



McAlester City Council

NOTICE OF MEETING

Regular Meeting Agenda

Thursday, March 12, 2008 – 6:00 pm
McAlester City Hall – Council Chambers
28 E. Washington

Don Lewis	Mayor
Weldon Smith	Ward One
Donnie Condit	Ward Two
Travis Read	Ward Three
Haven Wilkinson	Ward Four
Buddy Garvin	Ward Five
Sam Mason	Vice-Mayor, Ward Six
Mark B. Roath	City Manager
Robert Ivester	City Attorney
Cora M. Middleton	City Clerk

This agenda has been posted at the McAlester City Hall, distributed to the appropriate news media, and posted on the City website: www.cityofmcalester.com within the required time frame.

The Mayor and City Council request that all cell phones and pagers be turned off or set to vibrate. Members of the audience are requested to step outside the Council Chambers to respond to a page or to conduct a phone conversation.

The McAlester City Hall is wheelchair accessible. Sign interpretation or other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 918.423.9300, Extension 4956.

CALL TO ORDER

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

- **Father Leonard Higgins, St. John's Catholic Church**

ROLL CALL

CITIZENS COMMENTS ON NON-AGENDA ITEMS

Residents may address Council regarding an item that is not listed on the Agenda. Residents must provide their name and address. Council requests that comments be limited to five (5) minutes.

CONSENT AGENDA

All matters listed under the Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- A. **Approval of the Minutes from the February 26, 2008, Regular Meeting of the City Council.** *(Cora Middleton, City Clerk)*
- B. **Concur with Mayor's reappointment of David Verner to the Airport Advisory Board with a term to expire on January, 2010.** *(Cora Middleton, City Clerk)*
- C. **Concur with the Mayor's reappointment of Mike Hogan to the Airport Advisory Board with a term to expire on January, 2010.** *(Cora Middleton, City Clerk)*
- D. **Concur with the Mayor's reappointment of Bob Ettner to the Airport Advisory Board with a term to expire on January, 2010.** *(Cora Middleton, City Clerk)*
- E. **Concur with the Mayor's reappointment of Steve Otis to the Airport Advisory Board with a term to expire on January, 2010.** *(Cora Middleton, City Clerk)*
- F. **Approval of Claims for the period of February 27th through March 11th, 2008.** *(Sherry Alessi, Assistant City Treasurer)*

ITEMS REMOVED FROM CONSENT AGENDA

SCHEDULED BUSINESS

1. **Consider, and act upon, a resolution extending the Cable Television Franchise.** *(Sheila Morris, Government Relations and Office Administrator, Allegiance Communications, LLC)*

Executive Summary

Allegiance Communications is requesting an extension to their present franchise.

2. **Consider, and act upon, an Ordinance authorizing the City of McAlester to submit revised Charter for a vote of the people.** *(Tim Wynn and Weldon Smith, Charter Review Committee)*

Executive Summary

This Ordinance authorizes the submittal of the revised Charter for a vote of the people.

3. **Consider, and act upon, a Resolution setting date for revised Charter election.** *(Tim Wynn and Weldon Smith, Charter Review Committee)*

Executive Summary

The Resolution sets the date of the revised Charter election.

4. **Discussion, and possible action, concerning amendment of the City of McAlester "skateboard" Ordinance, Section 102-15 entitled, Use of Roller Skates, Skateboards, etc., on Roadways and Sidewalks.** *(Weldon Smith, Councilmember)*

Executive Summary

Councilmember Weldon Smith is requesting that the City Manager and City Attorney develop and present appropriate amendments to Section 102.15 no later than the first regular Council meeting in April.

5. **Discussion, and possible action, concerning amendment of the City of McAlester Code, Section 10 entitled Animals.** *(Weldon Smith, Councilmember)*

Executive Summary

Councilmember Weldon Smith is requesting that the City Manager and City Attorney develop and present appropriate amendments to Section 10 or a rewritten Section 10 no later than the second regular Council meeting in April.

- 6. **Discussion, and possible action, concerning adoption of the draft proposed charter language regarding the budget process and the capital program process (with slight modifications) for fiscal year 2008-09.** *(Weldon Smith, Councilmember)*

Executive Summary

Councilmember Weldon Smith is proposing that the City comply with the proposed revised Charter related to the budget for FY 2008/2009.

- 7. **Consider, and possible action, on a Seismic Survey Permit request from Geokinetics, Inc., on City-owned property including approval to place seismic cables/geophones inside the City limits on public right-of-way.** *(George Marcangeli, City Engineer and Public Works Director)*

Executive Summary

Geokinetics, Inc. is requesting a permit for seismic survey on City-owned property and placement of seismic cables and geophones on public right-of-way, which they propose to pay the City \$20,000.00.

- 8. **Consider, and act upon, a Contract for Engineering Services with NRS, Inc. for a CDBG Small Cities water and sewer project in southwest McAlester.** *(George Marcangeli, City Engineer and Public Works Director)*

Executive Summary

The City proposes to engage NRS, Inc., for an amount of \$22,100.00, to perform engineering services related to a CDBG Small Cities Grant for water and sewer improvements.

- 9. **Consider, and act upon, proposed Water Purchase Contracts with Pittsburg County Rural Water District No. 5; Pittsburg County Rural Water District No. 9 and Pittsburg County Rural Water District No. 16.** *(George Marcangeli, City Engineer and Public Works Director)*

Executive Summary

The Contracts involve an increase in the wholesale water rate to \$2.56 per 1,000 gallons for these rural water districts during this calendar year.

- 10. **Consider, and act upon, a Resolution abolishing the position of Assistant City Engineer and establishing the new Utilities Director position within the City of McAlester Classification and Compensation Plan.** *(Mark B. Roath, City Manager)*

Executive Summary

On January 8, 2008, the City Council adopted an ordinance establishing the Utilities Department and creating the position of Utilities Director to head the department. This Resolution places the Utilities Director within the current City Classification and Compensation Plan. In addition, this Resolution abolishes the position of Assistant City Engineer, since that individual will be promoted to Utilities Director after approval of this legislation.

NEW BUSINESS

Any matter not known or which could not have been reasonably foreseen prior to the time of posting the Agenda in accordance with Sec. 311.9, Title 25, Oklahoma State Statutes.

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY CITY COUNCIL

RECESS COUNCIL MEETING**CONVENE AS McALESTER AIRPORT AUTHORITY**

Majority of a Quorum required for approval

- **Approval of the Minutes from the February 26, 2008, Regular Meeting of the McAlester Airport Authority.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item B regarding Mayor's reappointment of David Verner to the Airport Advisory Board with a term to expire on January, 2010.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item C regarding Mayor's reappointment of Mike Hogan to the Airport Advisory Board with a term to expire on January, 2010.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item D regarding Mayor's reappointment of Bob Ettner to the Airport Advisory Board with a term to expire on January, 2010.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item E regarding Mayor's reappointment of Steve Otis to the Airport Advisory Board with a term to expire on January, 2010.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item F regarding the Claims for the period of February 27th through March 11th, 2008.** *(Sherry Alessi, Assistant City Treasurer)*

ADJOURN MAU**CONVENE AS McALESTER PUBLIC WORKS AUTHORITY**

Majority of a Quorum required for approval

- **Approval of the Minutes from the February 26, 2008, Regular Meeting of the McAlester Public Works Authority.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item 6 regarding adoption of the draft proposed charter language regarding the budget process and the capital program process (with slight modifications) for fiscal year 2008-09.** *(Weldon Smith, Councilmember)*
- **Confirm action taken on City Council Agenda Item 7 regarding a Seismic Survey Permit request from Geokinetics, Inc., on City-owned property including approval to place seismic cables/geophones inside the City limits on public right-of-way.** *(George Marcangeli, City Engineer and Public Works Director)*
- **Confirm action taken on City Council Agenda Item 8 regarding a Contract for Engineering Services with NRS, Inc. for a CDBG Small Cities water and sewer project in southwest McAlester.** *(George Marcangeli, City Engineer and Public Works Director)*
- **Confirm action taken on City Council Agenda Item 9 regarding proposed Water Purchase Contracts with Pittsburg County Rural Water District No. 5, Pittsburg County Rural Water District No.9 and Pittsburg County Rural Water District No. 16.** *(George Marcangeli, City Engineer and Public Works Director)*

- **Confirm action taken on City Council Agenda Item 10 regarding a Resolution abolishing the position of Assistant City Engineer and establishing the new Utilities Director position within the City of McAlester Classification and Compensation Plan.** (*Mark B. Roath, City Manager*)
- **Confirm action taken on City Council Agenda Item F regarding the Claims for the period of February 27th through March 11th, 2008.** (*Sherry Alessi, Assistant City Treasurer*)

ADJOURN MPWA

ADJOURNMENT

CERTIFICATION

I certify that this Notice of Meeting was posted on this ___ day of ____, 2008 at ___ a.m./ p.m. as required by law in accordance with Section _____ of the Oklahoma Statutes and that the appropriate news media was contacted. As a courtesy, this agenda is also posted on the City of McAlester website: www.cityofmcalester.com.

Cora M. Middleton, City Clerk

Council Chambers
Municipal Building
February 26, 2008

The McAlester City Council met in regular session on Tuesday, February 26, 2008, at 6:00 P.M. after proper notice and agenda was posted February 22, 2008, at 5:00 P.M.

CALL TO ORDER

Mayor Lewis called the meeting to order. Council Roll Call was as follows:

Present: Buddy Garvin, Haven Wilkinson, Sam Mason, Weldon Smith, Travis Read,
Donnie Condit & Mayor Lewis

Absent: None

Presiding: Don Lewis, Mayor

Staff Present: George Marcangeli, City Engineer/Public Works Director; Jim Lyles, Police Chief; Robert Ivester, City Attorney and Cora Middleton, City Clerk

INVOCATION & PLEDGE OF ALLEGIANCE

- **Terren Anderson Pastor, Life Church**

Mayor Lewis led the Pledge of Allegiance.

CITIZENS' COMMENTS ON NON-AGENDA ITEMS

Joyce Carlson addressed the Council regarding the form that had been mailed with the latest utility statement.

Mark Roath answered Ms. Carlson's questions concerning the form and explained that some of the requested information was optional and that unfortunately that had not been made clear on the form.

Steve Foster addressed the Council regarding the budget adjustments and the upcoming budget.

Mark Roath answered Mr. Foster's concerns stating that the new City Treasurer would be on board by March 10 and he would see that this information was given to the new City Treasurer.

Councilman Read commented that the City couldn't wait for the City Treasurer and that we owe the Audit & Finance Committee an answer before April.

Mark Roath stated that he had just received the information from Mr. Foster and he could not respond or commit to something he had not read.

Councilman Garvin commented that he had also just received this information along with several other items, none of which were signed or dated. He asked that in the future any items that were distributed to please be signed and dated.

CONSENT AGENDA

All matters listed under the Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- A. Approval of the Minutes from the January 22, 2008, Regular Meeting of the City Council. (Cora Middleton, City Clerk)**
- B. Approval of the Minutes from the January 24, 2008, Special Meeting of the City Council. (Cora Middleton, City Clerk)**
- C. Approval of the Minutes from the February 05, 2008, Special Meeting of the City Council. (Cora Middleton, City Clerk)**
- D. Approval of the Minutes from the February 08, 2008, Special Meeting/Retreat of the City Council. (Cora Middleton, City Clerk)**
- E. Approval of the Minutes from the February 12, 2008, Regular Meeting of the City Council. (Cora Middleton, City Clerk)**
- F. Concur with Mayor’s appointment of Steve Brock to the Personnel Board replacing R. Vernon “Doc” Bee for a term to expire April 2009. (Don Lewis, Mayor)**
- G. Concur with Mayor’s appointment of Charlotte Donathan to the McAlester Regional Health Center Authority with a term to expire February 2014. (Don Lewis, Mayor)**
- H. Approval of Claims for the period of February 13, 2008 through February 26, 2008. (Sherry Alessi, Assistant City Treasurer) In the amounts of: General Fund - \$213,547.84; Nutrition - \$323.21; C.O.P.S./Grant - \$6,142.00; SE Expo Ctr/Tourism Fund - \$15,012.29 and E-911 - \$2,170.05.**

Councilman Read moved to approve the consent agenda. The motion was seconded by Councilman Mason.

There was no discussion and the vote was taken as follows:

AYE: Councilman Smith, Condit, Read, Wilkinson, Garvin, Mason & Mayor Lewis
NAY: None

Mayor Lewis declared the motion carried.

ITEMS REMOVED FROM CONSENT AGENDA

None

SCHEDULED BUSINESS

1. Presentation, and possible action, regarding Ward Four City Council representation. (Joyce Carlson, Resident)

Executive Summary

On Tuesday, February 19, 2008, Mrs. Joyce Carlson submitted a letter requesting the opportunity to address the City Council regarding Ward Four representation.

Joyce Carlson addressed the Council regarding the availability of the Ward Four Councilman Haven Wilkinson. Ms. Carlson asked Councilman Wilkinson the following questions:

1. Haven, is it true that during this past year that you did not live in your 4th Ward house for approximately 3 months and at present you reside there only part time? Yes, your pickup is seen there full time and you probably receive your mail there, but are you actually living there?
2. What number (s) can you be reached at? Can you be reached at your place of employment?
3. What is your authentic email address and do you ever respond to email when received?
4. Do you feel that you make yourself available to the people of 4th Ward to serve our needs? Can you tell us one thing you have done as a councilman to make our ward a better place to live in?
5. Do you consider your Oath of Office as a councilman to be binding upon you? If so, how can you demonstrate your commitment to 4th Ward since no one can ever reach you to discuss city matters of any sort with you?

Councilman Wilkinson answered each of the questions as follows:

1. That was false, he always has lived there, he gets his mail there and his agenda there. He added that he had addressed this with Ms. Carlson a year ago.
2. He stated that his phone number is listed in the phone book and on the website. He stated that she had his cell phone number. He had given it to her at one time and she had contacted him on his cell phone. He then stated that he would prefer that he was not contacted at his place of employment.
3. He answered that he has the City of McAlester email address and yes, he does respond to his emails. He added that he can't say that he responds to everyone and there was one particular individual. He stated that he and the particular individual had issues that were between them and not with Ms. Carlson.
4. He answered that he did feel that he made himself available to the citizens of 4th Ward. He stated that one of the issues occurred as of last week. He had received

complaints about traffic on “D” street and he conveyed that information to the City Manager and the Chief of Police has responded. He added that this had been forwarded to George Marcangeli to review the potential for a stop sign in that area.

Mark Roath confirmed that Councilman Wilkinson had informed him of the situation and that he continually conveys information about 4th Ward to his office.

5. Councilman Wilkinson asked Ms. Carlson to clarify “no one”.

She retracted and said that someone must have contacted him regarding the stop sign. She then made the following statement. “If you are not available to be a Councilman I would suggest that you would resign because I do not think you are being a true 4th Ward Councilman because you are not available to the people.”

Councilman Garvin stated that Councilman Wilkinson had attended the tour in his ward and that he was one of the three Councilmen that attended meetings when new business prospects were considered.

2. Discussion, and possible action, concerning the policy to be followed in determining the upcoming budget adjustments for fiscal year 2007-2008 and the budget for fiscal year 2008-2009. (Weldon Smith, Councilmember)

Executive Summary

This item relates to the recent City Council retreat held on February 8th and 9th, which the facilitator has provided a written report.

Councilman Smith stated that the retreat was a good start at planning the direction the City would be going for the upcoming budget and he would like to see that the process was continued. He then read the following from a handout that he had distributed to the Council.

“A two-day planning session for the City of McAlester was held on 8-9 Feb. 08 with participation by citizens of McAlester, city councilmen, and city administrators. Dana Shadid, the facilitator, has submitted a Report of the Results of that planning activity. This report outlines the ideas that the participants developed and some of the activities that remain to be accomplished.”

“Mrs. Shadid recommended several steps to accomplish the task of turning this planning event into action and improvements for the City of McAlester which I have paraphrased below”

Councilman Smith then stated that he would like to make an amended motion that the following recommendations be accepted and a committee or committees be appointed by the Mayor to begin the task of seeing that these recommendation are carried out:

1. Form a committee to see that all suggestions for specific actions resulting from this planning event have champions(s) and that timelines for them are established;
2. Form a small committee to complete a McAlester Mission Statement, Vision Statement and Set of Values to present to the city council and staff for consideration.

3. Continue to add “steps” to the various action plans that were drafted at the meeting.
4. Have updates presented at least once a month at city council meetings to demonstrate to the community that action is being taken as a result of this planning event.

Mayor Lewis suggested that the Council conduct a workshop to address the major items because they could not and should not address all of the items. He also stated that the Council should accept the report as a guideline.

Mayor Lewis then asked for a motion to accept the report and then as soon as it was appropriate schedule a workshop for the Council and the administration to set some priorities and establish some timelines.

Councilman Condit moved to accept the report and to schedule a workshop for the Council and the administration as soon as appropriate to set priorities and establish timelines. The motion was seconded by Councilman Mason.

Before the vote, Mark Roath stated that if it was okay with the Council, the handout would be added to the packet on the website so the public would have access to the information.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Condit, Read, Wilkinson, Garvin, Mason, Smith & Mayor Lewis

NAY: None

Mayor Lewis declared the motion carried.

- 3. Discussion, and possible action, concerning the determination of the permitted uses, if any, of sales tax revenue received in excess of that needed to make required principal and interest payments on the Series 1999A, 1999B, and 2002 McAlester Public Works Authority bond issues. (Weldon Smith, Councilmember)**

Executive Summary

This item relates to the excess revenue generated by the third penny sales tax and how it should be used.

Councilman Smith asked that Steve Harrison speak regarding this issue.

Steve Harrison addressed the Council explaining the sales tax breakdown. He stated that the issue was; what were the permitted uses of the excess revenue from the third penny sales tax? He stated that this was raised at an Audit & Finance Committee meeting on December 12, 2007. He stated that the language on the ballot for the 2002 sales tax election appeared to indicate that the receipts could only be used to make the principal and interest payments and could not be used for any other purpose. He commented that the City had assumed the excess could be used for capital improvements since that was what the bond issue had been for. He stated that the City had sought out a legal opinion to clarify the issue. He then quoted from the opinion of Allen Brooks, an attorney with the Public Finance Law Group in Oklahoma City.

Mr. Harrison commented that there were a couple of things that he felt needed to be pointed out about the legal opinion. He stated the first item was that Mr. Brooks had only been asked for an opinion on the 2002 Sales Tax ballot language which had been based on Ordinance No. 2144. He added that he believed that the same issue existed with the 1999 Sales Tax ballot language which was based on Ordinance No. 2091. The second thing that Mr. Harrison wanted to point out was that Mr. Brooks had been asked to determine if the excess tax receipts could be used for capital improvements. Mr. Harrison then stated that if one was to go back and review the City's accounting records from 1999 until now they would find that the excess tax receipts were primarily used for the normal operating costs of the City and not for capital improvements. He stated that he can say that with some certainty because the tax receipts were posted into the MPWA fund and were not segregated. He also stated that he believed that all capital improvements during this time were paid for by bond proceeds. He added that he felt it would be appropriate for the City to engage its outside auditors to look into this. He stated that if all the years' excess receipts were combined there would be more than seven million dollars.

He asked the Council to keep two things in mind as they formulated their plan to address this issue. He stated that any solution that does not address the entire seven million dollar issue will still leave the City exposed to potential legal action. The second issue to keep in mind is the \$3.2 million in problems that were found as a result of the BKD audit. He stated that to resolve these issues and to address the failing infrastructure will involve going back to the people at some time in the future.

Mayor Lewis commented that Mr. Brooks had submitted an opinion and the original bond attorney had submitted an opinion and they were both different. He stated that the auditors had been asked to review this matter and they had not responded at this time.

Steve Foster stated that the Audit & Finance Committee had been aware of this matter but not to this extent and they did feel that the funds should be paid back.

There was discussion among the Council regarding this issue, the opinions of the bond attorneys and the repayment of the funds.

Mark Roath stated that when this was brought to light in December, the suggested actions had been taken. He stated that this was a matter of difference of interpretation and how the Council wanted to approach the issue. He commented that he had written a letter to Ms. Henderson requesting that she offer her services in the clarification of this matter. He also stated that in his discussion with Deanna Crawford she had suggested that the funds be segregated.

Mayor Lewis inquired about the \$3.2 million that had been mentioned.

Mr. Roath stated that the Council had retained Crawford and Associates to look into that matter and Ms. Henderson had informed him that she had been in communication with Ms. Crawford regarding the \$3.2 million.

There was further discussion among the Council and Steve Harrison reminded them that the opinions were to decide if the excess could be used for capital and that this excess had not historically been used for that purpose.

Harold King addressed the Council reminding them that he had threatened them with a taxpayer lawsuit at one time for mixing money in the General Fund.

Councilman Smith moved to present the following motion to:

1. Confirm that the Council accepts the legal interpretation (and its consequences) rendered by Allen Brooks that the income derived from the one cent MPWA sales tax is to be used for the sole purpose of payment of principal and interest on the 1999 and 2002 capital improvement bonds.
2. The City shall segregate and account for all income derived from the use-restricted one cent sales tax, including any excess above that used to make the required debt service on these bonds; no money may be expended or transferred from this account, other than for bond payments. The City Manager is directed to prepare a budget amendment for fiscal year 2007/2008. Such amendment shall adjust the budget to ensure that no tax receipts from the restricted one penny sales tax shall have been expended or appropriated this fiscal year for any purpose other than the payment of principal and interest on the 1999 and 2002 capital improvement bonds.
3. Direct that an audit be performed to determine on a year-by-year basis the amounts by which receipts from the restricted one penny sales tax exceeded payments on principal and interest in capital improvements bonds. This audit shall cover the series 1992, 1995, 1999 and 2002 capital improvement bonds.

There was discussion regarding the motion and Councilman Smith suggested striking the words "and its consequences".

Councilman Read moved to: Confirm that the Council accepts the legal interpretation (and its consequences) rendered by Allen Brooks that the income derived from the 1 cent MPWA sales tax is to be used for the sole purpose of payment of principal and interest on the 1999 and 2002 capital improvement bonds. The City shall segregate and account for all income derived from the use-restricted 1 cent sales tax, including any excess above that used to make the required debt service on these bonds; no money may be expended or transferred from this account, other than for bond payments. The City manager is directed to prepare a budget amendment for fiscal year 2007/2008. Such amendment shall adjust the budget to ensure that no tax receipts from the restricted one penny sales tax shall have been expended or appropriated this fiscal year for any purpose other than the payment of principal and interest on the 1999 and 2002 capital improvement bonds. Direct that an audit be performed to determine on a year-by-year basis that amounts by which receipts from the restricted one penny sales tax exceeded payments on principal and interest in capital improvements bonds. This audit shall cover the series 1992, 1995, 1999 and 2002 capital improvement bonds. The motion was seconded by Councilman Mason.

