, including electronic files, as Instruments of Professional Service. Nevertheless, the final Construction Documents prepared under this Agreement shall become the property of the Owner upon completion of the services and payment in full of all monies due to the Architect. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, employees and subconsultants (collectively, Architect) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the Drawings and Construction Documents by the Owner or any person or entity that acquires or obtains the Construction Documents from or through the Owner without the written authorization of the Architect.

§ 7.2 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.~~ In the event the Owner, the

Owner's contractors or subcontractors, or anyone for whom the Owner is legally liable makes or permits to be made any changes to any reports, Drawings, Plans, Specifications or other Construction Documents prepared by the Architect without obtaining the Architect's prior written consent, the Owner shall assume full responsibility for the results of such changes. Therefore the Owner agrees to waive any claim against the Architect and to release the Architect from any liability arising directly or indirectly from such changes. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense arising from such changes.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. In addition, the Owner agrees to include in any contracts for construction appropriate language that prohibits the Contractor or any subcontractors of any tier from making any changes or modifications to the Architect's construction documents without the prior written approval of the Architect and that further requires the Contractor to indemnify both the Architect and the Owner from any liability or cost arising from such changes made without such proper authorization.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§

PAGE 8

§ 8.1.3 The Architect and Owner waive against the other consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

...

§ 8.2.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, Clinton, Oklahoma, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

...

~~[]~~ ~~Litigation in a court of competent jurisdiction~~ ~~X~~ Litigation and venue exclusively shall be in the District Court of Custer County, Oklahoma

PAGE 9

§ 8.3 ARBITRATION

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 8.3.4 CONSOLIDATION OR JOINDER

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration; provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

~~§~~

...

~~§ 9.4 Either party may terminate this Agreement upon not less than seven-30 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.~~

~~§ 9.5 The Owner~~ Either party may terminate this Agreement upon not less than seven-days' written notice to the Architect for the Owner's convenience and without cause. 30 days' written notice to the other party for convenience and without cause, subject to payment to the Architect for the value of services rendered up to the time of termination.

~~§ 9.6~~ In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then ~~due and all Termination Expenses as defined in Section 9.7:~~ due.

~~§ 9.7~~ Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

~~§~~

~~§ 10.1~~ This Agreement shall be governed by the law of the ~~place where the Project is located,~~ State of Oklahoma, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

PAGE 10

A lump sum amount of \$66,200, plus estimated Reimbursable Expenses of \$5,000.

...

A lump sum amount to be agreed upon by both parties prior to beginning the Additional Services.

...

A lump sum amount to be agreed upon by both parties prior to beginning the Additional Services.

~~§ 11.4~~ Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~percent (—%),~~ fifteen percent (15%), or as otherwise stated below:

...

Design Development Phase	<u>twenty-five</u>	percent (<u>25</u>)
Construction Documents Phase	<u>fifty-five</u>	percent (<u>55</u>)
Construction Phase	<u>twenty</u>	percent (<u>20</u>)

PAGE 11

~~§ 11.8.2~~ For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~percent (—%)~~ ten percent (10%) of the expenses incurred.

...

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section ~~9.3, 9.3 or 9.5,~~ the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

An amount to be determined by the Architect, plus receipt of a signed release, paid prior to the release of the Instruments of Service. The Instruments of Service shall include all engineering disciplines included in this Agreement.

...

~~§ 11.10.1~~ An initial payment of (~~\$—~~) zero (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (~~—~~thirty-one (31) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

%—1.5% per month

PAGE 12

12.1 Sales Tax. In the event the laws of the State of Kansas should change in such a way so as to require the Architect to charge sales tax for the Services and Reimbursable Expenses to be invoiced to the Owner under this Agreement, any such sales tax due shall be payable by the Owner in addition to the Compensation otherwise due under this Agreement.

12.2 Mutual Indemnity. The Architect agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Architect's negligent performance of Professional Services under this Agreement and that of its subconsultants or anyone for whom the Architect is legally liable. The Architect's indemnity and hold harmless liability shall be subject to the Limitation of Liability amount set forth in Section 12.3.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, director and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Owner's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Owner is legally liable.

Neither the Owner nor the Architect shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

12.3 Limitation of Liability. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Architect and the Architect's officers, directors, insurers, partners, employees and subconsultants, and any of them, to the Owner and anyone claiming by or through the Owner, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total amount of the Architect's Fee. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

12.4 Availability of Professional Liability Insurance. The Architect agrees to attempt to maintain professional liability coverage for the period of design and construction of the Project, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the architects practicing the same professional discipline in the state where the project is located are able to obtain such coverage.

12.5 Attorneys' Fees. In the event of any dispute resolution arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation. In the even of a non-adjudicative settlement of litigation between the parties or a resolution of a dispute by mediation or arbitration, the term "prevailing party" shall be determined by that process.