Before the vote, Councilman Read commented that Mr. Byrum who was the original bond attorney, waffled on the opinion by saying it could be either way.

Mr. Ivester commented that the Council needed to understand, which he was sure they did, that one cent of the sales tax was for CIP, one quarter cent was for economic development, one quarter cent was for schools and the other quarter cent was given to the Hospital for the Wellness Center. All of those were bond indentures and they are lumped into one account. The City has not had a City Treasurer since Steve Harrison and he believed that Steve was aware of this matter. He stated that he did not believe that it just came up in 2007. Mr. Ivester stated that there was so much going on at that time that separate accounts were not opened, partly because of the financial situation the City was in at that time. He added that he did not agree with the proposition of paying back past excess receipts. He stated that the people that wrote the bonds gave the previous Council the opinion that they could use the bonds for capital improvements. But he did agree with going forward segregating the receipts. Mr. Ivester stated that the Council had agreed to pay the school money out of the excess receipts of that sales tax and that could be looked at in the same way that this issue was being looked at.

There was further discussion regarding Mr. Ivester's comments and the wording of the suggested motion.

Mark Roath commented that regarding the budget adjustment back to July 1, 2007, he could not say what the consequences would be and by further tightening the budget, it could have a detrimental affect.

There was some discussion regarding Mr. Roath's statement, the potential impact that the budget amendment might have on the City and the possibility of a taxpayer lawsuit.

Mayor Lewis commented on the first paragraph of the proposed motion and asked if it meant the funds should be paid back immediately.

Councilman Smith explained that it was meant that from this time forward the funds would be separated and the third paragraph was intended to get information on that subject. He stated that he was trying to have the City do the prudent thing and follow the narrow interpretation and to also go back to the first of the fiscal year and adjust the excess sales tax receipts.

Councilman Wilkinson suggested that the Council allow Mr. Roath time to calculate the impact of the proposed amendment and come back to Council with the information. He agreed that the funds should be segregated but not jump to conclusions. He further mentioned that he remembered that OML had stated that taxpayer lawsuits could be repaid by a property tax setup by a judge or court. Mr. Ivester confirmed Councilman Wilkinson's information regarding the taxpayer lawsuit.

Ross Eaton expressed concern to the Council regarding the idea that they would accept a legal opinion that was open to debate and then possibly later on decide that they no longer accepted the opinion. He also expressed concern about the date that the Council wanted to go back to, to calculate the amendment. He asked why would we set it at that date and not go back to the issuance of the bond.

Mr. Ivester suggested that the first paragraph in the motion be changed to this, "Confirm that the Council accepts a conservative interpretation and the income derived from the 1 cent MPWA sales tax is to be used for the sole purpose of payment of principal and interest on the 1999 and 2002 capital improvement bonds." Mayor Lewis asked if that wording was acceptable to Councilman Read and Mason. Both Councilmen agreed that the wording was acceptable.

Before the vote, Councilman Wilkinson asked if it had been decided that this was going back to the first of the fiscal year or just to January 1, 2008. Councilman Smith stated that he would like to go back to the first of the fiscal year and if later it needs to be changed that can be addressed at that time.

There was no discussion, and the vote was taken as follows:

AYE: Councilman Read, Wilkinson, Garvin, Mason, Smith, Condit & Mayor Lewis
NAY: None

Mayor Lewis declared the motion carried.

NEW BUSINESS

None

Mayor Lewis asked the Councilmen to make their comments and reports at this time.

REMARKS AND INQUIRIES BY CITY COUNCIL

Councilman Smith reminded the citizens that the revised charter was on the website and he asked them to review it and make any comments they felt were necessary.

Councilman Condit reported that he had attended the Career Fair at the Expo. He distributed a copy of the students agenda for the day to the Council and then reviewed the process that the students were expected to follow during the day.

Councilman Wilkinson commented that he also had attended the Career Fair and was very impressed with the turnout.

CITY MANAGER'S REPORT

Mr. Roath reported that he was still in the process of the reorganization and he updated the Council on the changes that had been made. He also gave them the schedule of the changes that still needed to be made.

He then commented on the letter regarding the Hotel/Motel tax.

Mayor Lewis commented that the tour of the City had gone well. He stated that Councilman Smith had suggested a cleanup day and he asked each of the Councilmen to recommend someone from their wards to work with George Marcangeli and hopefully have those names by the next meeting.

He stated that there would be a forum for the Council candidates next Thursday at 6:30 P.M. Rachel Ossenbeck thanked the Council for the time they gave to the community.

RECESS COUNCIL MEETING

Mayor Lewis asked for a motion to recess the Regular Meeting to convene the Authorities.

Councilman Condit moved to recess the Regular Meeting and convene the Authorities. The motion was seconded by Councilman Wilkinson and the vote was taken as follows:

AYE: Councilman Wilkinson, Garvin, Mason, Smith, Condit, Read & Mayor Lewis

NAY: None

Mayor Lewis declared the motion carried, and the Regular Meeting was recessed at 8:20 P.M.

RECONVENE COUNCIL MEETING

The Regular Meeting was reconvened at 8:23 P.M.

Councilman Condit moved to recess the Regular Meeting for an Executive Session to discuss lawsuits involving the City of McAlester vs. Randy Green and the City of McAlester vs. Diversified Foods and Seasonings, Inc., in accordance with Title 25, Sec. 307.B.4. The motion was seconded by Councilman Wilkinson. The vote was taken as follows:

AYE: Councilman Smith, Condit, Read, Wilkinson, Garvin, Mason & Mayor Lewis

NAY: None

Mayor Lewis declared the motion carried and the meeting was recessed at 8:24 P.M.

EXECUTIVE SESSION

Recess into Executive Session in compliance with Section Title 25 Section 307 (B), et.seq. Oklahoma Statutes, to wit:

- **Section 307 (B) (4) - Discussion concerning lawsuits involving City of McAlester vs. Randy Green and City of McAlester vs. Diversified Foods and Seasonings, Inc.**

RECONVENE INTO OPEN SESSION

Take any action as a result from Executive Session.

The Regular Meeting was reconvened at 8:40 P.M. Mayor Lewis reported that the Council had gone into Executive Session for the purpose of discussing lawsuits involving the City of McAlester vs. Randy Green and the City of McAlester vs. Diversified Foods and Seasonings, Inc., in accordance with Title 25, Sec. 307.B.4. No action was taken and only those matters were discussed.

ADJOURNMENT

There being no further business to come before the Council, Councilman Wilkinson moved for the meeting to be adjourned, seconded by Councilman Condit. The vote was taken as follows:

AYE: Councilman Condit, Read, Wilkinson, Garvin, Mason, Smith & Mayor Lewis
NAY: None

Mayor Lewis declared the motion carried, and the meeting was adjourned at 8:41 P.M.

ATTEST:

Don R. Lewis, Mayor

Cora Middleton, City Clerk

**CLAIMS FROM FEB. 27TH
THRU
MARCH 11, 2008**

ACKET: 03545 Regular Payments

ENDOR SET: 01

UND : 01 GENERAL FUND

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-1	MISC VENDOR					
	BEST WESTERN	I-6645	01 -5321331	EMPLOYEE TRAV 1 NIGHT 1 RM FOR	040982	79.28
1-A00267	AIRGAS					
		I-106549017	01 -5548204	SMALL TOOLS NEW WIREFEED WELDER TO	040984	928.50
1-A00450	AM LEONARD INC.					
		I-0234400901018	01 -5542202	OPERATING SUP PLANT LIFTING SLING TO	040986	166.24
1-A00751	ATWOODS					
		I-3013921	01 -5542203	REPAIRS & MAI OPEN PO FOR REPAIRS AND	040987	29.83
		I-3014274	01 -5542203	REPAIRS & MAI OPEN PO FOR REPAIRS AND	040987	139.84
		I-3014370	01 -5542203	REPAIRS & MAI OPEN PO FOR REPAIRS AND	040987	23.96
		I-3014534	01 -5542203	REPAIRS & MAI OPEN PO FOR REPAIRS AND	040987	25.98
		I-3015028	01 -5542203	REPAIRS & MAI OPEN PO FOR REPAIRS AND	040987	59.80
		I-3017609	01 -5542203	REPAIRS & MAI OPEN PO FOR REPAIRS AND	040987	29.96
		I-3018315	01 -5542203	REPAIRS & MAI OPEN PO FOR REPAIRS AND	040987	74.57
		I-3021703	01 -5542203	REPAIRS & MAI OPEN PO FOR REPAIRS AND	040987	65.00
		I-3022066	01 -5542203	REPAIRS & MAI OPEN PO FOR REPAIRS AND	040987	23.29
		I-3024149	01 -5542203	REPAIRS & MAI OPEN PO FOR REPAIRS AND	040987	19.97
1-A00753	ATCO INTERNATIONAL					
		I-10198692	01 -5862203	REPAIRS & MAI 3 CASES TUBE SILICONE	040988	480.00
1-A00770	AUTO PARTS CO					
		C-CM808572	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	85.88-
		I-808012	01 -5862203	REPAIRS & MAI AIR CON. PARTS FOR CAR27	040989	272.45
		I-808426	01 -5862203	REPAIRS & MAI 40 STOCK WINDSHIELD BLADE	040990	161.10
		I-808430	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	9.69
		I-808434	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	163.34
		I-808447	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	197.19
		I-808472	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	78.18
		I-808528	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	139.90
		I-808564	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	62.50
		I-808574	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	131.79
		I-808691	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040991	178.37
		I-808771	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040991	141.69
		I-808935	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040991	93.14
		I-808941	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040991	3.62
		I-808957	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040991	97.28
		I-809015	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040991	22.17
		I-809050	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040991	156.53
		I-809076	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040991	278.16
		I-809077	01 -5862203	REPAIRS & MAI BLANKET PO FOR SMALL	040991	18.06
1-B00043	B & S SUPPLY, INC.					
		I-58266 - 58267	01 -5862203	REPAIRS & MAI NUTS & BOLTS FOR SHOP	040992	995.19
1-B00098	BALL BARBEQUE					

ACKET: 03545 Regular Payments

ENDOR SET: 01

JND : 01 GENERAL FUND

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-B00098	BALL BARBEQUE		continued			
		I-07-20092	01 -5101319	MISCELLANEOUS FOOD FOR DINNER AT	040993	163.28
1-B00150	BEALES GOODYEAR TIRES					
		I-MC149259	01 -5862203	REPAIRS & MAI 20 POLICE CAR TIRES	040994	1,316.80
		I-MC149279-MC149278	01 -5862203	REPAIRS & MAI 2 TIRES FOR PK-21	040994	98.00
		I-MC149279-MC149278	01 -5862203	REPAIRS & MAI 2 TIRES FOR S-10	040994	84.00
1-B00180	BEMAC SUPPLY					
		I-S1362656.001	01 -5548203	REPAIRS & MAI 2 FORCES AIR HEATING UNIT	040996	984.61
		I-S1370869.001	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	040996	108.90
		I-S1371479.001	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	040996	21.02
		I-S1373014.001	01 -5542203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	040996	170.29
1-B00490	BRIGGS PRINTING					
		I-53331-53329-53330	01 -5321202	OPERATING SUP BUSINESS CARDS FOR:	040998	205.50
1-C00269	CBC INNOVIS					
		I-8034017591	01 -5321308	CONTRACTED SE CREDIT REPORTS:	041000	145.75
1-C00280	CELLULAR ONE					
		I-FEB 2008	01 -5215315	TELEPHONE UTI CELL BILL FOR FEB. 2008	040981	2,262.90
1-C00635	COMMERCIAL NURSERY					
		I-1767	01 -5542202	OPERATING SUP REPLACEMENT TREES FOR	041002	332.00
1-C00850	CRONATRON WELDING SYSTE					
		I-6552514	01 -5862203	REPAIRS & MAI WELDING SUPPLIES FOR	041003	1,206.13
1-D00213	DEBBIE COMPTON					
		I-07-20298	01 -5542308	CONTRACTED SE CONTRACT MEAL DELIVERY	041006	90.00
1-D00540	DOLESE BROTHERS					
		I-12538	01 -5865402	CAPITAL PROJE 1000 TON 1 1/2" CR	041008	811.99
		I-13310	01 -5865402	CAPITAL PROJE 1000 TON 1 1/2" CR	041008	1,184.03
		I-14098	01 -5865402	CAPITAL PROJE 1000 TON 1 1/2" CR	041008	181.73
		I-14099	01 -5865402	CAPITAL PROJE 1000 TON 1 1/2" CR	041008	1,176.71
		I-15184	01 -5865402	CAPITAL PROJE 1000 TON 1 1/2" CR	041008	1,492.20
1-D00600	DONNA M. CREWS					
		I-07-20296	01 -5542308	CONTRACTED SE SCOREKEEPER FEES	041009	168.00
1-D00730	DUB ROSS CO.					
		I-0043379-IN	01 -5542203	REPAIRS & MAI 50' OF GALVANIZED PIPE TO	041011	1,338.23
1-D00775	JUSTIN DUVAL					
		I-07-20292	01 -5542308	CONTRACTED SE REFEREE FEES - 12 GAMES	041012	240.00
1-E00090	EASLEY COMMUNICATIONS					

ACCKET: 03545 Regular Payments

ENDOR SET: 01

JND : 01 GENERAL FUND

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-E00090	EASLEY COMMUNICATIONS		continued			
		I-022193	01 -5548203	REPAIRS & MAI MONTHLY PAGER FEE	041013	15.90
1-E00206	EMBLEM ENTERPRISES INC.					
		I-398583	01 -5321207	CLOTHING ALLO 500 MCALESTER PD PATCHES	041014	445.00
		I-398583	01 -5321207	CLOTHING ALLO SHIPPING	041014	22.88
1-F00038	FED EX					
		I-2-549-12823	01 -5210202	OPERATING SUP FED EX EXPRESS	041017	25.66
1-F00170	FIRST NATIONAL BANK					
		I-02-29-08	01 -5431202	OPERATING SUP CASHIERS CHECK FOR EMT	040980	160.00
		I-02-29-08	01 -5431202	OPERATING SUP CASHIERS CHECK FOR EMT	040980	240.00
1-F00310	FRONTIER INTNL. TRUCKS					
		I-729540	01 -5862203	REPAIRS & MAI SWITCH, MOTOR, PIPE, CLAMP	041019	1,082.46
1-G00130	GALL'S INC./DYNA MED					
		I-5919784200038	01 -5321207	CLOTHING ALLO SHIPPING	041021	9.37
1-G00200	GEMBLER'S					
		I-1010997015	01 -5542202	OPERATING SUP MISC. OPERATING SUPPLIES	041022	761.20
1-H00020	H L'S PAWN SHOP					
		I-07-19956	01 -5321324	SWAT SNIPER RIFLES	041024	4,799.94
1-H00180	HI LINE ELECTRIC					
		I-1961336	01 -5865203	REPAIR & MAIN WASHERS, NUTS, SCREWS	041026	166.00
1-I00110	IMPRESS OFFICE SUPPLY					
		I-024349	01 -5321202	OPERATING SUP BLANKET PO MISC SUPPLYS	041027	131.13
		I-024352	01 -5212202	OPERATING SUP BLANKET PO FOR MISC.	041027	26.99
		I-024389	01 -5211202	OPERATING SUP OPEN PO FOR OFFICE SUPPLY	041027	52.78
		I-024395	01 -5321202	OPERATING SUP BLANKET PO MISC SUPPLYS	041027	5.07
		I-024399	01 -5211202	OPERATING SUP OPEN PO FOR OFFICE SUPPLY	041027	9.19
1-I00120	INCODE					
		I-62500	01 -5225349	INCODE SOFTWA ANNUAL SOFTWARE MAINT.	041028	778.00
		I-63203	01 -5225349	INCODE SOFTWA 6 MONTHS NETWORK	041028	200.00
		I-63302	01 -5225202	OPERATING SUP ANNUAL LICENSE FOR	041028	650.00
1-I00140	INDIAN NATION WHOLESALE					
		I-4548429	01 -5862203	REPAIRS & MAI CENTRAL GARAGE	041029	380.06
		I-4562274	01 -5865204	SMALL TOOLS STREET DEPT.	041029	80.22
		I-4562274	01 -5865204	SMALL TOOLS STREET DEPT.	041029	70.00
1-I00223	INTERNAT'L CODE COUNCIL					
		I-0950388-IN	01 -5431202	OPERATING SUP I-QUEST COMPLETE	041030	414.75

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ENDOR SET: 01

UND : 01 GENERAL FUND

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-J00495	JUSTIN HALL					
		I-07-20294	01 -5542308	CONTRACTED SE REFEREE FEES - 6 GAMES	041032	120.00
1-K00107	KELCO SUPPLY COMPANY					
		I-C10806841	01 -5547203	REPAIRS & MAI REPLACEMENT FUNERAL	041033	471.80
		I-c10802910	01 -5547203	REPAIRS & MAI REPLACEMENT FUNERAL	041033	89.89
1-K00170	KEVIN RUSHING					
		I-07-20293	01 -5542308	CONTRACTED SE REFEREE FEES- 3 GAMES	041034	60.00
1-L00060	LAB SAFETY SUPPLIES					
		I-1011018232	01 -5542202	OPERATING SUP SAFETY VEST FOR PARKS	041036	360.42
1-L00292	LEROY R BARTMAN					
		I-07-20193	01 -5431307	ARBITRATIONS ARBITRATOR FEES	041037	2,719.15
1-L00380	LOCKE SUPPLY CO.					
		I-7383194-00	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC.	041038	26.47
		I-7466870-0	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC.	041038	16.29
		I-7514982-00	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC.	041038	13.24
		I-7560086-00	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC.	041038	0.83
1-L00428	LOWE'S CREDIT SERVICES					
		I-05197	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041040	280.53
		I-05817	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041040	17.72
		I-08019	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041040	46.28
		I-09327	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041040	33.94
		I-10469	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041040	47.92
1-M00480	MILLER GLASS					
		I-16849	01 -5548203	REPAIRS & MAI LABOR AND MATERIALS TO	041041	68.00
1-M00570	MOORE MEDICAL CORP.					
		I-95085943	01 -5431202	OPERATING SUP MEDICAL SUPPLIES	041042	541.09
1-M00593	MOST DEPENDABLE FOUNTAI					
		I-INV10427	01 -5548203	REPAIRS & MAI PART NEEDED TO REPAIR	041043	202.00
1-MC0200	MCALESTER SCOTTISH RITE					
		I-102	01 -5545311	PARKING RENTA MONTHLY PARKING LOT FEE	041044	375.00
1-MC0206	MCALESTER WELDING SUPPL					
		I-940492	01 -5862203	REPAIRS & MAI WELDING SUPPLIES FOR SHOP	041045	499.84
1-N00025	NASCO					
		I-241133	01 -5322202	OPERATING SUP DART ACCESSORIES FOR	041046	670.50
		I-241133	01 -5322202	OPERATING SUP SHIPPING	041046	20.16
1-N00060	NAT'L. FIRE PROTECTION					

ACKET: 03545 Regular Payments

ENDOR SET: 01

UND : 01 GENERAL FUND

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-N00060	NAT'L. FIRE PROTECTION		continued			
		I-227654	01 -5431330	DUES & SUBSCR RENEW MEMBERSHIP TO	041047	150.00
1-N00250	MCALESTER NEWS CAPITAL					
		I-03522239	01 -5212317	ADVERTISING & BLANKET PO FOR COUNCIL	041048	30.25
1-000225	OKLA COMMUNITY INSTITU					
		I-106	01 -5101319	MISCELLANEOUS PREPARATION, FACILITATION	041050	750.00
		I-106	01 -5101319	MISCELLANEOUS EXPENSES-HOTEL & MILEAGE	041050	231.53
1-000340	OSIA-OKLAHOMA SELF INSU					
		I-07-20256	01 -5215330	DUES & SUBSCR MEMBERSHIP RENEWAL DUES	041051	250.00
1-000520	OIL-OK INDEPENDENT LIVI					
		I-FEB. 2008	01 -5215355	OIL-OK FOR IN MONTHLY FEE PER/COUNCIL	041052	2,000.00
		I-MARCH 2008	01 -5215355	OIL-OK FOR IN MONTHLY FEE PER/COUNCIL	041052	2,000.00
1-000530	OML-OK MUNICIPAL LEAGUE					
		I-021743	01 -5210330	DUES & SUBSCR 2007 OML MUN. CODE BOOK	041053	66.50
		I-021743	01 -5212330	DUES & SUBSCR 2007 OML MUN. CODE UPDATE	041053	30.00
		I-021743	01 -5652330	DUES & SUBSCR 2007 OML MUN. CODE BOOK	041053	66.50
		I-023598	01 -5101319	MISCELLANEOUS CITY & TOWN HANDBOOK &	041053	43.00
		I-023598	01 -5211202	OPERATING SUP CITY & TOWN HANDBOOK &	041053	43.00
		I-023598	01 -5212202	OPERATING SUP CITY & TOWN HANDBOOK &	041053	43.00
		I-023598A	01 -5210202	OPERATING SUP 07/08 CITY & TOWN DIRECT	041053	36.00
		I-023598A	01 -5211202	OPERATING SUP 07/08 CITY & TOWN DIRECT	041053	18.00
		I-023598A	01 -5321202	OPERATING SUP 07/08 CITY & TOWN DIRECT	041053	36.00
		I-023598A	01 -5653202	OPERATING SUP 07/08 CITY & TOWN DIRECT	041053	18.00
1-P00211	PENNY HENRY					
		I-07-20299	01 -5542308	CONTRACTED SE CONTRACT MEAL DELIVERY	041055	75.00
1-P00250	PETTY CASH					
		I-07-20305	01 -5431203	REPAIRS & MAI LEVER TO FIX TOILET	041056	5.67
		I-07-20305	01 -5431316	REPAIRS & MAI FITTING FOR EMER. VEHICLE	041056	11.58
		I-07-20305	01 -5431316	REPAIRS & MAI FITTING FOR ENGINE 2	041056	3.26
		I-07-20305	01 -5431331	EMPLOYEE TRAV HAZ MAT OPS	041056	41.88
		I-07-20305	01 -5652330	DUES & SUBSCR RENEWAL SWCCC-LEONARD H	041056	20.00
		I-07-20305	01 -5653202	OPERATING SUP DYMO LABELS	041056	3.00
		I-07-20305	01 -5653331	EMPLOYEE TRAV OKC-INTERVIEWING COURSE	041056	167.02
		I-07-20305	01 -5865202	OPERATING SUP KEY TO LOCK BACKHOE	041056	5.89
		I-07-20314	01 -5101319	MISCELLANEOUS POP/CHIPS-COUNCIL RETREAT	041056	91.28
		I-07-20314	01 -5213331	EMPLOYEE TRAV DIST 3 WORKSHOP /ADA	041056	73.23
		I-07-20314	01 -5213331	EMPLOYEE TRAV OK MUNICIPAL COURT ASSOC	041056	199.14
		I-07-20314	01 -5321202	OPERATING SUP BATTERIES FOR REMOTE	041056	16.34
		I-07-20314	01 -5321331	EMPLOYEE TRAV POSTAGE TO OSBI	041056	2.49
		I-07-20314	01 -5321331	EMPLOYEE TRAV LEGAL ASP. OF NARC./SEMIN	041056	92.25
		I-07-20314	01 -5321331	EMPLOYEE TRAV CLEET SCHOOL LUNCHES	041056	105.53
		I-07-20314	01 -5322202	OPERATING SUP DOG FOOD	041056	34.50