12.6 Utilizing CAD Drawings. The Owner and the Architect agree that any CAD files prepared by either party shall conform to the specifications listed in the attached Exhibit. The electronic files submitted by the Architect to the Owner are submitted for an acceptance period of 30 days. Any defects the Owner discovers during this period will be reported to the Architect and will be corrected as part of the Architect's Basic Scope of Services. Correction of defects detected and reported after the acceptance period will be compensated for as Additional Services.

The Owner further agrees not to use these drawings and data, in whole or in part, for any purpose or project other than the Project which is the subject of this Agreement. The Owner agrees to waive all claims against the Architect resulting in any way from any unauthorized changes or reuse of the drawings and data for any other project by anyone other than the Architect.

In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost, including reasonable attorneys' fees and costs of defense, arising from any changes made by anyone other than the Architect or from any reuse of the drawings and data without the prior written consent of the Architect.

Under no circumstances shall transfer of the drawings and other instruments of service on electronic media for use by the Owner be deemed a sale by the Architect, and the Architect makes no warranties, either express or implied, of merchantability and fitness for any particular purpose.

12.7 Severability: Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted, and the remainder of this Agreement shall remain in full force and effect.

12.8 Survival: Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

12.9 Certifications, Guarantees and Warranties: The Architect shall not be required to sign any documents, no matter by whom requested, that would result in the Architects having to certify, guarantee or warrant the existence of conditions whose existence the Architect cannot ascertain. The Owner also agrees not to make resolutions of any dispute with the Architect or payment of any amount due to the Architect in any way contingent upon the Architect's signing any such certification. As used herein, the word "certify" shall mean an expression of the Architect's professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by the Architect.

12.10 Force Majeure: The Owner shall not hold the Architect responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the Architect, or that could not have been reasonably foreseen and prevented including, but not limited to, fire, weather, floods, earthquakes, epidemics, war, riots, terrorism, strikes, and unanticipated site conditions.

PAGE 13

Exhibit B – CADD Standards

...

Steve Hewitt, City Manager

Jeffrey W. Weiford, AIA, LEED AP BD+C
Vice President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Bronda Robbins, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:28:50 on 09/01/2011 under Order No. 7557850234_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B104™ – 2007, Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

EXHIBIT B

CADD files shall be developed according to the following standards:

- A. The software used shall be AutoCAD Release 2008 or newer. All information provided or received shall be in the .dwg format. Architect may, at his option, use the Revit Architecture software as sold by Autodesk. "Object Enablers" may be obtained, free of charge, from Autodesk for compatibility with other AutoCAD products.
- B. The CADD files shall conform to the Architect's standard drawing conventions. This standard includes but is not limited to the following information:
 - 1. All drawings shall be drawn at full scale (1" = 1").
 - 2. Layering Conventions: The Architect's layering conventions are based on the AIA layering guidelines.
 - 3. X-referencing: The use of x-referencing will be used as desired by the Architect to efficiently manage the project. When the project is archived, all x-references shall be included in the same directory as the sheet files. X-references will not be bound to each drawing file or separately blocked into the drawing files.
 - 4. Paperspace/modelspace shall be used to create plotted sheet files with one sheet set-up per drawing. Title blocks, if used, should be created in Paperspace for 1:1 plot scale.
 - 5. Text and dimension style formats shall be based on the Architect's standards.
 - 6. Plotting Standards: The Architect's plot setups shall be used. This shall include line weight designations, layer color assignments, sheet size and plotter configurations.
- C. At the request of the Owner, the Architect will supply complete CADD deliverables of the Construction Documents based on the format established above. The deliverables shall be provided on a "read-only" compact disk. This information will be provided to the Owner after the bid process is complete. This information will also be made available to the successful contractor at the discretion of the Architect. This information will not include any changes made to project after the project has been sent out for bid.
- D. File transfer may be delivered in one of the following methods:
 - 1. Compact disk
 - 2. E-mail: Please limit attached file size to 10 megabytes.
 - 3. FTP Site: The Architect's FTP site is available for transfer of large files or numerous files. Access to this web site requires specific passwords to be set up for each new user.
 - 4. Files may be compressed to a zip file or any self-extracting compression format to facilitate transfer.
- E. All CADD files received by the Architect shall conform to the following standards:
 - 1. The drawings shall be in a .dwg format and must be readable by AutoCAD Release 2008 or newer.
 - 2. The drawings shall be drawn at full scale.
 - 3. All file names shall conform to the Architect's standard drawing conventions.
 - 4. All components of such files that were created with an AutoCAD DESKTOP product, or similar AutoCAD add-on or plug-in, shall be exploded to base AutoCAD entities.

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5. All components, internal and external, of such files shall be included, such as, but not limited to:
 - a. Externally referenced drawings.
 - b. Attached images.
 - c. Required special fonts, shape files and line type files.
 - d. Plotter pen tables.
 - e. Drawing and file list in Excel.

- F. Word processing files must be readable by WordPerfect X3 or MS Word 7.0.