ACCKET: 03545 Regular Payments

ENDOR SET: 01

UND : 01 GENERAL FUND

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-P00250	PETTY CASH			continued		
		I-07-20314	01 -5652411	DEMOLITION LIENS FILED @ CO. CLERK	041056	15.00
		I-07-20314	01 -5653215	AWARDS PROGRA B-DAY PARTY SUPPLIES	041056	49.63
		I-07-20315	01 -5321331	EMPLOYEE TRAV PD MEALS FOR SCHOOL	041056	54.29
1-P00310	PITNEY BOWES					
		I-07-20272	01 -5215312	EQUIPMENT REN RENTAL EQUIP.	041057	2,160.00
1-R00050	RADIO SHACK					
		I-246076	01 -5321316	REPAIRS & MAI OLYMPUS DIGITAL VOICE	041059	159.98
1-R00090	RAM INC					
		I-94983	01 -5862205	PETROLEUM PRO 2500 GAL DEISEL FOR SHOP	041060	7,497.35
1-R00210	RED RIVER SPECIALIST, I					
		I-199651	01 -5547206	MAJOR CHEMICA CEMETERY	041061	539.25
		I-199651A	01 -5542206	MAJOR CHEMICA PARKS	041061	1,042.50
1-R00300	RICHARD RUSHING					
		I-07-20290	01 -5542308	CONTRACTED SE REFEREE FEES - 6 GAMES	041062	120.00
1-R00360	RICKY S HACKLER					
		I-07-20295	01 -5542308	CONTRACTED SE REFEREE FEES - 6 GAMES	041063	120.00
1-S00190	SECURITY SYS. & ENG. IN					
		I-24103-24101-24102	01 -5545202	OPERATING SUP LIBRARY MONITORING	041064	45.00
		I-24103-24101-24102	01 -5547203	REPAIRS & MAI BI-YEARLY MONITOR-CEMETE	041064	180.00
1-S00725	STAPLES CREDIT PLAN					
		I-75628	01 -5225401	COMPUTER TECH BLANKET PO FOR COMPUTER	041067	161.44
		I-77683	01 -5225401	COMPUTER TECH BLANKET PO FOR COMPUTER	041067	69.98
		I-80876	01 -5225401	COMPUTER TECH BLANKET PO FOR COMPUTER	041067	84.98
		I-83253	01 -5321202	OPERATING SUP BROTHER FAX 4100C LASER	041067	299.98
1-S00791	STEIDLEY & NEAL, P.L.L.					
		I-8630	01 -5214302	CONSULTANTS/L CONSULTANTS/LABOR	041068	1,095.00
		I-8632	01 -5214302	CONSULTANTS/L CONSULTANTS/LABOR	041068	2,250.00
1-T00185	THE MEDICINE SHOPPE					
		I-07-20230	01 -5542203	REPAIRS & MAI VACINE FOR PREVENTION OF	041070	25.00
1-T00443	TOMMY BUCKNER					
		I-07-20291	01 -5542308	CONTRACTED SE REFEREE FEES - 6 GAMES	041071	120.00
1-T00458	TONYA M BARNES					
		I-07-20297	01 -5542308	CONTRACTED SE SCOREKEEPER FEES -	041072	168.00
1-T00502	TRAFFIC SAFETY SYSTEMS					
		I-5572313-5572314	01 -5865203	REPAIR & MAIN 4 ROLLS GRN FILM	041073	504.00

PACKET: 03545 Regular Payments

ENDOR SET: 01

JND : 01 GENERAL FUND

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT

1-T00502	TRAFFIC SAFETY SYSTEMS		continued			
		I-5572313-5572314	01 -5865203	REPAIR & MAIN 4 ROLLS GRN FILM	041073	630.00
		I-5572313-5572314	01 -5865203	REPAIR & MAIN 1 ROLL ECF TAPE	041073	48.00
1-U00070	ULTRA-CHEM, INC.					
		I-920046	01 -5548203	REPAIRS & MAI BREAK IT PENATRANT	041075	306.87
1-U00130	UNITED SAFETY & CLAIMS					
		I-07-20316	01 -5215106	WORKMAN'S COM MONTHLY SERVICE FEE	041077	1,175.00
1-W00193	WEDDLE SIGNS					
		I-13491	01 -5542202	OPERATING SUP RESERVATION SIGNS TO PUT	041080	90.00
1-W00270	WHITE ELECTRICAL SUPPLY					
		I-214962	01 -5865203	REPAIR & MAIN BATTERIES FOR TRAFFIC	041081	57.55
		I-215712	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041081	111.03
		I-215732	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041081	24.72
		I-215871	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041081	55.19
		I-215920	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041081	55.50
		I-216002	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041081	42.02
		I-216195	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041081	95.12
		I-216204	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041081	17.74
		I-216346	01 -5548203	REPAIRS & MAI OPEN PO FOR MISC. REPAIR	041081	55.73
1-W00480	WYLIE SPRAYERS OF OKLA.					
		I-909368	01 -5542202	OPERATING SUP ROLLER PUMP AND	041082	581.50
1-X00020	XEROX CORP-MAJOR ACCOUN					
		I-FEB. 2008	01 -5215312	EQUIPMENT REN XEROX COPIER PYMT FOR	041083	1,116.29
				VENDOR SET 01 GENERAL FUND	TOTAL:	64,233.91

ACCOUNT: 03545 Regular Payments

ENDOR SET: 01

JND : 02 MPWA

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-A00103	ACCURATE ENVIRONMTAL LA					
		I-E8303	02 -5874304	LAB TESTING THM & HALOACETRIC ACID	040983	1,370.00
1-A00360	ALL STATE ELECTRIC INC					
		I-9816-9815-9817	02 -5873316	REPAIRS & MAI 20HP MOTOR (REBUILD)	040985	645.19
		I-9816-9815-9817	02 -5873316	REPAIRS & MAI 40HP MOTOR (rebuild)	040985	1,545.00
		I-9816-9815-9817	02 -5873316	REPAIRS & MAI 7 1/2HP MOTOR / REBUILD	040985	202.23
1-A00770	AUTO PARTS CO					
		C-808366	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	0.63-
		I-807503	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	157.63
		I-80770	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	174.53
		I-807752	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	74.90
		I-807793	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	18.05
		I-807802	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	109.45
		I-807891	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	135.10
		I-807892	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	22.04
		I-807925	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	77.27
		I-807947	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	88.40
		I-808020	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	95.04
		I-808075	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040989	85.56
		I-808239	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	52.35
		I-808239	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	50.84
		I-808297	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	87.84
		I-808343	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	49.62
		I-808416	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	153.86
		I-808478	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL	040990	61.11
1-B00043	B & S SUPPLY, INC.					
		I-58266 - 58267	02 -5267203	REPAIRS & MAI NUTS & BOLTS FOR LANDFILL	040992	237.18
1-B00178	BELZONA OKLAHOMA INC.					
		I-2151	02 -5873203	REPAIRS & MAI METALS KIT FOR SHAFT	040995	499.00
1-B00491	BRENNTAG SOUTHWEST					
		I-BSW064408	02 -5874206	MAJOR CHEMICA CHLORINE	040999	3,660.00
1-C00340	CERTIFIED LABORATORIES					
		I-350729	02 -5267203	REPAIRS & MAI 35 GAL ENGINE CLEANER	041001	735.00
		I-350729	02 -5267203	REPAIRS & MAI 12 POLY SPRAYERS @ 1.00	041001	19.80
		I-350729	02 -5267203	REPAIRS & MAI FREIGHT	041001	68.57
		I-360976	02 -5873203	REPAIRS & MAI LIFT STATION DEGREASER	041001	394.32
1-C00850	CRONATRON WELDING SYSTE					
		I-6557188	02 -5267203	REPAIRS & MAI FOR HAMMERS ON TUB	041003	1,733.00
		I-6557188	02 -5267203	REPAIRS & MAI FREIGHT	041003	30.06
1-C00880	CULLIGAN WATER COND INC					
		I-JAN 08 12808	02 -5874304	LAB TESTING DISTILLED WATER FOR TESTS	041004	71.13

ACCOUNT: 03545 Regular Payments

ENDOR SET: 01

JND : 02 MPWA

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-D00323	DEPT. OF ENVIR. QUALITY					
		I-22507	02 -5873316	REPAIRS & MAI CONSTRUCTION PERMIT	041007	500.00
1-E00265	ERMI ENVIRONMENTAL LABS					
		I-0800430	02 -5873304	LAB TESTING METALS TESTING AT BOTH	041015	175.25
		I-0800431	02 -5873304	LAB TESTING METALS TESTING AT BOTH	041015	125.00
		I-0800781	02 -5873304	LAB TESTING METALS TESTING AT BOTH	041015	125.00
		I-0800785	02 -5873304	LAB TESTING METALS TESTING AT BOTH	041015	150.00
		I-0800797	02 -5873304	LAB TESTING METALS TESTING AT BOTH	041015	190.50
		I-0800870	02 -5873304	LAB TESTING METALS TESTING AT BOTH	041015	15.25
1-F00015	FLEETCOR TECHNOLOGIES					
		I-NP11163306	02 -5267205	PETROLEUM PRO MPWA FUEL FOR FEB.	041016	1,259.29
1-F00314	FRONTIER SERVICE & PART					
		I-14052	02 -5267203	REPAIRS & MAI TRANS FOR SW-1 TRASH	041020	6,798.85
1-I00110	IMPRESS OFFICE SUPPLY					
		I-024092	02 -5216202	OPERATING SUP OPEN PO FOR MISC. SUPPLIE	041027	97.00
		I-024374	02 -5216202	OPERATING SUP OPEN PO FOR MISC. SUPPLIE	041027	91.44
1-I00120	INCODE					
		I-63047	02 -5216316	REPAIRS & MAI EXTRACT FILE PROCESSING	041028	135.00
1-I00140	INDIAN NATION WHOLESALE					
		I-4548429	02 -5864204	SMALL TOOLS SAN & LANDFILL	041029	80.22
		I-4548429	02 -5864204	SMALL TOOLS LANDFILL	041029	175.00
		I-4571720	02 -5864410	LAND IMPROVEM 10 CASES TRASH CAN LINERS	041029	335.00
1-J00110	JACKIE BRANNON CORR. CT					
		I-1145	02 -5864410	LAND IMPROVEM INMATES WORKING AT	041031	19.36
1-K00190	KEYSTONE EQUIPMENT CO.					
		I-35332	02 -5267203	REPAIRS & MAI WINDOW FOR WATER DEPT.	041035	449.68
1-L00383	LOCKE ELECTRICAL SUPPLY					
		C-CASH DISCOUNT	02 -5873316	REPAIRS & MAI HIGH PRESSURE SODIUM	041039	10.50-
		I-7534237-00	02 -5873316	REPAIRS & MAI HIGH PRESSURE SODIUM	041039	210.00
1-N00250	MCALESTER NEWS CAPITAL					
		I-03522191	02 -5874317	ADVERTISING & BLANKET PO FOR ENG.	041048	19.00
1-O00075	O'REILLY AUTO PARTS					
		I-230-431127	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	14.59
		I-230-431353	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	40.52
		I-421957	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	13.76
		I-422052	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	26.59
		I-422862	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	12.83
		I-425108	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	49.95

ACKET: 03545 Regular Payments

ENDOR SET: 01

JND : 02 MPWA

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-000075	O'REILLY AUTO PARTS		continued			
		I-426098	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	96.42
		I-426797	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	26.59
		I-426801	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	4.87
		I-430402	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	28.19
		I-430674	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	71.93
		I-430904	02 -5267203	REPAIRS & MAI BLANKET PO FOR SMALL AUTO	041049	37.35
1-000530	OML-OK MUNICIPAL LEAGUE					
		I-023598	02 -5871202	OPERATING SUP CITY & TOWN HANDBOOK &	041053	43.00
1-P00250	PETTY CASH					
		I-07-20305	02 -5216202	OPERATING SUP RAINCOAT FOR READER	041056	30.51
		I-07-20305	02 -5216202	OPERATING SUP POUCH FOR MACE / READER	041056	7.58
		I-07-20305	02 -5216202	OPERATING SUP BULB FOR FLASHLIGHT	041056	7.99
1-P00420	POSTMASTER					
		I-07-20327	02 -5216202	OPERATING SUP POSTAL 1ST CLASS PERMIT	041058	175.00
		I-07-20327	02 -5216202	OPERATING SUP POSTAL STANDARD PERMIT	041058	175.00
1-R00090	RAM INC					
		I-94982	02 -5267205	PETROLEUM PRO 1800 GAL DEISEL FOR	041060	5,489.24
		I-94983	02 -5267205	PETROLEUM PRO 1500 GAL NO LEAD SHOP	041060	4,003.00
1-S00530	SOUTHWEST CHEMICAL SERV					
		I-82822	02 -5874206	MAJOR CHEMICA SODIUM PERMANGANATE	041065	1,435.20
		I-82833	02 -5874206	MAJOR CHEMICA SODIUM PERMANGANATE	041065	3,348.80
1-T00010	T. H. ROGERS LUMBER CO.					
		I-365795	02 -5871203	REPAIRS & MAI LONG SHANK MASTER LOCKS	041069	115.00
1-U00053	UTILITY SUPPLY					
		I-031510	02 -5875209	UTILITY MAINT 3/4" X 2 METER NIPPLES	041074	350.00
1-U00128	UNITED PACKAGING & SHIP					
		I-47478	02 -5873304	LAB TESTING SHIPPING SAMPLES TO ERMI	041076	51.06
1-W00130	WATER PRODUCTS					
		I-0698098-IN	02 -5875204	SMALL TOOLS PARTS FOR TAPPING MACHINE	041079	210.40
		I-0698099-IN	02 -5875209	UTILITY MAINT 3/4" & 1" CORP STOPS FOR	041079	1,801.50
		I-0699101-IN	02 -5875209	UTILITY MAINT 2" X 6" FULL CIRCLE CLAMP	041079	1,814.00
1-W00270	WHITE ELECTRICAL SUPPLY					
		I-216466	02 -5874203	REPAIRS & MAI MAINTENANCE PARTS	041081	185.72
		I-216468	02 -5874203	REPAIRS & MAI MAINTENANCE PARTS	041081	84.56
				VENDOR SET 02 MPWA	TOTAL:	43,394.93

ACCOUNT: 03545 Regular Payments

ENDOR SET: 01

UND : 03 AIRPORT AUTHORITY

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-P00250	PETTY CASH					
		I-07-20305	03 -5876203	REPAIRS & MAI BEARING FOR AIRPORT GATE	041056	33.00
				VENDOR SET 03 AIRPORT AUTHORITY	TOTAL:	33.00

ACCOUNT: 03545 Regular Payments

ENDOR SET: 01

JND : 08 NUTRITION

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-D00213	DEBBIE COMPTON					
		I-07-20301	08 -5549308	CONTRACT SERV REIMBURSEMENT OF	041006	75.75
1-G00220	GENE CARR					
		I-07-20302	08 -5549308	CONTRACT SERV REIMBURSEMENT OF	041023	113.63
1-P00211	PENNY HENRY					
		I-07-20303	08 -5549308	CONTRACT SERV REIMBURSEMENT OF	041055	50.50
1-S00580	SOUTHWESTERN BELL					
		I-07-20300	08 -5549315	TELEPHONE UTI TELEPHONE SERVICE FOR	041066	54.58
				VENDOR SET 08 NUTRITION	TOTAL:	294.46

ACCOUNT: 03545 Regular Payments

ENDOR SET: 01

JND : 16 REVOLVING EVIDENCE

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT

i-H00139	HEWLETT PACKARD					
		I-43763401	16 -5323202	OPERATING SUP HP COMPUTERS	041025	1,605.00
				VENDOR SET 16 REVOLVING EVIDENCE	TOTAL:	1,605.00

CKET: 03545 Regular Payments

NDOR SET: 01

ND : 28 SE EXPO CTR/TOURISM FUND

NDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT

.-B00192	BEN E. KEITH					
		I-00535985	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	040997	1,469.91
		I-00547096-00544597	28 -5654210	CONCESSION SU CONCESSION SUPPLIES FOR	040997	2,493.87
.-D00205	DAYLIGHT DONUTS					
		I-4270-7	28 -5654210	CONCESSION SU DONUTS FOR DOT MEETING	041005	18.00
.-D00602	DON'S LAZY S JERKY MFG					
		I-9076	28 -5654210	CONCESSION SU BEEF JERKY FOR GUN &	041010	154.00
.-F00200	FLAMECO FIRE & SAFETY C					
		I-13985	28 -5654202	OPERATING SUP FIRE EXTINGUISHERS FOR	041018	240.00
.-L00380	LOCKE SUPPLY CO.					
		I-2/27/08	28 -5654210	CONCESSION SU TASTE & ODER FILTERS	041038	86.52
.-L00428	LOWE'S CREDIT SERVICES					
		I-2/27/08	28 -5654203	REPAIR & MAIN MISC. SUPPLIES	041040	47.94
L-P00210	PEPSI COLA					
		I-121793	28 -5654210	CONCESSION SU BAG-N-BOX CO2 FOR GUN &	041054	220.00
L-S00725	STAPLES CREDIT PLAN					
		I-2/29/08	28 -5654202	OPERATING SUP MISC. OFFICE SUPPLIES	041067	100.36
L-W00040	WALMART COMMUNITY BRC					
		I-15475	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	041078	22.80
		I-19652	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	041078	28.89
		I-21315	28 -5654210	CONCESSION SU HOSPITALITY ROOM	041078	112.49
		I-21403	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	041078	49.38
		I-21404	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	041078	78.12
		I-21986	28 -5654210	CONCESSION SU HOSPITALITY SUPPLIES	041078	77.56
		I-23707	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	041078	48.38
		I-23949	28 -5654210	CONCESSION SU HOSPITALITY SUPPLIES	041078	59.60
		I-25185	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	041078	33.38
		I-25649	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	041078	30.99
		I-27200	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	041078	19.87
		I-28128	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	041078	51.01
		I-28128	28 -5654210	CONCESSION SU HOSPITALITY SUPPLIES	041078	112.74
		I-29917	28 -5654210	CONCESSION SU HOSPITALITY SUPPLIES	041078	93.17

VENDOR SET 28 SE EXPO CTR/TOURISM FUND TOTAL: 5,648.98

ACCOUNT: 03545 Regular Payments

ENDOR SET: 01

JND : 29 E-911

ENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
1-B00098	BALL BARBEQUE					
		I-07-20217	29 -5324331	EMPLOYEE TRAV FOOD: 911 MEETING	040993	99.87
1-N00250	MCALESTER NEWS CAPITAL					
		I-07-20149	29 -5324202	OPERATING SUP BIDS ON E911 ADDRESSING	041048	31.90
1-P00250	PETTY CASH					
		I-07-20315	29 -5324202	OPERATING SUP PETTY CASH	041056	16.34
				VENDOR SET 29 E-911	TOTAL:	148.11
					REPORT GRAND TOTAL:	115,358.39

** G/L ACCOUNT TOTALS **

EAR	ACCOUNT	NAME	AMOUNT	=====LINE ITEM=====			-----GROUP BUDGET-----		
				ANNUAL BUDGET	BUDGET AVAILABLE	OVER BUDG	ANNUAL BUDGET	BUDGET AVAILABLE	OVER BUDG
007-2008	01 -5101319	MISCELLANEOUS	1,279.09	1,500	1,480.34-	Y			
	01 -5210202	OPERATING SUPPLIES	61.66	2,900	532.82-	Y			
	01 -5210330	DUES & SUBSCRIPTIONS	66.50	1,500	413.50				
	01 -5211202	OPERATING SUPPLIES	122.97	2,500	1,549.10-	Y			
	01 -5212202	OPERATING SUPPLIES	69.99	2,600	170.18				
	01 -5212317	ADVERTISING & PRINTING	30.25	5,500	2,860.38				
	01 -5212330	DUES & SUBSCRIPTIONS	30.00	600	270.00				
	01 -5213331	EMPLOYEE TRAVEL & TRAINING	272.37	2,450	1,489.79				
	01 -5214302	CONSULTANTS/LABOR RELATION	3,345.00	15,000	133,882.62-	Y			
	01 -5215106	WORKMAN'S COMP	1,175.00	312,758	164,265.50				
	01 -5215312	EQUIPMENT RENTALS	3,276.29	41,100	1,022.65				
	01 -5215315	TELEPHONE UTILITY	2,262.90	140,000	92,919.39				
	01 -5215330	DUES & SUBSCRIPTIONS	250.00	0	250.00-	Y			
	01 -5215355	OIL-OK FOR INDEPENDENT LIV	4,000.00	24,000	4,000.00				
	01 -5225202	OPERATING SUPPLIES	650.00	5,000	2,989.86				
	01 -5225349	INCODE SOFTWARE MAINTENANC	978.00	21,900	1,047.00-	Y			
	01 -5225401	COMPUTER TECHNOLOGY	316.40	25,000	17,733.41				
	01 -5321202	OPERATING SUPPLIES	694.02	20,000	7,046.21				
	01 -5321207	CLOTHING ALLOWANCE	477.25	27,400	11,066.26-	Y			
	01 -5321308	CONTRACTED SERVICES	145.75	25,683	3,860.04				
	01 -5321316	REPAIRS & MAINTENANCE	159.98	15,000	11,897.67				
	01 -5321324	SWAT	4,799.94	36,677	17,169.58				
	01 -5321331	EMPLOYEE TRAVEL & TRAININ	333.84	12,000	7,492.86				
	01 -5322202	OPERATING SUPPLIES	725.16	4,000	1,492.35				
	01 -5431202	OPERATING SUPPLIES	1,355.84	25,000	6,596.31				
	01 -5431203	REPAIRS & MAINT SUPPLIES	5.67	70,156	8,553.12				
	01 -5431307	ARBITRATIONS	2,719.15	19,092	46,872.45-	Y			
	01 -5431316	REPAIRS & MAINTENANCE	14.84	13,000	2,572.30				
	01 -5431330	DUES & SUBSCRIPTIONS	150.00	6,000	1,017.89-	Y			
	01 -5431331	EMPLOYEE TRAVEL & TRAININ	41.88	12,000	6,646.22				
	01 -5542202	OPERATING SUPPLIES	2,291.36	56,000	10,696.48-	Y			
	01 -5542203	REPAIRS & MAINT SUPPLIES	2,025.72	28,000	6,973.75				
	01 -5542206	MAJOR CHEMICALS	1,042.50	21,000	14,734.51				
	01 -5542308	CONTRACTED SERVICES	1,281.00	25,000	7,028.59				
	01 -5545202	OPERATING SUPPLIES	45.00	2,000	1,810.00				
	01 -5545311	PARKING RENTAL	375.00	0	3,375.00-	Y			
	01 -5547203	REPAIRS & MAINT SUPPLIES	741.69	12,000	4,943.81				
	01 -5547206	MAJOR CHEMICALS	539.25	2,300	1,760.75				
	01 -5548203	REPAIRS & MAINTENANCE SUPP	2,647.57	40,000	7,472.97				
	01 -5548204	SMALL TOOLS	928.50	5,000	929.43				
	01 -5652330	DUES & SUBSCRIPTIONS	86.50	3,500	1,591.35				
	01 -5652411	DEMOLITION	15.00	45,000	20,122.02				
	01 -5653202	OPERATING SUPPLIES	21.00	2,500	824.68				
	01 -5653215	AWARDS PROGRAM	49.63	5,000	4,850.02				
	01 -5653331	EMPLOYEE TRAVEL & TRAININ	167.02	1,500	718.98				

** G/L ACCOUNT TOTALS **

BAR	ACCOUNT	NAME	AMOUNT	-----LINE ITEM-----		-----GROUP BUDGET-----	
				ANNUAL BUDGET	BUDGET OVER AVAILABLE BUDG	ANNUAL BUDGET	BUDGET OVER AVAILABLE BUDG
	01 -5862203	REPAIRS & MAINT SUPPLIES	8,261.76	165,000	40,083.14		
	01 -5862205	PETROLEUM PRODUCTS	7,497.35	350,000	95,714.67		
	01 -5865202	OPERATING SUPPLIES	5.89	2,000	1,294.82		
	01 -5865203	REPAIR & MAINT SUPPLIES	1,405.55	51,000	25,566.96		
	01 -5865204	SMALL TOOLS	150.22	2,500	0.73		
	01 -5865402	CAPITAL PROJECTS-RESURFACI	4,846.66	250,000	100,676.31		
	02 -5216202	OPERATING SUPPLIES	584.52	40,008	834.12-	Y	
	02 -5216316	REPAIRS & MAINTENANCE	135.00	8,000	2,093.22		
	02 -5267203	REPAIRS & MAINTENANCE	11,988.69	230,000	88,919.99		
	02 -5267205	PETROLEUM PRODUCTS	10,751.53	140,000	36,096.43		
	02 -5864204	SMALL TOOLS	255.22	2,500	1,596.10		
	02 -5864410	LAND IMPROVEMENTS	354.36	190,000	84,259.74		
	02 -5871202	OPERATING SUPPLIES	43.00	7,500	3,764.08		
	02 -5871203	REPAIRS & MAINT SUPPLIES	115.00	10,000	9,034.42		
	02 -5873203	REPAIRS & MAINT SUPPLIES	893.32	60,000	17,774.49		
	02 -5873304	LAB TESTING	832.06	17,000	161.12		
	02 -5873316	REPAIRS & MAINTENANCE	3,091.92	65,000	29,970.39		
	02 -5874203	REPAIRS & MAINT SUPPLIES	270.28	50,000	37,407.94		
	02 -5874206	MAJOR CHEMICALS	8,444.00	290,000	16,832.25		
	02 -5874304	LAB TESTING	1,441.13	31,000	13,743.11		
	02 -5874317	ADVERTISING & PRINTING	19.00	2,000	526.83		
	02 -5875204	SMALL TOOLS	210.40	3,000	2,385.10		
	02 -5875209	UTILITY MAINTENANCE SUPP.	3,965.50	40,000	14,550.32		
	03 -5876203	REPAIRS & MAINT SUPPLIES	33.00	3,000	1,562.98		
	08 -5549308	CONTRACT SERVICES	239.88	4,160	1,354.46-	Y	
	08 -5549315	TELEPHONE UTILITY	54.58	1,000	562.69		
	16 -5323202	OPERATING SUPPLIES	1,605.00	50,000	35,320.14		
	28 -5654202	OPERATING SUPPLIES	340.36	8,000	1,500.77		
	28 -5654203	REPAIR & MAINT SUPPLIES	47.94	13,000	691.85		
	28 -5654210	CONCESSION SUPPLIES	5,260.68	27,000	2,504.80		
	29 -5324202	OPERATING SUPPLIES	48.24	6,000	5,085.60		
	29 -5324331	EMPLOYEE TRAVEL & TRAININ	99.87	4,000	3,900.13		
	** 2007-2008 YEAR TOTALS **		115,358.39				

NO ERRORS

** END OF REPORT **

CHECK: 03562 Regular Payments

VENDOR SET: 01

IND : 02 MPWA

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT

-U00130	UNITED SAFETY & CLAIMS					
		I-0720308	02 -5267106	WORKMAN'S COM W/C ACCOUNT FOR MEDICAL	041106	20,000.00
				VENDOR SET 02 MPWA	TOTAL:	20,000.00
					REPORT GRAND TOTAL:	20,000.00



McAlester City Council

AGENDA REPORT

Meeting Date: March 12, 2008 **Item Number:** 1
Department: City Council
Prepared By: Cora Middleton **Account Code:** _____
Date Prepared: March 4, 2008 **Budgeted Amount:** _____
Exhibits: Three

Subject

Consider, and act upon, a resolution extending the Cable Television Franchise.

Recommendation

Motion to approve a resolution extending the Cable Television Franchise.

Discussion

The City received a letter from Allegiance Communications requesting to be placed on the agenda for the Council's consideration of the extension of the cable television franchise. As the letter states the Council approved Resolution No. 07-26 on October 23, 2007, extending the permit to May 1, 2008. A copy of the letter is attached.

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	<u>CM</u>	<u>03/07/08</u>
City Manager	<u>MBR</u>	<u>03/07/08</u>



February 27, 2008

FEDERAL EXPRESS

Mark B. Roath
City of McAlester
c/o City Clerk
First and Washington
McAlester OK 74502

Dear Mark B. Roath,

Thank you for taking time out of your busy schedule to talk to me yesterday morning. I am writing to request the opportunity to be on the March 18th agenda for the City's consideration on signing the Resolution that would extend the cable franchise. I have enclosed two (2) copies of the Resolution. I look forward to meeting you and await the notification that we are confirmed for the agenda on the 18th.

The City approved Resolution No. 07-26 on October 23, 2007, extending the permit to May 1, 2008. They also requested some reports and information at that time, which I sent to the City on November 29, 2007 for review. The additional reports that you requested, mentioned in Ordinance No. 2074 and Permit Agreement, were sent to the City on January 11, 2008. Please contact me at any time if you need more information and I will be glad to help you. You can reach me by phone at 405-395-1104 or email me at sheila.morris@allegiancecatv.com.

Allegiance Communications is asking that this Resolution be passed so that the expiration date of the Permit Agreement, dated October 28, 1997, match the expiration date of Ordinance No. 2074, dated October 28, 1997.

Thank you,

A handwritten signature in cursive script that reads "Sheila Morris".

Sheila Morris
Government Relations & Office Administrator
Allegiance Communications

Enclosure (1)

cc: Connie Lyles

Come home to cable!

www.allegiance.tv

RESOLUTION NO. 07-26

A RESOLUTION TO EXTEND THE CABLE TELEVISION FRANCHISE

WHEREAS, Allegiance Communications, LLC ("Allegiance"), currently holds a cable franchise with the City of McAlester, Oklahoma ("City"); and

WHEREAS, the City enacted Ordinance No. 2074 (the "Ordinance") providing for the construction and operation of a cable system; and

WHEREAS, the Ordinance, under Section 3.5 thereof, states that any Permit shall be for fifteen (15) years; and

WHEREAS, the City granted a franchise permit to Allegiance, as successor in interest, by that certain Permit Agreement dated October 28, 1997 (the "Permit"); and

WHEREAS, the Permit was for a period of five (5) years, with an automatic five (5) year extension upon certain requirements; and

WHEREAS, the Permit was extended for the automatic five (5) years; and

WHEREAS, the Permit under its own terms, will expire on October 28, 2007; and

WHEREAS, Allegiance and City wish to extend the Permit for the remaining five (5) years, as provided in the Ordinance; and

WHEREAS, it is in the public interest to extend the Permit for an additional five (5) years so that cable service to the public will not be interrupted.

NOW, THEREFORE, in consideration of the foregoing, Allegiance and City agree as follows:

Section 1: The Permit is hereby extended for six (6) months and will now expire May 1, 2008.

Section 2: All other terms and conditions of the Franchise shall continue in full force and effect, subject to applicable law.

PASSED AND APPROVED this 23 day of October, 2007.

CITY OF MCALESTER, OKLAHOMA
A Municipal Corporation

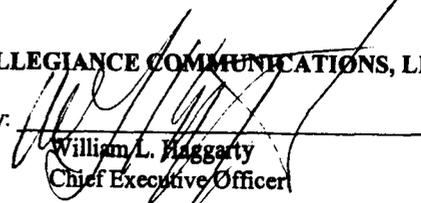
ATTEST:

By: 
Don R. Lewis, Mayor


Cora Middleton, City Clerk

ACCEPTED THIS 5th day of November, 2007.

ALLEGIANCE COMMUNICATIONS, LLC

By: 
William L. Haggarty
Chief Executive Officer

RESOLUTION NO. _____

A RESOLUTION TO EXTEND THE CABLE TELEVISION FRANCHISE

WHEREAS, Allegiance Communications, LLC ("Allegiance"), currently holds a cable franchise with the City of McAlester, Oklahoma ("City"); and

WHEREAS, the City enacted Ordinance No. 2074 (the "Ordinance") providing for the construction and operation of a cable system; and

WHEREAS, the Ordinance, under Section 3.5 thereof, states that any Permit shall be for fifteen (15) years; and

WHEREAS, the City granted a franchise permit to Allegiance, as successor in interest, by that certain Permit Agreement dated October 28, 1997 (the "Permit"); and

WHEREAS, the Permit was for a period of five (5) years, with an automatic five (5) year extension upon certain requirements; and

WHEREAS, the Permit was extended for the automatic five (5) years; and

WHEREAS, the Permit under its own terms, will expire on October 28, 2007; and

WHEREAS, Allegiance and City wish to extend the Permit for the remaining five (5) years, as provided in the Ordinance; and

WHEREAS, it is in the public interest to extend the Permit for an additional five (5) years so that cable service to the public will not be interrupted.

WHEREAS, Resolution No. 07-26 granted an extension to the Permit for six (6) months, expiring May 1, 2008; and

NOW, THEREFORE, in consideration of the foregoing, Allegiance and City agree as follows:

Section 1: The Permit is hereby extended for four (4) years and eight (8) months and will now expire on October 28, 2012.

Section 2: All other terms and conditions of the Franchise shall continue in full force and effect, subject to applicable law.

PASSED AND APPROVED this _____ day of _____, 2008.

**CITY OF MCALESTER, OKLAHOMA
A Municipal Corporation**

ATTEST:

By: _____
Don R. Lewis, Mayor

Cora Middleton, City Clerk

ACCEPTED THIS _____ day of _____, 2008.

ALLEGIANCE COMMUNICATIONS, LLC

By: _____
William L. Haggarty
Chief Executive Officer



McAlester City Council

AGENDA REPORT

Meeting Date: March 12, 2008 Item Number: 2
Department: City Council
Prepared By: Cora Middleton for Councilman W. Smith Account Code: _____
Date Prepared: March 4, 2008 Budgeted Amount: _____
Exhibits: One

Subject

Consider, and act upon, an ordinance authorizing the City of McAlester to submit revised Charter for a vote of the people.

Recommendation

Discussion

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	<u>CM</u>	<u>03/04/08</u>
City Manager	<u>MBR</u>	<u>03/04/08</u>

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY OF MCALESTER, OKLAHOMA TO SUBMIT TO THE REGISTERED QUALIFIED VOTERS OF SAID CITY THE QUESTION WHETHER REVISED CHARTER SHOULD BE APPROVED.

* * * * *

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCALESTER, OKLAHOMA, that:

SECTION 1: The Mayor of the City of McAlester is hereby authorized and directed to submit to the registered, qualified voters at a Special Election on the 13th day of May 2008 the following Proposition:

PROPOSITION

PREAMBLE

We the people of the City of McAlester of Pittsburg County, under the constitution and laws of the State of Oklahoma, in order to secure the benefits of local self-government and to provide for an honest and accountable Council-Manager government do hereby adopt this Charter and confer upon the City the following powers, subject to the following restrictions, and prescribed by the following procedures and governmental structure. By this action, we secure the benefits of home rule and affirm the values of representative democracy, professional management, strong political leadership, citizen participation, and regional cooperation.

ARTICLE 1. POWERS OF THE CITY

Section 1.01. Powers of the City

The City shall have all powers possible for a city to have under the constitution and laws of the state of Oklahoma as fully and completely as though they were specifically enumerated in this Charter.

Section 1.02. Construction.

The powers of the City under this Charter shall be construed liberally in favor of the City, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power granted in this article.

Section 1.03. Intergovernmental Relations.

The City may participate by contract or otherwise with any governmental entity of the state of Oklahoma or any other state or states or the United States in the performance of any activity which one or more of such entities has the authority to undertake.

ARTICLE 2. CITY COUNCIL

Section 2.01. General Powers and Duties.

(a) Powers. All powers of the City shall be vested in the City Council, except as otherwise provided by law or this Charter and the Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the City by law.

(b) Fiduciary Responsibility. The City Council has a fiduciary responsibility to the City of McAlester. It shall carry out its trusteeship duties with the utmost degree of good faith, probity, diligence, and loyalty to the interests of the people of McAlester.

(c) Policies, Goals, and Performance Monitoring. The City Council shall define the policies and goals of the City. To ensure that policies are followed and goals are achieved, it shall exercise its oversight responsibilities through regular, systematic and rigorous performance monitoring.

Section 2.02. Eligibility, Terms, and Composition.

(a) Eligibility. Only registered voters of the City who are at least 25 years old, who have resided in the City at least two years, shall be qualified for the office of Mayor. Only registered voters of the City who are at least 25 years old, who have resided in the City at least two years, and who have resided for a period of one year in the respective wards from which they are elected or appointed to fill a vacancy, shall be qualified for the offices of Councilmen from the wards. The Council shall not prescribe additional qualifications for the Mayor and other Councilmen.

(b) Terms. The term of office of elected officials shall be four years elected in accordance with Article 6.

(c) Composition. There shall be a City Council composed of seven members, six of which shall be elected by ward by the voters in that ward and a Mayor who shall be elected by the voters of the City at large in accordance with the provisions of § 2.03(b).

(d) Term Limitation. No more than 12 years may be served as Mayor, Councilman, or a combination thereof. A Mayor or Councilman elected or appointed to serve less than a full term shall not have that partial term counted in the 12 year limitation.

Section 2.03. Mayor and Vice-Mayor.

(a) Powers and Duties. The Mayor shall be a voting member of the City Council and shall attend and preside at meetings of the Council, represent the City in

intergovernmental relationships, appoint with the advice and consent of the Council the members of citizen advisory boards and commissions, present an annual state of the City message no later than the first regular Council meeting in February, appoint the members and officers of Council committees, assign agenda items to committees subject to the consent of Council, and perform other duties specified by the Council. The Mayor shall be recognized as head of the City government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties.

(b) Election of Mayor and Selection of Vice-Mayor. The Mayor will be elected for a term of four years beginning with the 2008 election and every four years thereafter. After every regular election of Councilmen at two year intervals the Council shall elect from among its members a Vice-Mayor who shall act as Mayor during the absence, disability, or suspension of the Mayor, or if a vacancy occurs in the office of Mayor, until another Mayor is selected by the Council for completion of the unexpired term and qualifies. If the office of Vice-Mayor becomes vacant, the Council shall select from its membership another Vice-Mayor for completion of the unexpired term.

Section 2.04. Compensation; Expenses.

The salary of the Mayor shall be \$75.00 per month, and the salary of each other Councilman shall be \$50.00 per month. The Mayor and Council members shall receive their actual and necessary expenses incurred in the performance of their duties of office if such expenses are approved in advance by the Council at a public meeting.

Section 2.05. Prohibitions.

(a) Holding Other Office. Except where authorized by law, no Council member shall hold any other elected public office during the term for which the member was elected to the Council. No Council member shall hold any other City office or City employment during the term for which the member was elected to the Council. No former Council member shall hold any compensated appointive office or employment with the City until one year after the expiration of the term for which the member was elected to the Council.

Nothing in this section shall be construed to prohibit the Council from selecting any current or former Council member to represent the City on the governing boards of any regional or other intergovernmental agency or on other boards.

(b) Appointments and Removals. Neither the City Council nor any of its members shall in any manner control or demand the appointment or removal of any City administrative officer or employee whom the City Manager or any subordinate of the City Manager is empowered to appoint, except the City Attorney under the provisions of § 4.03(a). However, the Council may express its views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees.

(c) Interference with Administration; Freedom of Communication. Neither the Council nor its members shall give orders to City officers or employees who are subordinate to the City Manager. However, this prohibition shall not prevent Council members from making inquiries of department heads or employees under § 2.08 for the purpose of obtaining information needed by them in the discharge of their duties, including response to constituent requests or requesting assistance that is available to any other citizen, City employees shall use their chain of command for work-related situations and problems, but they have the same rights as any other citizen to communicate with Council members and will not be punished for doing so.

Section 2.06. Vacancies; Forfeiture of Office; Filling of Vacancies.

(a) Vacancies. The office of a Council member shall become vacant upon the member's death, resignation, removal from office, or forfeiture of office in any manner authorized by this Charter or the laws of the state of Oklahoma.

(b) Forfeiture of Office. A Council member shall forfeit that office if the Council member:

- (1) lacks at any time during the term of office for which elected any qualification for the office prescribed by this Charter or by the laws of the State of Oklahoma;
- (2) violates any express prohibition of this Charter;
- (3) has been found guilty or entered a plea of guilty or nolo contendere to a felony or any other crime involving moral turpitude under the laws of the United States or of any state, even if subsequently followed by the suspended or deferred imposition of the sentence;
- (4) commits any of those acts set forth in Oklahoma Statutes, Title 22 Section 1181, as may be amended from time to time by the state legislature; or
- (5) fails to attend more than one-half of all meetings of the Council, regular and special, held within any period of three consecutive months.

(c) Filling of Vacancies. The Council, by majority vote of its remaining members, shall fill vacancies in its own membership, including the office of Mayor, for the unexpired terms, provided that should the unexpired term to be so filled be one year or longer, the Council shall call a special election for the purpose of electing a suitable person to fill such vacancy for the remainder of the unexpired term, not less than 30 days nor more than 60 days following declaration of vacancy, all candidates to file upon applications provided for said purpose, and the candidate receiving the greater number of votes to be elected.

Section 2.07. City Clerk.

The City Council shall appoint an officer of the City who shall have the title of City Clerk and serves at the pleasure of the Council. The City Clerk shall give notice of Council meetings to its members and the public, keep the journal of its proceedings and perform such other duties as are assigned by this Charter, the Council, or by State Law.

Section 2.08. Investigations.

The City Council may make investigations into the affairs of the City and the conduct of any City department, division, or other organizational unit.

Section 2.09. Independent Audit.

The City Council shall provide for an independent annual audit of all City financial and accounting activities and may provide for more frequent audits as it deems necessary. Such audits shall be carried out in accordance with § 5.13.

Section 2.10. Procedure.

(a) Meetings. The Council shall hold at least two regular meetings every month, at such times as it may prescribe by ordinance or otherwise. The Mayor or any four Councilmen may call special meetings as the Council may prescribe by ordinance or otherwise. All meetings of the Council shall comply with the Oklahoma open meeting law.

(b) Rules and Journal. The City Council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record and posted in a website or other means of publicly available electronic distribution.

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Four members of the Council shall constitute a quorum, but a smaller number may adjourn from time to time. No action of the Council, except as otherwise provided in the preceding sentence and in § 2.06(c), shall be valid or binding unless adopted by the affirmative vote of four or more members of the Council.

Section 2.11. Action Requiring an Ordinance.

In addition to other acts required by law or by specific provision of this Charter to be done by ordinance, those acts of the City Council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter, or abolish any City department, division, or other organizational unit;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Levy taxes;

- (4) Grant, renew, or extend a franchise;
- (5) Regulate the rate charged for its services by a public utility;
- (6) Authorize the borrowing of money in accordance with State law;
- (7) Convey or lease or authorize the conveyance or lease of any lands of the City;
- (8) Regulate land use and development;
- (9) Amend or repeal any ordinance previously adopted; or
- (10) Adopt, with or without amendment, ordinances proposed under the initiative power.

Acts other than those referred to in the preceding sentence may be done either by ordinance, resolution, or motion.

Section 2.12. Ordinances in General.

(a) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The enacting clause shall be, "Be it ordained by the Council of the City of McAlester, Oklahoma..." All ordinances proposed by the voters under their power of initiative, "Be it ordained by the People of the City of McAlester, Oklahoma..." Any ordinance which repeals or amends an existing ordinance or part of the City Code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing it in brackets or by ~~strikeout~~ type and shall indicate new matters by underscoring or by italics.

(b) Procedure. All proposed ordinances shall appear on the published agenda for regular or special meetings of the Council. Upon introduction of any ordinance, the City Clerk shall distribute a copy to each Council member and to the City Manager, shall file a reasonable number of copies in the office of the City Clerk and such other public places as the Council may designate, and shall post the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council. The public hearing shall follow the posting by at least seven days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing, the Council may adopt the ordinance with or without amendment or reject it. A majority vote of all councilmen shall be required for adoption of an ordinance. As soon as practicable after adoption, the Clerk shall have the ordinance and a notice of its adoption published and available at a reasonable price as set by the Council and posted on a website or distributed through other publicly available electronic means.

(c) Effective Date. Except as otherwise provided in this Charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein. A franchise for a public utility shall not go into effect until the ordinance granting it has been published in full in a newspaper of general circulation within the city and has been approved at an election by a vote of the qualified electors voting on the question.

(d) Publish Defined. As used in this section, the term "publish" means to print in the contemporary means of information sharing, which includes but is not limited to, one or more newspapers of general circulation in the City, and in a website or other means of publicly available electronic distribution: (1) the ordinance in full or by number, title, and a brief summary thereof, and (2) the places where copies of it have been filed and the times when they are available for public inspection and purchase at a reasonable price set by the Council.

Section 2.13. Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the City Council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided by State Law. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. The question of the emergency must be voted on separately and approved by the affirmative vote of at least five (5) members of the City Council. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least five (5) members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. An emergency ordinance may be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Section 2.14. Codes of Technical Regulations.

The City Council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that:

(1) The requirements of § 2.12 (b) for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and

(2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the City Clerk pursuant to § 2.15.

Copies of any adopted code of technical regulations shall be made available by the City Clerk for distribution or for purchase at a reasonable price as set by the Council.

Section 2.15. Authentication and Recording; Codification; and Printing of Ordinances and Resolutions.

(a) Authentication and Recording. The City Clerk shall authenticate by signing and shall record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the City Council.

(b) Codification. At least every ten years, the City Council shall provide for the preparation of a general codification of all City ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the Council by ordinance and shall be published, together with this Charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of Oklahoma, and such codes of technical regulations and other rules and regulations as the Council may specify. This compilation shall be known and cited officially as the McAlester City Code. Copies of the Code shall be furnished to City officers and shall be made available for purchase by the public at a reasonable price fixed by the Council. The Code shall be placed in libraries, public offices, and in a website or other means of publicly available electronic distribution for free public reference.

(c) Printing of Ordinances and Resolutions. The City Council shall cause each ordinance and resolution having the force and effect of law and each amendment to this Charter to be printed promptly following its adoption, and the printed ordinances, resolutions and Charter amendments shall be distributed or sold to the public at reasonable prices as fixed by the Council. The Charter, all Charter amendments, and each ordinance and resolution having the force and effect of law shall be available on a website or other means of publicly available electronic distribution. Following publication of the first McAlester City Code and at all times thereafter, the ordinances, resolutions and Charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The Council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the constitution and other laws of the State of Oklahoma, or the codes of technical regulations and other rules and regulations included in the code.

ARTICLE 3. CITY MANAGER

Section 3.01. Appointment, Qualifications, Compensation, and Periodic Evaluations. The City Council, by a majority vote of its total membership, shall appoint a City Manager for an indefinite term and fix the Manager's compensation. The City Manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local government management. Minimum qualifications are 1) a Master's Degree with a concentration in public administration or a related

discipline, and two years of experience in an appointed managerial or administrative position in a local government; or 2) a Bachelor's Degree and five years of such experience. The Manager need not be a resident of the City or state at the time of appointment, but shall reside within the City while in office. The City Council shall thoroughly review the performance of the City Manager at least once every year and deliver a report of this evaluation to the City Manager. A copy of the City Manager's evaluations shall be kept in the personnel records.

Section 3.02. Removal.

If the City Manager declines to resign at the request of the City Council, the City Council may suspend the Manager by a resolution approved by the majority of the total membership of the City Council. Such resolution shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the City Manager. The Manager shall have fifteen (15) days in which to reply thereto in writing, and upon request, shall be afforded a public hearing, which shall occur not earlier than ten (10) days, or later than fifteen (15) days after such hearing is requested. After the public hearing, if one is requested, and after full consideration, the City Council, by a majority vote of its total membership, may adopt a final resolution of removal. The City Manager shall continue to receive full salary until the effective date of a final resolution of removal. The position of City Manager shall be excluded from the general provisions of § 4.02 (a), as set forth in this Charter.

Section 3.03. Acting City Manager.

To perform his duties during his temporary absence or disability, the City Manager, by letter filed with the City Clerk, shall appoint a qualified administrative officer of the City to be Acting City Manager. If the Council suspends the City Manager, if the City Manager's disability or absence is likely to be for more than thirty (30) days, or if there is a vacancy in the office of City Manager, the Council shall appoint an Acting City Manager within thirty (30) days to serve until his disability, absence or suspension ceases, or until it appoints another City Manager, as the case may be. The City Council shall exert the same authority over the Acting City Manager as it has over the City Manager including the right to evaluate and adjust the salary of the position and the Council may remove an Acting City Manager without cause by vote of a majority of all its members. Hiring or removal of any department head by the Acting City Manager shall require the concurrence of a majority of the City Council.

Section 3.04. Powers and Duties.

The City Manager shall be chief administrative officer and head of the administrative branch of the City government. He shall execute the laws and ordinances and administer the government of the City, and shall be responsible therefore to the Council. He shall:

- (1) Appoint, and when necessary for the good of the service, suspend or remove all City employees and appoint administrative officers provided for by or under this Charter,

except as otherwise provided by law, this Charter, or personnel rules adopted pursuant to this Charter. The City Manager may authorize any administrative officer, subject to the City Manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;

- (2) Direct and supervise the administration of all departments, divisions, and other organizational units of the City, except as otherwise provided by this Charter or by law;
- (3) Attend all City Council meetings unless specifically excused by the presiding council member. The City Manager shall have the right to take part in discussion, but shall not vote;
- (4) See that all laws, provisions of this Charter and acts of the City Council, subject to enforcement by the City Manager or by officers subject to the City Manager's direction and supervision, are faithfully executed;
- (5) Prepare and submit the annual budget and capital program to the City Council, and implement the final budget approved by the City Council to achieve the goals of the City;
- (6) Submit to the City Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year;
- (7) Make such other reports as the City Council may require concerning operations;
- (8) Keep the City Council fully advised as to the financial condition and future needs of the City;
- (9) Make recommendations to the City Council concerning the affairs of the City and facilitate the work of the City Council in developing policy;
- (10) Annually assist the Council to develop long-term goals for the City and strategies to implement these goals;
- (11) Promote partnerships among Council, staff, and citizens in developing public policy and building a sense of community; and
- (12) Perform such other duties as are specified in this Charter or may be required by the City Council and are consistent with this Charter, state, or federal law.

Section 3.05. Holding More than One Office.

The City Manager may hold more than one office in City government through appointment by the Council, but he may not receive compensation for service in such other offices.

Section 3.06 Purchases, Competitive Bidding, and Sales.

(a) Purchases. The City Manager, subject to any regulations which the Council may prescribe, shall contract for the purchase, or issue purchase authorizations for, all supplies, materials and equipment for the offices, departments and agencies of the City government. Every such contract or purchase exceeding an amount to be established by ordinance, shall require the prior approval of the Council. The City Manager may also transfer to or between offices, departments and divisions, or sell surplus or obsolete supplies, materials, and equipment, subject to such regulations as the Council may prescribe.

(b) Competitive Bidding. Before the purchase of, or contract for, any supplies, materials, or equipment, or the sale of any surplus or obsolete supplies, materials, or equipment, ample opportunity for competitive bidding, under such regulations and with such exceptions, as the Council may prescribe, shall be given; but the Council shall not except an individual contract, purchase or sale from the requirement of competitive bidding. A violation of this provision shall be cause for removal of any city employee who knowingly authorized any violation of the City's competitive bidding rules.

(c) Sale of Property Valued at More Than \$50,000. The sale of any City property, real or personal, including public utilities, or of any interest therein, except real property held by the City for Economic Development, the value of which is more than \$50,000, may be made only: (1) by authority of an affirmative vote of a majority of the qualified electors of the City who vote on the question of approving or authorizing the sale at an election; or (2) by authority of a special non-emergency ordinance. Such ordinance shall be published in full in a newspaper of general circulation in the City within ten days after its passage, and shall include a section reading substantially as follows: "Section _____. This ordinance shall be referred to a vote of the electors of the City if a legal and sufficient referendum petition is properly filed within 30 days after its passage; otherwise it shall go into effect thirty (30) days after its passage." The sale of an entire public utility may be authorized only as provided in (1) hereinabove.

(d) Sale of Economic Development Property. The sale of City property held for Economic Development such as Taylor Industrial Park, King Property, and other real property owned or acquired in the future for Economic Development by the City shall be subject to approval by an affirmative vote of five (5) councilmen.

Article 4. DEPARTMENTS, DIVISIONS, AND OTHER ORGANIZATIONAL UNITS

Section 4.01. General Provisions.

(a) Creation of Departments and other Organizational Units. The City Council may establish City departments, divisions, and other organizational units in addition to those created by this Charter and may prescribe the functions of all departments, divisions, and other organizational units. No function assigned by this Charter to a particular department, division, or other organizational unit may be discontinued or, unless this Charter specifically so provides, assigned to any other.

(b) **Direction by City Manager.** All departments, divisions, and other organizational units under the direction and supervision of the City Manager shall be administered by an officer appointed by and subject to the direction and supervision of the Manager. The City Manager may appoint one person as the head of two or more departments, divisions, and other organizational units.

Section 4.02. Personnel System.

(a) **Merit Principle.** All appointments and promotions of City officers and employees shall be made solely on the basis of merit and fitness demonstrated by a valid and reliable examination when applicable, education, experience, or other evidence of competence. Removals, demotions, suspensions, and layoffs shall be made solely for the good of the service.

(b) **Merit System.** Consistent with all applicable federal and state laws, the City Council shall within twelve (12) months after the effective date of this Charter provide by ordinance for the establishment, regulation, and maintenance of a merit system governing personnel policies necessary to effective administration of the employees of the City's departments, divisions, and other organizational units, including but not limited to classification and pay plans, examinations, force reduction, removals, working conditions, provisional and exempt appointments, in-service training, grievances and relationships with employee organizations.

(c) **Bonds of City Officers and Employees.** The City Manager, the Chief Financial Officer, and such other officers and employees as the Council may designate, before entering upon their duties, shall provide bonds for the faithful performance of their respective duties, payable to the City, in such form and in such amounts as the Council may prescribe, with a surety company authorized to operate within the state. The City shall pay the premiums on such bonds. The bonds of the City Manager and the Chief Financial Officer shall be in an amount of at least one percent (1%) of the total current annually budgeted expenditures for the City, but no less than two hundred thousand dollars (\$200,000).

(d) **Personnel Matters.** The Council, consistent with this Charter, by ordinance or personnel rules, may regulate personnel matters and provide for proper personnel administration.

(e) **Oath or Affirmation of Office.** Every officer of the city, before entering upon the duties of his office, shall take and subscribe to the oath or affirmation of office prescribed by the State Constitution. The oath or affirmation shall be filed in the City Clerk's office. All officers authorized by federal or state law, the Mayor, the City Manager, the Municipal Judge or Judges, and such other officers as the council may authorize, may administer oaths and affirmations in any matter pertaining to the affairs and government of the City.

(f) Layoff, Suspend, Demote, or Remove Officers and Employees. Except as may be otherwise provided by this Charter, the power to layoff, suspend, demote, and remove accompanies the power to elect or appoint; and the Council, the City Manager, or other electing or appointing authority may at any time layoff, suspend, demote, or remove any officer or employee to whom the Council, the City Manager, or the other electing or appointing authority respectively may elect or appoint a successor.

(g) Acting Officers and Employees. Except as may be otherwise provided by this Charter, the electing or appointing authority who may elect or appoint the successor of an officer or employee, may elect or appoint a person to act during the temporary absence, disability, or suspension of such officer or employee, or, in case of a vacancy, until a successor is elected or appointed and qualifies, unless the Council provides by general ordinance that a particular superior or subordinate of such officer or employee shall act. The Council may provide by general ordinance for a deputy to act in such cases.

(h) Officers to Continue. Except as may be otherwise provided by this Charter, every officer who is elected or appointed for a term ending at a definite time, shall continue to serve thereafter until his successor is elected or appointed and qualifies unless his services are sooner terminated by resignation, removal, disqualification, death, abolition of the office, or other legal manner.

Section 4.03. City Attorney.

(a) Appointment. The City Attorney shall be appointed or removed only by a majority vote of the City Council, not including vacant positions. The City Attorney shall be an attorney licensed to practice law in the State of Oklahoma.

(b) Role. The City Attorney shall serve as chief legal advisor to the City Council, the City Manager and all City departments, divisions, and other organizational units, shall normally represent the City in all legal proceedings and shall perform any other duties prescribed by state law, by this Charter or by ordinance; provided, however, that in all proceedings under Section 3.02 of this Charter, the City Attorney shall represent only the City Council and not the City Manager, nor shall the City Attorney represent any entity with which the City contracts, any City employee or City Council Member charged with or under investigation for a crime.

Section 4.04. Chief Financial Officer.

(a) Appointment and Qualifications. The Chief Financial Officer (CFO) shall be appointed for an indefinite term by the City Manager. The CFO shall be appointed solely on the basis of education and experience in the accepted competencies and practices of accounting and financial management. Minimum qualifications are: 1) a Bachelor's Degree in accounting or finance; and 2) progressively responsible experience in accounting and financial management. The CFO shall have the demonstrated ability to communicate effectively via oral or written reports. Experience in local government or

not-for-profit accounting and financial management is preferred. Certified Public Accountant or Certified Government Finance Officer is preferred.

(b) Role. The Chief Financial Officer is responsible for all accounting and financial management functions except for those otherwise provided for in this Charter. Subject to and in accordance with this Charter, applicable law, and such ordinances and other policies as the Council may adopt, the Chief Financial Officer or personnel under his supervision and control shall:

- (1) Be responsible for investment of City money. Collect or receive revenue and other money for the city and shall be responsible for its custody, safekeeping, deposit, investment, and disbursement.
- (2) Insure that the City has an accurate and comprehensive financial accounting, management, and reporting system to meet the requirements of this Charter and state law.
- (3) Provide all financial information and reports requested by the City Council and the City Manager.
- (4) Establish and maintain a system of internal control to ensure the effectiveness and efficiency of operations, the reliability of financial reporting, and compliance with all applicable laws and regulations. The internal control system shall be designed to provide reasonable assurance regarding prevention or prompt detection of unauthorized acquisition, use, or disposition of assets.
- (5) Provide open and timely communication, both written and oral, to the Council, City Manager, City Attorney, other City employees, City Boards and Committees, and to the general public on matters of accounting, auditing, budgeting, financial management and internal control.
- (6) Perform such other duties as are specified in this Charter, prescribed by ordinance or applicable law, or may be required by the City Council or City Manager.

Section 4.05. Land Use, Development, and Environmental Planning.

Consistent with all applicable federal and state laws with respect to land use, development, and environmental planning, the City Council shall:

- (1) Designate an agency or agencies to carry out the planning function and such decision-making responsibilities as may be specified by ordinance;
- (2) Adopt a comprehensive plan that is to be reviewed annually and determine to what extent zoning and other land use control ordinances must be consistent with the plan;
- (3) Determine to what extent the comprehensive plan and zoning and other land use ordinances must be consistent with regional plan(s); and

(4) Adopt development regulations, to be specified by ordinance, to implement the plan.

The designated agency, the City Manager, and the Mayor and Council shall seek to act in cooperation with other jurisdictions and organizations in their region to promote integrated approaches to regional issues.

ARTICLE 5. FINANCIAL MANAGEMENT

Section 5.01. Fiscal Year.

The fiscal year of the City shall begin on the first day of July and end on the last day of June.

Section 5.02. Submission of Budget and Budget Message.

Each year the City Manager shall submit to the City Council and the Audit and Finance Advisory Committee a budget for the ensuing fiscal year and an accompanying message. These submissions will be due forty-five (45) days prior to the last day of the fiscal year.

Section 5.03. Budget Message.

The City Manager's message shall explain the budget both in fiscal terms and in terms of the work programs, linking those programs to organizational goals and community priorities. It should outline the proposed financial policies of the City for the ensuing fiscal year and the impact of those policies on future years. It should describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the City's debt position, including factors affecting the ability to raise resources through debt issues, and include such other material as the City Manager or City Council deem desirable.

Section 5.04. Budget.

The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the City Manager deems desirable or the City Council may require for effective management and an understanding of the relationship between the budget and the City's strategic goals, consistent with state law. The City Manager shall also provide a list of all current City positions by department and division, their current annual pay, any additional pay such as longevity or incentive pay, the value of all benefits, and any proposed changes to positions, assignments, or pay. The budget shall begin with a clear general summary of its contents, shall show in detail all estimated income, indicating the proposed property tax levy if any, and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income

and expenditures of the preceding fiscal year. Current year “actual” figures shall be authentic figures through the date they are available and estimated figures for the remaining portion of the fiscal year. It shall indicate in separate sections:

- (1) The proposed goals and expenditures for current operations during the ensuing fiscal year, detailed for each fund by department and division or by other organization unit, activity, or objectives, or other means as state law permits, method of financing such expenditures, and methods to measure outcomes and performance related to the goals. An Emergency Fund will be included in the budget and every reasonable attempt shall be made to maintain this fund at a minimum of ten percent (10%) of the total operating budget including capital improvements. A separate account shall be maintained for the Emergency Fund and the City Council shall define by ordinance under what circumstances withdrawals may be made from the Emergency Fund account;
- (2) Proposed longer-term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by department and division or by other organization unit when practicable, the proposed method of financing each such capital expenditure, and methods to measure outcomes and performance related to the goals; and
- (3) The proposed goals, anticipated income and expense for the ensuing year for each utility or other enterprise fund or internal service fund operated by the City, and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance exclusive of reserves.

Nothing in this section shall be construed to prevent the use of “purpose-based” budgeting or any other budget format acceptable to the State of Oklahoma.

Section 5.05. City Council Action on Budget.

(a) Notice and Hearing. Within one (1) week of receiving the proposed budget from the City Manager, the City Council shall publish in one or more newspapers of general circulation in the City the general summary of the budget and a notice stating:

- (1) The times and places where copies of the message and the entire detailed budget are available for inspection by the public and purchase at a reasonable price set by the Council; and
- (2) The time and place, not less than two weeks after such publication, for a public hearing(s) on the budget.

The entire budget shall also be available on a website or other means of publicly available electronic distribution.

(b) Amendment before Adoption. After the public hearing(s), the City Council may adopt the budget with or without amendment. In amending the budget, it may add or

increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income plus carried forward fund balance.

(c) Adoption. The City Council shall adopt the budget no later than seven (7) days before the end of the current fiscal year or any other applicable deadline of State Law. If it fails to adopt the budget by this date, the budget for the amounts appropriated for operations in the current fiscal year will be deemed adopted.

(d) Publish defined. As used in this article, the term "publish" means to print in the contemporary means of information sharing, which includes but is not limited to, one or more newspapers of general circulation in the City and in a website or other means of publicly available electronic distribution.

Section 5.06. Appropriation and Revenue Ordinances.

To implement the adopted budget, the City Council shall adopt, prior to the beginning of the fiscal year:

- (1) an appropriation ordinance making appropriations by department, division, or other organizational unit, activities or objectives;
- (2) ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.

Section 5.07. Midyear Budget Review and Amendments after Adoption.

(a) Midyear Budget Review. The City Manager shall submit a midyear review of the budget to the Council on or before the last day of January. This shall include the evaluation and modification, if necessary, of revenues and expenses.

(b) Supplemental Appropriations. If during or before the fiscal year the City Manager certifies in writing that there are available for appropriation revenues in excess of those estimated in the budget or unappropriated fund balances, the City Council by ordinance may make supplemental appropriations for the year up to the amount of such excess.

(c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the City Manager that the revenues or fund balances available will be insufficient to finance the expenditures for which appropriations have been authorized, the Manager shall report to the City Council without delay, indicating the estimated amount of the shortfall, any remedial action taken by the Manager and recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or reduce any shortfall and for that purpose it may by ordinance reduce or eliminate one or more appropriations.

(d) Transfer of Appropriations. The City Council may by resolution give the City Manager authority during the fiscal year to transfer part or all of the unencumbered appropriation balance from one department, to the appropriation for other departments or to a new appropriation.

(e) Limitation; Effective Date. No appropriation for debt service may be reduced or transferred, except to the extent that the debt is refinanced and less debt service is required, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

Section 5.08. Lapse of Appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until expended, revised or repealed; the purpose of any such appropriation shall be deemed abandoned if three (3) years pass without any disbursement from or encumbrance of the appropriation.

Section 5.09. Administration and Fiduciary Oversight of the Budget.

The City Council shall provide by ordinance the procedures for administration and fiduciary oversight of the budget.

Section 5.10 Overspending of Appropriations.

No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the City Manager or his designee first certifies that there is sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal. A violation of this provision shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation. Such officer may also be liable to the City for any amount so paid. Except where prohibited by law, however, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, but only if such action is made or approved by a majority of the City Council.

Section 5.11. Capital Program.

(a) Submission to City Council. The City Manager shall prepare and submit to the City Council and the Audit and Finance Advisory Committee a five (5)-year or longer capital program no later than the fifteenth (15th) day of March.

(b) Contents. The capital program shall include:

(1) A clear general summary of its contents;

(2) Identification of the long-term goals of the community;

(3) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five (5) fiscal years or longer next ensuing, with appropriate supporting information as to the necessity for each, regardless of whether funding is available for any such capital expenditure or improvement;

(4) Cost estimates and recommended time schedules for each improvement or other capital expenditure;

(5) Method of financing upon which each capital expenditure is to be reliant;

(6) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired;

(7) Methods to measure outcomes and performance of the capital plan related to the long-term goals of the community.

The above shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

(c) Debt Limitations.. Any resolution or ordinance adopted by the council permitting or approving the creation of any indebtedness or obligation by a municipal beneficiary trust in excess of \$500,000 must be approved by a majority of the qualified electors of the City of McAlester; provided that for purposes of this provision, the terms “indebtedness or obligation” shall include the aggregate rental required to be paid for the entire term of a lease.

(d) Public Improvements. Public improvements may be made by the City government itself or by contract. The Council shall award all contracts for such improvements; provided that the Council may authorize the City Manager to award such contracts not exceeding an amount to be determined by the Council and subject to such regulations as the Council may prescribe. The City will follow State Law on bidding.

Section 5.12. City Council Action on Capital Program.

(a) Notice and Hearing. Within one (1) week of receiving the capital budget from the City Manager, the City Council shall publish in one or more newspapers of general

circulation in the City and on a website or other publicly available means of electronic distribution, the general summary of the capital program and a notice stating:

- (1) The times and places where copies of the entire detailed capital program are available for inspection by the public and purchase at a reasonable price set by the Council; and
- (2) The time and place, not less than two (2) weeks after such publication, for a public hearing(s) on the capital program.

Public discussion and suggestions on the capital program will be actively solicited until the fifteenth (15th) day of April.

(b) Adoption. The City Council by resolution shall adopt the capital program with or without amendment after the public hearing(s) on or before the last day of April of the current fiscal year. If the City Council fails to adopt the capital program by such date, the current capital program will continue in effect.

Section 5.13 Independent Audit.

The City Council shall provide for an independent annual audit of all City accounts and may provide for more frequent audits as it deems necessary. The City Council may direct the character or type of audits to be performed consistent with this Charter and state law. An independent certified public accountant or firm of such accountants shall make such audits. Such audits should be performed in accordance with Generally Accepted Auditing Standards (GAAS) and Generally Accepted Governmental Auditing Standards (GAGAS). This audit should be completed within five and one-half months (5 1/2) after the end of the fiscal year.

The Council shall, using competitive bidding, designate such accountant or firm annually, but the designation for any particular fiscal year shall be made no later than thirty (30) days after the beginning of such fiscal year. The standard for independence is that the auditor must be capable of exercising objective and impartial judgment on all issues encompassed within the audit engagement. No accountant or firm may provide any other services to the City during the time it is retained to provide independent audits to the City. The City Council may waive this requirement by a majority vote at a public hearing. If the state makes such an audit, the Council may accept it as satisfying the requirements of this section.

Section 5.14. Audit and Finance Advisory Committee.

(a) Appointment and Compensation. The Committee shall consist of either five (5) or seven (7) members at the discretion of the City Council with a majority being citizen members. The Mayor may appoint himself and other Council members to serve on the Committee. The Mayor shall appoint and the Council shall approve citizen members. The chairperson of the Committee, who must be a citizen member, shall be determined by a majority vote of the citizen members. Elected officials and employees of the City of

McAlester are ineligible for citizen membership. All members shall serve without compensation.

(b) Terms, Credentials, and Qualifications. The terms, credentials, and qualifications of the Committee members shall be set by ordinance

(c) Role and Responsibilities. The Committee shall advise and assist the City Council in fulfilling its corporate governance and oversight responsibilities relating to the integrity of the City's financial statements and other financial reporting, the adequacy and effectiveness of the systems of internal control, and the independence and performance of the external audit function. The detailed responsibilities of the Committee shall be listed in the Audit and Finance Advisory Committee Mission Statement. These Mission Statement responsibilities may be changed from time to time by a super majority vote (simple majority plus one (1)) of the Committee and the approval of the City Council.

(d) Meetings. The Audit and Finance Advisory Committee shall establish its own rules

(e) Removal. A member of the Audit and Finance Advisory Committee shall be removed from the Committee if the Member:

(1) lacks at any time any qualification for Committee membership prescribed by City ordinance or;

(2) fails to attend more than one-half of all meetings of the Audit and Finance Advisory Committee, regular and special, held within any period of twelve (12) consecutive months.

Section 5.15. Public Records.

Copies of the budget, capital program, independent audits, and appropriation and revenue ordinances shall be public records and copies will be available to the public at a reasonable price set by the Council. These documents will also be available on a website or through other means of electronic distribution available to the public.

ARTICLE 6. ELECTIONS

Section 6.01. City Elections.

(a) Conduct of City Elections. The provisions of the State Constitution and general election laws of the State of Oklahoma shall govern such elections in this City insofar as they are applicable and are not superseded by this Charter or by ordinance. Candidates shall run for office without party designation. For the conduct of City elections, for the prevention of fraud in such elections, and for the recount of ballots in cases of doubt or fraud, the City Council shall adopt ordinances consistent with law and this Charter. Such ordinances and regulations pertaining to elections shall be publicized in the manner of

City ordinances generally. If there are no candidates and no questions to be voted upon at a primary or general election, the election shall not be held.

(b) Registered Voter Defined. All citizens legally registered under the constitution and laws of the State of Oklahoma to vote in the City shall be registered voters of the City within the meaning of this Charter.

(c) Council Members: Method of Electing. At the general election in 2006, all Council members and the Mayor were elected. Following that election, the Council members from odd-numbered wards and the Mayor shall serve for terms of two years, and Council members from even-numbered wards shall serve for terms of four years. Commencing at the next general election and at all subsequent elections, the Mayor and other Council members shall serve for terms of four years.

(d) Mayor and Council Member Terms and Failure to Qualify. The Mayor and other Councilmen shall serve for the terms indicated in § 6.01 (c) and until their respective successors are elected and qualify. Their terms shall begin at the first regular Council meeting after their election is certified. If a Mayor-elect or other Councilman-elect fails to qualify within one month after the beginning of his term, his office shall become vacant and the vacancy shall be filled as other vacancies in the Council are filled.

Section 6.02. General Elections.

The general City election shall be held on the first Tuesday of April of even-numbered years and every two years thereafter to elect the Mayor and other Councilmen to succeed those whose terms are expiring. An elector may vote for only one candidate for an office to be filled. The candidates for each office receiving the greater number of votes shall be elected. In case of failure to elect because of a tie, the election shall be determined from among those tying, fairly by lot, by the county election board in a public meeting.

Section 6.03. Primary Elections.

(a) Primary Elections: Filing. Any person qualified for the office for which he is filing may have his name placed on the ballot for the primary election as a candidate for Mayor or Councilman by filing no earlier than 8:00 a.m. on the last Monday in January and no later than 5:00 p.m. on the next succeeding Wednesday, with the secretary of the county election board, his sworn statement and his candidacy, specifying the office for which he is a candidate.

(b) Primary Elections: Time and Voting. A primary election shall be held on the first Tuesday of March of even-numbered years and every two (2) years thereafter to nominate candidates for Mayor and other Councilmen to succeed those whose terms are expiring. If only one person is a candidate for an office to be filled, he shall be not only nominated, but also elected ipso facto, and his name shall not appear on the primary or general election ballot. Every registered voter of the city shall be entitled to vote for one

candidate for Mayor, and every registered voter of a vacated ward shall be entitled to vote for one candidate for Councilman from his ward.

(c) Primary Elections: Who Nominated or Elected. In a primary election, the two candidates for each office to be filled receiving the greatest number of votes for that office, shall be nominated. If one of the candidates for an office receives a majority of all votes cast for all candidates for that office, he alone shall be not only nominated, but also elected ipso facto; and his name shall not appear on the ballot for the general election. In case of failure to nominate because of a tie, the nominee or nominees shall be determined from among those tying, fairly by lot, by the county election board in a public meeting. If one of the two candidates for an office nominated in a primary election dies or withdraws before the general election, the remaining candidate shall be elected ipso facto; and his name need not appear on the ballot for the general election.

Section 6.04. Council Wards; Adjustment of Ward Boundaries.

(a) Number of Wards. There shall be six City Council wards.

(b) Ward Commission; Composition; Appointment; Terms; Vacancies; Compensation.

(1) There shall be a Ward Commission consisting of seven (7) members. Each City Council person shall appoint one (1) member to the Commission. These six (6) members shall, with the affirmative vote of at least four (4), choose the seventh (7th) member who shall be chairman.

(2) No member of the Commission shall be an elected official or be employed by the City.

(3) The City Council shall appoint the Commission no later than one year and five months before the first (1st) general election of the City Council after each federal decennial census. The Commission's term shall end upon adoption of a ward plan, as set forth in § 6.04(c).

(4) In the event of a vacancy on the Commission by death, resignation or otherwise, the City Council shall appoint a new member to serve the balance of the term remaining.

(5) No member of the Ward Commission shall be removed from office by the City Council except for cause and upon notice and hearing.

(6) The members of the Commission shall serve without compensation.

(7) The Commission may require agencies of City government to provide technical assistance. The Commission shall have a budget as provided by the City Council.

(c) Powers and Duties of the Commission; Hearings, Submissions, and Approval of Plan.

(1) Following each decennial census, the Commission shall consult the City Council and shall prepare a plan for dividing the City into wards for the election of Council members.

In preparing the plan, the Commission shall be guided by the criteria set forth in § 6.04

(d). The report on the plan shall include a map and description of the wards recommended.

(2) The Commission shall hold one or more public hearings not less than one month before it submits the plan to the City Council. The Commission shall make its plan available to the public for inspection and comment not less than one month before its public hearing. At that time the plan shall be available for purchase by the public at a reasonable price set by the Council. The plan shall also be posted on a website or available to the public by other electronic means.

(3) The Commission shall submit its plan to the City Council not less than one year before the first general election of the City Council after each decennial census.

(4) The plan shall be deemed adopted by the City Council unless disapproved within three (3) weeks by the vote of the majority of all members of the City Council. If the City Council fails to adopt the plan, it shall return the plan to the Commission with its objections and with the objections of individual members of the Council.

(5) Upon rejection of its plan, the Commission shall prepare a revised plan and shall submit such revised plan to the City Council no later than nine months before the first general election of the City Council after the decennial census. Such revised plan shall be deemed adopted by the City Council unless disapproved within two weeks by the vote of two-thirds of all of the members of the City Council and unless, by a vote of two-thirds of all of its members, the City Council votes to file a petition in the District Court, Pittsburg County, for a determination that the plan fails to meet the requirements of this Charter. The City Council shall file its petition no later than ten days after its disapproval of the plan. Upon a final determination upon appeal, if any, that the plan meets the requirements of this Charter, the plan shall be deemed adopted by the City Council and the Commission shall deliver the plan to the City Clerk. If the District Court finds the plan does not comply with the requirements of this Charter, the plan shall be revised by the Commission to satisfy the court's objections within ten (10) days. The plan delivered to the City Clerk shall include a map and description of the wards.

(6) If in any year population figures are not available at least one year and five months before the first general election following the decennial census, the City Council may, by ordinance, shorten the time periods provided for Ward Commission action in paragraphs (2), (3), (4), and (5) of this subsection.

(d) Ward Plan; Criteria. In preparation of its plan for dividing the City into wards for the election of Council members, the Commission shall apply the following criteria which, to the extent practicable, shall be applied and given priority in the order in which they are herein set forth.

- (1) Wards shall be equal in population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five percent (5%) of the average population of a City Council ward, calculated by dividing the total city population according to the most recent census by six (6).
- (2) Wards shall consist of contiguous territory unless such is physically impossible given City boundaries.
- (3) Consistent with the foregoing provisions, the aggregate length of all district boundaries shall be as short as possible.
- (4) Ward boundaries will be set in alleyways or closed alleyways whenever possible with the aim of placing houses across the street from each other in the same ward.
- (e) Effect of Enactment. The new City Council wards and boundaries as of the date of enactment shall supersede previous Council wards and boundaries for all purposes of the next regular City election, including nominations. The new wards and boundaries shall supersede previous wards and boundaries for all other purposes as of the date on which all Council members elected at that regular City election take office.

Section 6.05. Initiative, Citizen Referendum, and Recall.

(a) General Authority for Initiative, Citizen Referendum, and Recall.

- (1) Initiative. The registered voters of the City shall have power to propose ordinances to the Council and, if the Council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a City election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes, or salaries of City officers or employees.
- (2) Citizen Referendum. The registered voters of the City shall have power to require reconsideration by the Council of any adopted ordinance and, if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at a City election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.
- (3) Recall. The registered voters of the City shall have power to recall elected officials of the City, but no recall petition shall be filed against any official within six months after the official takes office, nor, in case of a member subjected to a recall election and not removed, until at least six months after the election.

(b) Commencement of Proceeding; Petitioners' Committee; Affidavit. Any five (5) registered voters may commence initiative, citizen referendum, or recall proceedings by filing with the City Clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the

committee are to be sent, and setting out in full the proposed initiative ordinance, citing the ordinance sought to be reconsidered, or stating the name and title of the officer sought to be recalled accompanied by a statement, not to exceed two hundred (200) words, of the reasons for the recall. The reason or reasons for recall shall be in conformity with or more stringent than the reasons as set out in Title 51 Oklahoma Statutes (1981), Section 93, namely: (1) Any willful failure or neglect to diligently and faithfully perform any duty enjoined upon such officer by the laws of this state (2) Intoxication or incapacitation in any public place within the state produced by alcohol or an illegal substance voluntarily taken; and (3) Committing any act constituting a violation of any penal statute involving moral turpitude. Such an act has been committed, in the sense of this section, when the official involved has been convicted thereof by a court of record. Grounds for recall should relate to and affect the administration of the official's office, and be of a substantial nature directly affecting the rights and interests of the public. Promptly after receipt of a recall petition, the Clerk shall serve, personally or by certified mail, a copy of the affidavit on the elected officer sought to be recalled. Within ten (10) days of service of the affidavit, the elected officer sought to be recalled may file a statement with the City Clerk, not to exceed two hundred (200) words, in response. Promptly after the affidavit of the petitioners' committee is filed, and the response, if any, of the elected official sought to be recalled is filed, the Clerk shall issue the appropriate petition blanks to the petitioners' committee.

(c) Petitions.

(1) Number of Signatures. Initiative and citizen referendum petitions must be signed by registered voters of the City equal in number to at least twenty-five percent (25%) of the total number of votes cast at the preceding general City election. Recall petitions must be signed by registered voters of the City equal in number to at least twenty-five percent (25%) of the total number of votes cast for governor in the City or ward at the last general state election at which a governor was elected.

(2) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Initiative and citizen referendum petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered. Recall petitions shall contain the name and title of the official sought to be recalled, the statement of grounds for the recall, and the response of the official sought to be recalled, if any. If no response was filed, the petition shall so state.

(3) Affidavit of Circulator. Petitions may be circulated only by registered qualified electors of the City or ward concerned. The person who circulates each copy of the petition shall sign an affidavit on each page of the copy stating:

A) the number of signatures thereon;

B) that he personally circulated the paper;

C) that each signer signed the petition in his presence;

D) that he believes them to be genuine signatures of the persons whose names they purport to be;

E) that he believes each signer to be a registered qualified elector of the City or ward concerned, and;

F) that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be considered or the reason for recall and response, if any.

(4) Time for Filing Referendum and Recall Petitions. Referendum petitions must be filed within thirty (30) days after adoption by the Council of the ordinance sought to be reconsidered. Recall petitions must be filed within thirty (30) days of the filing of the petitioners' affidavit initiating the recall procedure.

(d) Procedure after Filing.

(1) Certificate of Clerk; Amendment. Within thirty (30) days after the petition is filed, the City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the Clerk within five (5) business days after receiving the copy of the insufficiency certificate and files a supplementary petition upon additional papers within ten (10) business days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of § 6.05 (c), and within ten (10) business days after it is filed the Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under paragraph (2) of this subsection within the time required, the Clerk shall promptly present his or her certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

(2) Court Review; New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

(e) Referendum Petitions; Suspension of Effect of Ordinance. When a referendum petition is filed with the City Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (1) There is a final determination of insufficiency of the petition, or
- (2) The petitioners' committee withdraws the petition, or
- (3) The Council repeals the ordinance, or
- (4) The election in which the voters fail to reject the ordinance is certified.

(f) Action on Petitions.

(1) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance in the manner provided in Article 2 or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) days or fails to repeal the referred ordinance within thirty (30) days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the City. The Council shall promptly order a recall election to be held not less than forty (40) days, nor more than fifty (50) days of the date the recall petition was finally determined sufficient.

(2) Submission to Voters of Proposed or Referred Ordinances. The vote of the City on a proposed or referred ordinance shall be held not less than thirty (30) days and not later than one (1) year from the date of the final Council vote thereon. If no regular City election is to be held within the period prescribed in this subsection, the Council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

(3) Withdrawal of Petitions. An initiative, referendum, or recall petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the day scheduled for a vote of the City by filing with the City Clerk a request for withdrawal signed by at least two-thirds (2/3) of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

(g) Results of Election.

(1) Initiative. If a majority of the registered voters voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(2) Referendum. If a majority of the registered voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

(3) Recall. The recall election shall be an election to fill the office held by the incumbent sought to be recalled. There shall be no primary. Any qualified person, including the incumbent, may file as a candidate for the office. The candidate receiving the greatest number of votes in the recall election shall be elected. If a candidate other than the incumbent is elected, the incumbent shall be recalled from office effective as of the time when the result of the election is certified. The successful candidate must qualify within one (1) month thereafter; and if he fails to do so, the office shall be vacant, and the vacancy shall be filled in accordance with § 2.06 (c). A candidate thus elected and qualifying shall serve for the unexpired term. If the incumbent is a candidate and receives the greatest number of votes, he shall continue in office without interruption. A person who has been recalled from an office, or who has resigned from such office while recall proceedings were pending against him, may not hold any office or position of employment in the City government within three (3) years after his recall or resignation.

(4) General Election Provisions. The provisions of this Charter relating to City elections shall also govern initiative, referendum, and recall elections insofar as they are applicable and are not superseded by the provisions of this Article.

ARTICLE 7. GENERAL PROVISIONS

Section 7.01. Conflicts of Interest, Board of Ethics, and Code of Conduct.

(a) Conflicts of Interest. The use of public office for private gain is prohibited. The City Council shall implement this prohibition by ordinance, the terms of which shall include, but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official; the unethical or illegal use of confidential information; and appearances by City officials before other City agencies on behalf of private interests. This ordinance shall include a statement of purpose and shall provide for reasonable public disclosure of finances by City officials with major decision-making authority over monetary expenditures and contractual and regulatory matters and, insofar as permissible under state law, shall provide for fines and imprisonment for violations.

(b) Board of Ethics. The City Council shall, by ordinance, establish an independent Board of Ethics to administer and enforce the conflict of interest and financial disclosure ordinances. No member of the Board may hold elective or appointed office under the City or any other government or hold any political party office. Insofar as possible under state law, the City Council shall authorize the Board to issue binding advisory opinions, conduct investigations on its own initiative and on referral or complaint from officials or citizens, subpoena witnesses and documents, refer cases for prosecution, impose administrative fines, and to hire independent counsel, subject to notification to the City Council. The City Council shall appropriate sufficient funds to the Board of Ethics to

enable it to perform the duties assigned to it and to provide annual training and education of City officials and employees, including candidates for public office, regarding the Code of Ethics. All City boards and committees shall promptly report in writing any findings of unethical activity by an elected or appointed official to the Board of Ethics.

(c) Code of Conduct.

(1) The City Council shall create and approve a written Code of Conduct for the City of McAlester. This Code shall describe, in general terms, ethical and unethical behavior and shall give examples of specific acts or failures to act that shall be considered violations of this policy, while not precluding non-specified items. This Code shall be reviewed at least annually, amended as necessary, and re-approved by the Council.

(2) All City Council members, City officers, and employees shall be supplied with a copy of the Code of Conduct upon taking office or being employed by the City and at least annually thereafter. After each receipt of the Code, they shall certify in writing that they have read and understand the Code, have adhered to the Code, and are not aware of any violation of the Code by any Council member or City employee. Any exceptions shall be noted in writing. These certifications will be maintained in the City's administrative and personnel files.

(3) City officers and employees who violate any provision of the Code of Conduct shall be subject to disciplinary action up to and including dismissal. Persons who violate the Code may also be subject to prosecution under State or Federal Law.

(d) Nepotism. Neither the city manager, the council, nor any other authority of the city government, may appoint or elect any person related to the mayor or any other councilman, to the city manager, or to himself, or, in the case of a plural authority, to one of its members, by affinity or consanguinity within the third degree, to any office or position of profit in the city government; but this shall not prohibit an officer or employee already in the service of the city from continuing and being promoted therein.

Section 7.02. Prohibitions.

(a) Activities Prohibited.

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, gender, age, sexual orientation, disability, religion, country of origin, or political affiliation.

(2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this Charter or the rules and regulations made there under, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

(3) No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.

(b) Penalties. Any person convicted of a violation of this section shall be ineligible for a period of five (5) years following such conviction to hold any City office or position and, if an officer or employee of the City, shall immediately forfeit his or her office or position. The City Council shall establish by ordinance such further penalties as it may deem appropriate.

Section 7.03. Political Activity, Coercion of City Officers and Employees.

(a) Political Activities. Municipal employees may attend and express their views at City Council meetings, or any other public meetings of municipal employees. Any municipal employee may actively participate in partisan and nonpartisan political activities, provided, the political activity in which the employee participates shall be exercised only during off-duty hours and while not in uniform. Any federal statutes restricting the political activities of certain municipal employees shall supersede the provisions of this section as to such employees.

(b) Coercion. It shall be unlawful for the City Council, officers, supervisors, or any employee of the City to directly or indirectly coerce or attempt to coerce any municipal employee to participate or refrain from participation in municipal political activities or public meetings.

ARTICLE 8. CHANGES TO THE CHARTER

Section 8.01. Proposal of Charter Changes.

A proposition to change this Charter may be either in the form of a proposed amendment to a part or parts of the Charter or of a proposed new Charter.

Changes to this Charter may be framed and proposed:

- (a) In the manner provided by the laws and Constitution of the State of Oklahoma, or
- (b) By ordinance of the Council containing the full text of the proposed amendment or new Charter and effective upon adoption, or
- (c) By the voters of the City.

The Council may create a Charter Commission by ordinance to propose amendments to the Charter or propose a new Charter. The Charter Commission shall submit its proposals to the Council. If after Council and public review and editing of the proposals,

a majority of the Council approves the proposed changes, the proposed Charter amendments or new Charter shall be submitted to a vote of the people.

Proposal of an amendment by the voters of the City shall be by petition containing the full text of the proposed amendment and shall be governed by the same procedures and requirements prescribed in Article 6 for initiative petitions until such time as a final determination as to the sufficiency of the petition is made, except that there shall be no limitation as to subject matter and that the petition must be signed by registered voters of the City equal in number to at least twenty-five percent (25%) of the total number of votes cast at the preceding general election. The petitioners' committee may withdraw the petition at any time before the fifteenth (15th) day immediately preceding the day scheduled for the City vote on the amendment.

Section 8.02. Election.

The election authorities shall submit the proposed amendment or new Charter to the voters of the City at an election, which shall be announced by a notice containing the complete text of the proposed Charter amendment or the new Charter in one or more newspapers of general circulation in the City as provided by the laws of the State of Oklahoma. Copies of the proposed amendment or new Charter shall be available at a reasonable price set by the Council and the amendment or new Charter shall be posted on a website or available through other publicly accessible electronic means. The election on the proposed Charter amendment or new Charter shall be conducted according to the laws and Constitution of the State of Oklahoma.

Section 8.03. Adoption of Amendment or New Charter.

If a majority of those voting upon a proposed Charter amendment or new Charter vote in favor of it, the amendment or New Charter shall become effective at the time fixed in the amendment or new Charter or, if no time is therein fixed, thirty (30) days after its adoption by the voters and approval by the governor as provided by the State Constitution.

ARTICLE 9. TRANSITION AND SEVERABILITY.

Section 9.01. When Charter goes into Effect.

This Charter shall go into effect immediately upon its ratification by a vote of a majority of the qualified electors of the city voting upon the question at an election and its approval by the governor as provided by the State Constitution; and this Charter shall supersede the heretofore existing Charter as of that time and become the organic law of the City of McAlester.

Section 9.02. Officers and Employees to Continue.

When this new Charter goes into effect, the Mayor and other Councilmen under the previous Charter shall remain in office and be respectively Mayor and Councilmen of their respective wards, as the case may be, and shall continue in office until their respective terms expire. All other City officers and employees under the previous Charter including members of boards and commissions shall continue in their respective offices and positions of employment under this Charter until their respective terms expire or until their services are terminated in accordance with the provisions of this Charter and ordinances relating to the creation, change, and abolition of offices and removal of officers and employees, as the case may be.

Section 9.03. Ordinances Continued.

All ordinances, insofar as they are not inconsistent with this Charter, shall continue in effect until they are repealed or until they expire by their own limitations.

Section 9.04. Pending Actions and Proceedings.

The adoption of this Charter shall not abate or otherwise affect any action or proceeding, civil or criminal, pending when it takes effect, brought by or against the municipality or any office, department, division, agency, or officer thereof.

Section 9.05. Severability.

(a) If a court of competent jurisdiction holds any section or part of this Charter invalid, such holding shall not affect the remainder of this Charter nor the context in which such section or part so held invalid may appear, except to the extent that an entire section or part may be inseparably connected in meaning and effect with that section or part.

(b) If a court of competent jurisdiction holds a part of this Charter invalid, or if a change in the State Constitution or Law renders a part of this Charter invalid or inapplicable, the Council, by ordinance, may take such appropriate action as will enable the City government to function properly.

/ __ / For the Proposition

/ __ / Against the Proposition

SECTION 2. Such Proposition shall be by Proclamation signed by the Mayor and attested by the City Clerk setting forth the Proposition to be voted upon, the number and location of the polls and places, the hours of opening and closing the polls; the ballots shall set forth the Proposition to be voted upon substantially as set forth in **SECTION 1** hereof; the returns of said election shall be made and canvassed by the County Election Board.

PASSED and APPROVED this _____ day of _____, 2008.

CITY OF MCALESTER, OKLAHOMA
A Municipal Corporation

ATTEST:

By _____

Cora Middleton, City Clerk



McAlester City Council

AGENDA REPORT

Meeting Date: March 12, 2008 Item Number: 3
Department: City Council
Prepared By: Cora Middleton for Councilman W. Smith Account Code: _____
Date Prepared: March 4, 2008 Budgeted Amount: _____
Exhibits: Two

Subject

Consider, and act upon, a resolution setting date for revised Charter election.

Recommendation

Discussion

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	<u>CM</u>	<u>03/04/08</u>
City Manager	<u>MBR</u>	<u>03/04/08</u>

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CALLING AND HOLDING OF A SPECIAL ELECTION IN THE CITY OF MCALESTER, OKLAHOMA, ON TUESDAY, THE 13TH DAY OF MAY 2008 FOR THE PURPOSE OF SUBMITTING TO THE REGISTERED QUALIFIED VOTERS OF SAID CITY THE QUESTION WHETHER REVISED CHARTER SHOULD BE APPROVED; SETING FORHT OTHER FACTS AS REQUIRED BY STATE LAW; PROVIDING FOR SAID ELECTION TO BE CONDUCTED BY THE PITTSBURG COUNTY ELECTION BOARD; PROVIDING THAT POLLS SHALL BE OPEN CONTINUOUSLY FROM 7:00 A.M. TO 7:00 P.M.; PROVIDING FOR SEPARABILITY.

* * * * *

WHEREAS, it is deemed advisable by the City of McAlester, Oklahoma, to submit to the qualified voters of the City of McAlester for their approval or rejection; and

WHEREAS, said proposition should be presented at a Special Election to be held for that purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCALESTER, OKLAHOMA, that

SECTION 1: The Mayor of the City of McAlester is hereby authorized and directed to submit to the registered, qualified voters at a Special Election on the 13th day of May 2008 the following Proposition:

PROPOSITION

PREAMBLE

We the people of the City of McAlester of Pittsburg County, under the constitution and laws of the State of Oklahoma, in order to secure the benefits of local self-government and to provide for an honest and accountable Council-Manager government do hereby adopt this Charter and confer upon the City the following powers, subject to the following restrictions, and prescribed by the following procedures and governmental structure. By this action, we secure the benefits of home rule and affirm the values of representative democracy, professional management, strong political leadership, citizen participation, and regional cooperation.

ARTICLE 1. POWERS OF THE CITY

Section 1.01. Powers of the City

The City shall have all powers possible for a city to have under the constitution and laws of the state of Oklahoma as fully and completely as though they were specifically enumerated in this Charter.

Section 1.02. Construction.

The powers of the City under this Charter shall be construed liberally in favor of the City, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power granted in this article.

Section 1.03. Intergovernmental Relations.

The City may participate by contract or otherwise with any governmental entity of the state of Oklahoma or any other state or states or the United States in the performance of any activity which one or more of such entities has the authority to undertake.

ARTICLE 2. CITY COUNCIL

Section 2.01. General Powers and Duties.

(a) Powers. All powers of the City shall be vested in the City Council, except as otherwise provided by law or this Charter and the Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the City by law.

(b) Fiduciary Responsibility. The City Council has a fiduciary responsibility to the City of McAlester. It shall carry out its trusteeship duties with the utmost degree of good faith, probity, diligence, and loyalty to the interests of the people of McAlester.

(c) Policies, Goals, and Performance Monitoring. The City Council shall define the policies and goals of the City. To ensure that policies are followed and goals are achieved, it shall exercise its oversight responsibilities through regular, systematic and rigorous performance monitoring.

Section 2.02. Eligibility, Terms, and Composition.

(a) Eligibility. Only registered voters of the City who are at least 25 years old, who have resided in the City at least two years, shall be qualified for the office of Mayor. Only registered voters of the City who are at least 25 years old, who have resided in the City at least two years, and who have resided for a period of one year in the respective wards from which they are elected or appointed to fill a vacancy, shall be qualified for the offices of Councilmen from the wards. The Council shall not prescribe additional qualifications for the Mayor and other Councilmen.

(b) Terms. The term of office of elected officials shall be four years elected in accordance with Article 6.

(c) Composition. There shall be a City Council composed of seven members, six of which shall be elected by ward by the voters in that ward and a Mayor who shall be elected by the voters of the City at large in accordance with the provisions of § 2.03(b).

(d) Term Limitation. No more than 12 years may be served as Mayor, Councilman, or a combination thereof. A Mayor or Councilman elected or appointed to serve less than a full term shall not have that partial term counted in the 12 year limitation.

Section 2.03. Mayor and Vice-Mayor.

(a) Powers and Duties. The Mayor shall be a voting member of the City Council and shall attend and preside at meetings of the Council, represent the City in intergovernmental relationships, appoint with the advice and consent of the Council the members of citizen advisory boards and commissions, present an annual state of the City message no later than the first regular Council meeting in February, appoint the members and officers of Council committees, assign agenda items to committees subject to the consent of Council, and perform other duties specified by the Council. The Mayor shall be recognized as head of the City government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties.

(b) Election of Mayor and Selection of Vice-Mayor. The Mayor will be elected for a term of four years beginning with the 2008 election and every four years thereafter. After every regular election of Councilmen at two year intervals the Council shall elect from among its members a Vice-Mayor who shall act as Mayor during the absence, disability, or suspension of the Mayor, or if a vacancy occurs in the office of Mayor, until another Mayor is selected by the Council for completion of the unexpired term and qualifies. If the office of Vice-Mayor becomes vacant, the Council shall select from its membership another Vice-Mayor for completion of the unexpired term.

Section 2.04. Compensation; Expenses.

The salary of the Mayor shall be \$75.00 per month, and the salary of each other Councilman shall be \$50.00 per month. The Mayor and Council members shall receive their actual and necessary expenses incurred in the performance of their duties of office if such expenses are approved in advance by the Council at a public meeting.

Section 2.05. Prohibitions.

(a) Holding Other Office. Except where authorized by law, no Council member shall hold any other elected public office during the term for which the member was elected to the Council. No Council member shall hold any other City office or City employment during the term for which the member was elected to the Council. No former Council member shall hold any compensated appointive office or employment with the City until one year after the expiration of the term for which the member was elected to the Council.

Nothing in this section shall be construed to prohibit the Council from selecting any current or former Council member to represent the City on the governing boards of any regional or other intergovernmental agency or on other boards.

(b) **Appointments and Removals.** Neither the City Council nor any of its members shall in any manner control or demand the appointment or removal of any City administrative officer or employee whom the City Manager or any subordinate of the City Manager is empowered to appoint, except the City Attorney under the provisions of § 4.03(a). However, the Council may express its views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees.

(c) **Interference with Administration; Freedom of Communication.** Neither the Council nor its members shall give orders to City officers or employees who are subordinate to the City Manager. However, this prohibition shall not prevent Council members from making inquiries of department heads or employees under § 2.08 for the purpose of obtaining information needed by them in the discharge of their duties, including response to constituent requests or requesting assistance that is available to any other citizen, City employees shall use their chain of command for work-related situations and problems, but they have the same rights as any other citizen to communicate with Council members and will not be punished for doing so.

Section 2.06. Vacancies; Forfeiture of Office; Filling of Vacancies.

(a) **Vacancies.** The office of a Council member shall become vacant upon the member's death, resignation, removal from office, or forfeiture of office in any manner authorized by this Charter or the laws of the state of Oklahoma.

(b) **Forfeiture of Office.** A Council member shall forfeit that office if the Council member:

- (1) lacks at any time during the term of office for which elected any qualification for the office prescribed by this Charter or by the laws of the State of Oklahoma;
- (2) violates any express prohibition of this Charter;
- (3) has been found guilty or entered a plea of guilty or nolo contendere to a felony or any other crime involving moral turpitude under the laws of the United States or of any state, even if subsequently followed by the suspended or deferred imposition of the sentence;
- (4) commits any of those acts set forth in Oklahoma Statutes, Title 22 Section 1181, as may be amended from time to time by the state legislature; or
- (5) fails to attend more than one-half of all meetings of the Council, regular and special, held within any period of three consecutive months.

(c) Filling of Vacancies. The Council, by majority vote of its remaining members, shall fill vacancies in its own membership, including the office of Mayor, for the unexpired terms, provided that should the unexpired term to be so filled be one year or longer, the Council shall call a special election for the purpose of electing a suitable person to fill such vacancy for the remainder of the unexpired term, not less than 30 days nor more than 60 days following declaration of vacancy, all candidates to file upon applications provided for said purpose, and the candidate receiving the greater number of votes to be elected.

Section 2.07. City Clerk.

The City Council shall appoint an officer of the City who shall have the title of City Clerk and serves at the pleasure of the Council. The City Clerk shall give notice of Council meetings to its members and the public, keep the journal of its proceedings and perform such other duties as are assigned by this Charter, the Council, or by State Law.

Section 2.08. Investigations.

The City Council may make investigations into the affairs of the City and the conduct of any City department, division, or other organizational unit.

Section 2.09. Independent Audit.

The City Council shall provide for an independent annual audit of all City financial and accounting activities and may provide for more frequent audits as it deems necessary. Such audits shall be carried out in accordance with § 5.13.

Section 2.10. Procedure.

(a) Meetings. The Council shall hold at least two regular meetings every month, at such times as it may prescribe by ordinance or otherwise. The Mayor or any four Councilmen may call special meetings as the Council may prescribe by ordinance or otherwise. All meetings of the Council shall comply with the Oklahoma open meeting law.

(b) Rules and Journal. The City Council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record and posted in a website or other means of publicly available electronic distribution.

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Four members of the Council shall constitute a quorum, but a smaller number may adjourn from time to time. No action of the Council, except as otherwise provided in the preceding sentence and in § 2.06(c), shall be valid or binding unless adopted by the affirmative vote of four or more members of the Council.

Section 2.11. Action Requiring an Ordinance.

In addition to other acts required by law or by specific provision of this Charter to be done by ordinance, those acts of the City Council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter, or abolish any City department, division, or other organizational unit;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Levy taxes;
- (4) Grant, renew, or extend a franchise;
- (5) Regulate the rate charged for its services by a public utility;
- (6) Authorize the borrowing of money in accordance with State law;
- (7) Convey or lease or authorize the conveyance or lease of any lands of the City;
- (8) Regulate land use and development;
- (9) Amend or repeal any ordinance previously adopted; or
- (10) Adopt, with or without amendment, ordinances proposed under the initiative power.

Acts other than those referred to in the preceding sentence may be done either by ordinance, resolution, or motion.

Section 2.12. Ordinances in General.

(a) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The enacting clause shall be, "Be it ordained by the Council of the City of McAlester, Oklahoma..." All ordinances proposed by the voters under their power of initiative, "Be it ordained by the People of the City of McAlester, Oklahoma..." Any ordinance which repeals or amends an existing ordinance or part of the City Code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing it in brackets or by ~~strikeout~~ type and shall indicate new matters by underscoring or by *italics*.

(b) Procedure. All proposed ordinances shall appear on the published agenda for regular or special meetings of the Council. Upon introduction of any ordinance, the City Clerk shall distribute a copy to each Council member and to the City Manager, shall file a reasonable number of copies in the office of the City Clerk and such other public places as the Council may designate, and shall post the ordinance together with a notice setting

out the time and place for a public hearing thereon and for its consideration by the Council. The public hearing shall follow the posting by at least seven days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing, the Council may adopt the ordinance with or without amendment or reject it. A majority vote of all councilmen shall be required for adoption of an ordinance. As soon as practicable after adoption, the Clerk shall have the ordinance and a notice of its adoption published and available at a reasonable price as set by the Council and posted on a website or distributed through other publicly available electronic means.

(c) Effective Date. Except as otherwise provided in this Charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein. A franchise for a public utility shall not go into effect until the ordinance granting it has been published in full in a newspaper of general circulation within the city and has been approved at an election by a vote of the qualified electors voting on the question.

(d) Publish Defined. As used in this section, the term "publish" means to print in the contemporary means of information sharing, which includes but is not limited to, one or more newspapers of general circulation in the City, and in a website or other means of publicly available electronic distribution: (1) the ordinance in full or by number, title, and a brief summary thereof, and (2) the places where copies of it have been filed and the times when they are available for public inspection and purchase at a reasonable price set by the Council.

Section 2.13. Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the City Council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided by State Law. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. The question of the emergency must be voted on separately and approved by the affirmative vote of at least five (5) members of the City Council. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least five (5) members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. An emergency ordinance may be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Section 2.14. Codes of Technical Regulations.

The City Council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that:

- (1) The requirements of § 2.12 (b) for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and
- (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the City Clerk pursuant to § 2.15.

Copies of any adopted code of technical regulations shall be made available by the City Clerk for distribution or for purchase at a reasonable price as set by the Council.

Section 2.15. Authentication and Recording; Codification; and Printing of Ordinances and Resolutions.

(a) **Authentication and Recording.** The City Clerk shall authenticate by signing and shall record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the City Council.

(b) **Codification.** At least every ten years, the City Council shall provide for the preparation of a general codification of all City ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the Council by ordinance and shall be published, together with this Charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of Oklahoma, and such codes of technical regulations and other rules and regulations as the Council may specify. This compilation shall be known and cited officially as the McAlester City Code. Copies of the Code shall be furnished to City officers and shall be made available for purchase by the public at a reasonable price fixed by the Council. The Code shall be placed in libraries, public offices, and in a website or other means of publicly available electronic distribution for free public reference.

(c) **Printing of Ordinances and Resolutions.** The City Council shall cause each ordinance and resolution having the force and effect of law and each amendment to this Charter to be printed promptly following its adoption, and the printed ordinances, resolutions and Charter amendments shall be distributed or sold to the public at reasonable prices as fixed by the Council. The Charter, all Charter amendments, and each ordinance and resolution having the force and effect of law shall be available on a website or other means of publicly available electronic distribution. Following publication of the first McAlester City Code and at all times thereafter, the ordinances, resolutions and Charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The Council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the constitution and other laws of the

State of Oklahoma, or the codes of technical regulations and other rules and regulations included in the code.

ARTICLE 3. CITY MANAGER

Section 3.01. Appointment, Qualifications, Compensation, and Periodic Evaluations.
The City Council, by a majority vote of its total membership, shall appoint a City Manager for an indefinite term and fix the Manager's compensation. The City Manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local government management. Minimum qualifications are 1) a Master's Degree with a concentration in public administration or a related discipline, and two years of experience in an appointed managerial or administrative position in a local government; or 2) a Bachelor's Degree and five years of such experience. The Manager need not be a resident of the City or state at the time of appointment, but shall reside within the City while in office. The City Council shall thoroughly review the performance of the City Manager at least once every year and deliver a report of this evaluation to the City Manager. A copy of the City Manager's evaluations shall be kept in the personnel records.

Section 3.02. Removal.

If the City Manager declines to resign at the request of the City Council, the City Council may suspend the Manager by a resolution approved by the majority of the total membership of the City Council. Such resolution shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the City Manager. The Manager shall have fifteen (15) days in which to reply thereto in writing, and upon request, shall be afforded a public hearing, which shall occur not earlier than ten (10) days, or later than fifteen (15) days after such hearing is requested. After the public hearing, if one is requested, and after full consideration, the City Council, by a majority vote of its total membership, may adopt a final resolution of removal. The City Manager shall continue to receive full salary until the effective date of a final resolution of removal. The position of City Manager shall be excluded from the general provisions of § 4.02 (a), as set forth in this Charter.

Section 3.03. Acting City Manager.

To perform his duties during his temporary absence or disability, the City Manager, by letter filed with the City Clerk, shall appoint a qualified administrative officer of the City to be Acting City Manager. If the Council suspends the City Manager, if the City Manager's disability or absence is likely to be for more than thirty (30) days, or if there is a vacancy in the office of City Manager, the Council shall appoint an Acting City Manager within thirty (30) days to serve until his disability, absence or suspension ceases, or until it appoints another City Manager, as the case may be. The City Council shall exert the same authority over the Acting City Manager as it has over the City Manager including the right to evaluate and adjust the salary of the position and the Council may remove an Acting City Manager without cause by vote of a majority of all

its members. Hiring or removal of any department head by the Acting City Manager shall require the concurrence of a majority of the City Council.

Section 3.04. Powers and Duties.

The City Manager shall be chief administrative officer and head of the administrative branch of the City government. He shall execute the laws and ordinances and administer the government of the City, and shall be responsible therefore to the Council. He shall:

- (1) Appoint, and when necessary for the good of the service, suspend or remove all City employees and appoint administrative officers provided for by or under this Charter, except as otherwise provided by law, this Charter, or personnel rules adopted pursuant to this Charter. The City Manager may authorize any administrative officer, subject to the City Manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;
- (2) Direct and supervise the administration of all departments, divisions, and other organizational units of the City, except as otherwise provided by this Charter or by law;
- (3) Attend all City Council meetings unless specifically excused by the presiding council member. The City Manager shall have the right to take part in discussion, but shall not vote;
- (4) See that all laws, provisions of this Charter and acts of the City Council, subject to enforcement by the City Manager or by officers subject to the City Manager's direction and supervision, are faithfully executed;
- (5) Prepare and submit the annual budget and capital program to the City Council, and implement the final budget approved by the City Council to achieve the goals of the City;
- (6) Submit to the City Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year;
- (7) Make such other reports as the City Council may require concerning operations;
- (8) Keep the City Council fully advised as to the financial condition and future needs of the City;
- (9) Make recommendations to the City Council concerning the affairs of the City and facilitate the work of the City Council in developing policy;
- (10) Annually assist the Council to develop long-term goals for the City and strategies to implement these goals;
- (11) Promote partnerships among Council, staff, and citizens in developing public policy and building a sense of community; and

(12) Perform such other duties as are specified in this Charter or may be required by the City Council and are consistent with this Charter, state, or federal law.

Section 3.05. Holding More than One Office.

The City Manager may hold more than one office in City government through appointment by the Council, but he may not receive compensation for service in such other offices.

Section 3.06 Purchases, Competitive Bidding, and Sales.

(a) Purchases. The City Manager, subject to any regulations which the Council may prescribe, shall contract for the purchase, or issue purchase authorizations for, all supplies, materials and equipment for the offices, departments and agencies of the City government. Every such contract or purchase exceeding an amount to be established by ordinance, shall require the prior approval of the Council. The City Manager may also transfer to or between offices, departments and divisions, or sell surplus or obsolete supplies, materials, and equipment, subject to such regulations as the Council may prescribe.

(b) Competitive Bidding. Before the purchase of, or contract for, any supplies, materials, or equipment, or the sale of any surplus or obsolete supplies, materials, or equipment, ample opportunity for competitive bidding, under such regulations and with such exceptions, as the Council may prescribe, shall be given; but the Council shall not except an individual contract, purchase or sale from the requirement of competitive bidding. A violation of this provision shall be cause for removal of any city employee who knowingly authorized any violation of the City's competitive bidding rules.

(c) Sale of Property Valued at More Than \$50,000. The sale of any City property, real or personal, including public utilities, or of any interest therein, except real property held by the City for Economic Development, the value of which is more than \$50,000, may be made only: (1) by authority of an affirmative vote of a majority of the qualified electors of the City who vote on the question of approving or authorizing the sale at an election; or (2) by authority of a special non-emergency ordinance. Such ordinance shall be published in full in a newspaper of general circulation in the City within ten days after its passage, and shall include a section reading substantially as follows: "Section _____. This ordinance shall be referred to a vote of the electors of the City if a legal and sufficient referendum petition is properly filed within 30 days after its passage; otherwise it shall go into effect thirty (30) days after its passage." The sale of an entire public utility may be authorized only as provided in (1) hereinabove.

(d) Sale of Economic Development Property. The sale of City property held for Economic Development such as Taylor Industrial Park, King Property, and other real property owned or acquired in the future for Economic Development by the City shall be subject to approval by an affirmative vote of five (5) councilmen.

Article 4. DEPARTMENTS, DIVISIONS, AND OTHER ORGANIZATIONAL UNITS

Section 4.01. General Provisions.

(a) **Creation of Departments and other Organizational Units.** The City Council may establish City departments, divisions, and other organizational units in addition to those created by this Charter and may prescribe the functions of all departments, divisions, and other organizational units. No function assigned by this Charter to a particular department, division, or other organizational unit may be discontinued or, unless this Charter specifically so provides, assigned to any other.

(b) **Direction by City Manager.** All departments, divisions, and other organizational units under the direction and supervision of the City Manager shall be administered by an officer appointed by and subject to the direction and supervision of the Manager. The City Manager may appoint one person as the head of two or more departments, divisions, and other organizational units.

Section 4.02. Personnel System.

(a) **Merit Principle.** All appointments and promotions of City officers and employees shall be made solely on the basis of merit and fitness demonstrated by a valid and reliable examination when applicable, education, experience, or other evidence of competence. Removals, demotions, suspensions, and layoffs shall be made solely for the good of the service.

(b) **Merit System.** Consistent with all applicable federal and state laws, the City Council shall within twelve (12) months after the effective date of this Charter provide by ordinance for the establishment, regulation, and maintenance of a merit system governing personnel policies necessary to effective administration of the employees of the City's departments, divisions, and other organizational units, including but not limited to classification and pay plans, examinations, force reduction, removals, working conditions, provisional and exempt appointments, in-service training, grievances and relationships with employee organizations.

(c) **Bonds of City Officers and Employees.** The City Manager, the Chief Financial Officer, and such other officers and employees as the Council may designate, before entering upon their duties, shall provide bonds for the faithful performance of their respective duties, payable to the City, in such form and in such amounts as the Council may prescribe, with a surety company authorized to operate within the state. The City shall pay the premiums on such bonds. The bonds of the City Manager and the Chief Financial Officer shall be in an amount of at least one percent (1%) of the total current annually budgeted expenditures for the City, but no less than two hundred thousand dollars (\$200,000).

(d) **Personnel Matters.** The Council, consistent with this Charter, by ordinance or personnel rules, may regulate personnel matters and provide for proper personnel administration.

(e) **Oath or Affirmation of Office.** Every officer of the city, before entering upon the duties of his office, shall take and subscribe to the oath or affirmation of office prescribed by the State Constitution. The oath or affirmation shall be filed in the City Clerk's office. All officers authorized by federal or state law, the Mayor, the City Manager, the Municipal Judge or Judges, and such other officers as the council may authorize, may administer oaths and affirmations in any matter pertaining to the affairs and government of the City.

(f) **Layoff, Suspend, Demote, or Remove Officers and Employees.** Except as may be otherwise provided by this Charter, the power to layoff, suspend, demote, and remove accompanies the power to elect or appoint; and the Council, the City Manager, or other electing or appointing authority may at any time layoff, suspend, demote, or remove any officer or employee to whom the Council, the City Manager, or the other electing or appointing authority respectively may elect or appoint a successor.

(g) **Acting Officers and Employees.** Except as may be otherwise provided by this Charter, the electing or appointing authority who may elect or appoint the successor of an officer or employee, may elect or appoint a person to act during the temporary absence, disability, or suspension of such officer or employee, or, in case of a vacancy, until a successor is elected or appointed and qualifies, unless the Council provides by general ordinance that a particular superior or subordinate of such officer or employee shall act. The Council may provide by general ordinance for a deputy to act in such cases.

(h) **Officers to Continue.** Except as may be otherwise provided by this Charter, every officer who is elected or appointed for a term ending at a definite time, shall continue to serve thereafter until his successor is elected or appointed and qualifies unless his services are sooner terminated by resignation, removal, disqualification, death, abolition of the office, or other legal manner.

Section 4.03. City Attorney.

(a) **Appointment.** The City Attorney shall be appointed or removed only by a majority vote of the City Council, not including vacant positions. The City Attorney shall be an attorney licensed to practice law in the State of Oklahoma.

(b) **Role.** The City Attorney shall serve as chief legal advisor to the City Council, the City Manager and all City departments, divisions, and other organizational units, shall normally represent the City in all legal proceedings and shall perform any other duties prescribed by state law, by this Charter or by ordinance; provided, however, that in all proceedings under Section 3.02 of this Charter, the City Attorney shall represent only the City Council and not the City Manager, nor shall the City Attorney represent any entity

with which the City contracts, any City employee or City Council Member charged with or under investigation for a crime.

Section 4.04. Chief Financial Officer.

(a) **Appointment and Qualifications.** The Chief Financial Officer (CFO) shall be appointed for an indefinite term by the City Manager. The CFO shall be appointed solely on the basis of education and experience in the accepted competencies and practices of accounting and financial management. Minimum qualifications are: 1) a Bachelor's Degree in accounting or finance; and 2) progressively responsible experience in accounting and financial management. The CFO shall have the demonstrated ability to communicate effectively via oral or written reports. Experience in local government or not-for-profit accounting and financial management is preferred. Certified Public Accountant or Certified Government Finance Officer is preferred.

(b) **Role.** The Chief Financial Officer is responsible for all accounting and financial management functions except for those otherwise provided for in this Charter. Subject to and in accordance with this Charter, applicable law, and such ordinances and other policies as the Council may adopt, the Chief Financial Officer or personnel under his supervision and control shall:

- (1) Be responsible for investment of City money. Collect or receive revenue and other money for the city and shall be responsible for its custody, safekeeping, deposit, investment, and disbursement.
- (2) Insure that the City has an accurate and comprehensive financial accounting, management, and reporting system to meet the requirements of this Charter and state law.
- (3) Provide all financial information and reports requested by the City Council and the City Manager.
- (4) Establish and maintain a system of internal control to ensure the effectiveness and efficiency of operations, the reliability of financial reporting, and compliance with all applicable laws and regulations. The internal control system shall be designed to provide reasonable assurance regarding prevention or prompt detection of unauthorized acquisition, use, or disposition of assets.
- (5) Provide open and timely communication, both written and oral, to the Council, City Manager, City Attorney, other City employees, City Boards and Committees, and to the general public on matters of accounting, auditing, budgeting, financial management and internal control.
- (6) Perform such other duties as are specified in this Charter, prescribed by ordinance or applicable law, or may be required by the City Council or City Manager.

Section 4.05. Land Use, Development, and Environmental Planning.

Consistent with all applicable federal and state laws with respect to land use, development, and environmental planning, the City Council shall:

- (1) Designate an agency or agencies to carry out the planning function and such decision-making responsibilities as may be specified by ordinance;
- (2) Adopt a comprehensive plan that is to be reviewed annually and determine to what extent zoning and other land use control ordinances must be consistent with the plan;
- (3) Determine to what extent the comprehensive plan and zoning and other land use ordinances must be consistent with regional plan(s); and
- (4) Adopt development regulations, to be specified by ordinance, to implement the plan.

The designated agency, the City Manager, and the Mayor and Council shall seek to act in cooperation with other jurisdictions and organizations in their region to promote integrated approaches to regional issues.

ARTICLE 5. FINANCIAL MANAGEMENT

Section 5.01. Fiscal Year.

The fiscal year of the City shall begin on the first day of July and end on the last day of June.

Section 5.02. Submission of Budget and Budget Message.

Each year the City Manager shall submit to the City Council and the Audit and Finance Advisory Committee a budget for the ensuing fiscal year and an accompanying message. These submissions will be due forty-five (45) days prior to the last day of the fiscal year.

Section 5.03. Budget Message.

The City Manager's message shall explain the budget both in fiscal terms and in terms of the work programs, linking those programs to organizational goals and community priorities. It should outline the proposed financial policies of the City for the ensuing fiscal year and the impact of those policies on future years. It should describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the City's debt position, including factors affecting the ability to raise resources through debt issues, and include such other material as the City Manager or City Council deem desirable.

Section 5.04. Budget.

The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the City Manager deems desirable or the City Council may require for effective management and an understanding of the relationship between the budget and the City's strategic goals, consistent with state law. The City Manager shall also provide a list of all current City positions by department and division, their current annual pay, any additional pay such as longevity or incentive pay, the value of all benefits, and any proposed changes to positions, assignments, or pay. The budget shall begin with a clear general summary of its contents, shall show in detail all estimated income, indicating the proposed property tax levy if any, and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. Current year "actual" figures shall be authentic figures through the date they are available and estimated figures for the remaining portion of the fiscal year. It shall indicate in separate sections:

- (1) The proposed goals and expenditures for current operations during the ensuing fiscal year, detailed for each fund by department and division or by other organization unit, activity, or objectives, or other means as state law permits, method of financing such expenditures, and methods to measure outcomes and performance related to the goals. An Emergency Fund will be included in the budget and every reasonable attempt shall be made to maintain this fund at a minimum of ten percent (10%) of the total operating budget including capital improvements. A separate account shall be maintained for the Emergency Fund and the City Council shall define by ordinance under what circumstances withdrawals may be made from the Emergency Fund account;
- (2) Proposed longer-term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by department and division or by other organization unit when practicable, the proposed method of financing each such capital expenditure, and methods to measure outcomes and performance related to the goals; and
- (3) The proposed goals, anticipated income and expense for the ensuing year for each utility or other enterprise fund or internal service fund operated by the City, and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance exclusive of reserves.

Nothing in this section shall be construed to prevent the use of "purpose-based" budgeting or any other budget format acceptable to the State of Oklahoma.

Section 5.05. City Council Action on Budget.

- (a) Notice and Hearing. Within one (1) week of receiving the proposed budget from the City Manager, the City Council shall publish in one or more newspapers of general circulation in the City the general summary of the budget and a notice stating:

(1) The times and places where copies of the message and the entire detailed budget are available for inspection by the public and purchase at a reasonable price set by the Council; and

(2) The time and place, not less than two weeks after such publication, for a public hearing(s) on the budget.

The entire budget shall also be available on a website or other means of publicly available electronic distribution.

(b) Amendment before Adoption. After the public hearing(s), the City Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income plus carried forward fund balance.

(c) Adoption. The City Council shall adopt the budget no later than seven (7) days before the end of the current fiscal year or any other applicable deadline of State Law. If it fails to adopt the budget by this date, the budget for the amounts appropriated for operations in the current fiscal year will be deemed adopted.

(d) Publish defined. As used in this article, the term "publish" means to print in the contemporary means of information sharing, which includes but is not limited to, one or more newspapers of general circulation in the City and in a website or other means of publicly available electronic distribution.

Section 5.06. Appropriation and Revenue Ordinances.

To implement the adopted budget, the City Council shall adopt, prior to the beginning of the fiscal year:

(1) an appropriation ordinance making appropriations by department, division, or other organizational unit, activities or objectives;

(2) ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.

Section 5.07. Midyear Budget Review and Amendments after Adoption.

(a) Midyear Budget Review. The City Manager shall submit a midyear review of the budget to the Council on or before the last day of January. This shall include the evaluation and modification, if necessary, of revenues and expenses.

(b) Supplemental Appropriations. If during or before the fiscal year the City Manager certifies in writing that there are available for appropriation revenues in excess of those

estimated in the budget or unappropriated fund balances, the City Council by ordinance may make supplemental appropriations for the year up to the amount of such excess.

(c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the City Manager that the revenues or fund balances available will be insufficient to finance the expenditures for which appropriations have been authorized, the Manager shall report to the City Council without delay, indicating the estimated amount of the shortfall, any remedial action taken by the Manager and recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or reduce any shortfall and for that purpose it may by ordinance reduce or eliminate one or more appropriations.

(d) Transfer of Appropriations. The City Council may by resolution give the City Manager authority during the fiscal year to transfer part or all of the unencumbered appropriation balance from one department, to the appropriation for other departments or to a new appropriation.

(e) Limitation; Effective Date. No appropriation for debt service may be reduced or transferred, except to the extent that the debt is refinanced and less debt service is required, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

Section 5.08. Lapse of Appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until expended, revised or repealed; the purpose of any such appropriation shall be deemed abandoned if three (3) years pass without any disbursement from or encumbrance of the appropriation.

Section 5.09. Administration and Fiduciary Oversight of the Budget.

The City Council shall provide by ordinance the procedures for administration and fiduciary oversight of the budget.

Section 5.10 Overspending of Appropriations.

No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the City Manager or his designee first certifies that there is sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal. A violation of this provision shall be cause for

removal of any officer who knowingly authorized or made such payment or incurred such obligation. Such officer may also be liable to the City for any amount so paid. Except where prohibited by law, however, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, but only if such action is made or approved by a majority of the City Council.

Section 5.11. Capital Program.

(a) Submission to City Council. The City Manager shall prepare and submit to the City Council and the Audit and Finance Advisory Committee a five (5)-year or longer capital program no later than the fifteenth (15th) day of March.

(b) Contents. The capital program shall include:

- (1) A clear general summary of its contents;
- (2) Identification of the long-term goals of the community;
- (3) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five (5) fiscal years or longer next ensuing, with appropriate supporting information as to the necessity for each, regardless of whether funding is available for any such capital expenditure or improvement;
- (4) Cost estimates and recommended time schedules for each improvement or other capital expenditure;
- (5) Method of financing upon which each capital expenditure is to be reliant;
- (6) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired;
- (7) Methods to measure outcomes and performance of the capital plan related to the long-term goals of the community.

The above shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

(c) Debt Limitations.. Any resolution or ordinance adopted by the council permitting or approving the creation of any indebtedness or obligation by a municipal beneficiary trust in excess of \$500,000 must be approved by a majority of the qualified electors of the City of McAlester; provided that for purposes of this provision, the terms “indebtedness or obligation” shall include the aggregate rental required to be paid for the entire term of a lease.

(d) Public Improvements. Public improvements may be made by the City government itself or by contract. The Council shall award all contracts for such improvements; provided that the Council may authorize the City Manager to award such contracts not exceeding an amount to be determined by the Council and subject to such regulations as the Council may prescribe. The City will follow State Law on bidding.

Section 5.12. City Council Action on Capital Program.

(a) Notice and Hearing. Within one (1) week of receiving the capital budget from the City Manager, the City Council shall publish in one or more newspapers of general circulation in the City and on a website or other publicly available means of electronic distribution, the general summary of the capital program and a notice stating:

(1) The times and places where copies of the entire detailed capital program are available for inspection by the public and purchase at a reasonable price set by the Council; and

(2) The time and place, not less than two (2) weeks after such publication, for a public hearing(s) on the capital program.

Public discussion and suggestions on the capital program will be actively solicited until the fifteenth (15th) day of April.

(b) Adoption. The City Council by resolution shall adopt the capital program with or without amendment after the public hearing(s) on or before the last day of April of the current fiscal year. If the City Council fails to adopt the capital program by such date, the current capital program will continue in effect.

Section 5.13 Independent Audit.

The City Council shall provide for an independent annual audit of all City accounts and may provide for more frequent audits as it deems necessary. The City Council may direct the character or type of audits to be performed consistent with this Charter and state law. An independent certified public accountant or firm of such accountants shall make such audits. Such audits should be performed in accordance with Generally Accepted Auditing Standards (GAAS) and Generally Accepted Governmental Auditing Standards (GAGAS). This audit should be completed within five and one-half months (5 1/2) after the end of the fiscal year.

The Council shall, using competitive bidding, designate such accountant or firm annually, but the designation for any particular fiscal year shall be made no later than thirty (30) days after the beginning of such fiscal year. The standard for independence is that the auditor must be capable of exercising objective and impartial judgment on all issues encompassed within the audit engagement. No accountant or firm may provide any other services to the City during the time it is retained to provide independent audits to the City. The City Council may waive this requirement by a majority vote at a public

hearing. If the state makes such an audit, the Council may accept it as satisfying the requirements of this section.

Section 5.14. Audit and Finance Advisory Committee.

(a) **Appointment and Compensation.** The Committee shall consist of either five (5) or seven (7) members at the discretion of the City Council with a majority being citizen members. The Mayor may appoint himself and other Council members to serve on the Committee. The Mayor shall appoint and the Council shall approve citizen members. The chairperson of the Committee, who must be a citizen member, shall be determined by a majority vote of the citizen members. Elected officials and employees of the City of McAlester are ineligible for citizen membership. All members shall serve without compensation.

(b) **Terms, Credentials, and Qualifications.** The terms, credentials, and qualifications of the Committee members shall be set by ordinance

(c) **Role and Responsibilities.** The Committee shall advise and assist the City Council in fulfilling its corporate governance and oversight responsibilities relating to the integrity of the City's financial statements and other financial reporting, the adequacy and effectiveness of the systems of internal control, and the independence and performance of the external audit function. The detailed responsibilities of the Committee shall be listed in the Audit and Finance Advisory Committee Mission Statement. These Mission Statement responsibilities may be changed from time to time by a super majority vote (simple majority plus one (1)) of the Committee and the approval of the City Council.

(d) **Meetings.** The Audit and Finance Advisory Committee shall establish its own rules

(e) **Removal.** A member of the Audit and Finance Advisory Committee shall be removed from the Committee if the Member:

(1) lacks at any time any qualification for Committee membership prescribed by City ordinance or;

(2) fails to attend more than one-half of all meetings of the Audit and Finance Advisory Committee, regular and special, held within any period of twelve (12) consecutive months.

Section 5.15. Public Records.

Copies of the budget, capital program, independent audits, and appropriation and revenue ordinances shall be public records and copies will be available to the public at a reasonable price set by the Council. These documents will also be available on a website or through other means of electronic distribution available to the public.

ARTICLE 6. ELECTIONS

Section 6.01. City Elections.

(a) **Conduct of City Elections.** The provisions of the State Constitution and general election laws of the State of Oklahoma shall govern such elections in this City insofar as they are applicable and are not superseded by this Charter or by ordinance. Candidates shall run for office without party designation. For the conduct of City elections, for the prevention of fraud in such elections, and for the recount of ballots in cases of doubt or fraud, the City Council shall adopt ordinances consistent with law and this Charter. Such ordinances and regulations pertaining to elections shall be publicized in the manner of City ordinances generally. If there are no candidates and no questions to be voted upon at a primary or general election, the election shall not be held.

(b) **Registered Voter Defined.** All citizens legally registered under the constitution and laws of the State of Oklahoma to vote in the City shall be registered voters of the City within the meaning of this Charter.

(c) **Council Members: Method of Electing.** At the general election in 2006, all Council members and the Mayor were elected. Following that election, the Council members from odd-numbered wards and the Mayor shall serve for terms of two years, and Council members from even-numbered wards shall serve for terms of four years. Commencing at the next general election and at all subsequent elections, the Mayor and other Council members shall serve for terms of four years.

(d) **Mayor and Council Member Terms and Failure to Qualify.** The Mayor and other Councilmen shall serve for the terms indicated in § 6.01 (c) and until their respective successors are elected and qualify. Their terms shall begin at the first regular Council meeting after their election is certified. If a Mayor-elect or other Councilman-elect fails to qualify within one month after the beginning of his term, his office shall become vacant and the vacancy shall be filled as other vacancies in the Council are filled.

Section 6.02. General Elections.

The general City election shall be held on the first Tuesday of April of even-numbered years and every two years thereafter to elect the Mayor and other Councilmen to succeed those whose terms are expiring. An elector may vote for only one candidate for an office to be filled. The candidates for each office receiving the greater number of votes shall be elected. In case of failure to elect because of a tie, the election shall be determined from among those tying, fairly by lot, by the county election board in a public meeting.

Section 6.03. Primary Elections.

(a) **Primary Elections: Filing.** Any person qualified for the office for which he is filing may have his name placed on the ballot for the primary election as a candidate for Mayor or Councilman by filing no earlier than 8:00 a.m. on the last Monday in January and no later than 5:00 p.m. on the next succeeding Wednesday, with the secretary of the county

election board, his sworn statement and his candidacy, specifying the office for which he is a candidate.

(b) **Primary Elections: Time and Voting.** A primary election shall be held on the first Tuesday of March of even-numbered years and every two (2) years thereafter to nominate candidates for Mayor and other Councilmen to succeed those whose terms are expiring. If only one person is a candidate for an office to be filled, he shall be not only nominated, but also elected ipso facto, and his name shall not appear on the primary or general election ballot. Every registered voter of the city shall be entitled to vote for one candidate for Mayor, and every registered voter of a vacated ward shall be entitled to vote for one candidate for Councilman from his ward.

(c) **Primary Elections: Who Nominated or Elected.** In a primary election, the two candidates for each office to be filled receiving the greatest number of votes for that office, shall be nominated. If one of the candidates for an office receives a majority of all votes cast for all candidates for that office, he alone shall be not only nominated, but also elected ipso facto; and his name shall not appear on the ballot for the general election. In case of failure to nominate because of a tie, the nominee or nominees shall be determined from among those tying, fairly by lot, by the county election board in a public meeting. If one of the two candidates for an office nominated in a primary election dies or withdraws before the general election, the remaining candidate shall be elected ipso facto; and his name need not appear on the ballot for the general election.

Section 6.04. Council Wards; Adjustment of Ward Boundaries.

(a) **Number of Wards.** There shall be six City Council wards.

(b) **Ward Commission; Composition; Appointment; Terms; Vacancies; Compensation.**

(1) There shall be a Ward Commission consisting of seven (7) members. Each City Council person shall appoint one (1) member to the Commission. These six (6) members shall, with the affirmative vote of at least four (4), choose the seventh (7th) member who shall be chairman.

(2) No member of the Commission shall be an elected official or be employed by the City.

(3) The City Council shall appoint the Commission no later than one year and five months before the first (1st) general election of the City Council after each federal decennial census. The Commission's term shall end upon adoption of a ward plan, as set forth in § 6.04(c).

(4) In the event of a vacancy on the Commission by death, resignation or otherwise, the City Council shall appoint a new member to serve the balance of the term remaining.

(5) No member of the Ward Commission shall be removed from office by the City Council except for cause and upon notice and hearing.

(6) The members of the Commission shall serve without compensation.

(7) The Commission may require agencies of City government to provide technical assistance. The Commission shall have a budget as provided by the City Council.

(c) Powers and Duties of the Commission; Hearings, Submissions, and Approval of Plan.

(1) Following each decennial census, the Commission shall consult the City Council and shall prepare a plan for dividing the City into wards for the election of Council members.

In preparing the plan, the Commission shall be guided by the criteria set forth in § 6.04

(d). The report on the plan shall include a map and description of the wards recommended.

(2) The Commission shall hold one or more public hearings not less than one month before it submits the plan to the City Council. The Commission shall make its plan available to the public for inspection and comment not less than one month before its public hearing. At that time the plan shall be available for purchase by the public at a reasonable price set by the Council. The plan shall also be posted on a website or available to the public by other electronic means.

(3) The Commission shall submit its plan to the City Council not less than one year before the first general election of the City Council after each decennial census.

(4) The plan shall be deemed adopted by the City Council unless disapproved within three (3) weeks by the vote of the majority of all members of the City Council. If the City Council fails to adopt the plan, it shall return the plan to the Commission with its objections and with the objections of individual members of the Council.

(5) Upon rejection of its plan, the Commission shall prepare a revised plan and shall submit such revised plan to the City Council no later than nine months before the first general election of the City Council after the decennial census. Such revised plan shall be deemed adopted by the City Council unless disapproved within two weeks by the vote of two-thirds of all of the members of the City Council and unless, by a vote of two-thirds of all of its members, the City Council votes to file a petition in the District Court, Pittsburg County, for a determination that the plan fails to meet the requirements of this Charter. The City Council shall file its petition no later than ten days after its disapproval of the plan. Upon a final determination upon appeal, if any, that the plan meets the requirements of this Charter, the plan shall be deemed adopted by the City Council and the Commission shall deliver the plan to the City Clerk. If the District Court finds the plan does not comply with the requirements of this Charter, the plan shall be revised by the Commission to satisfy the court's objections within ten (10) days. The plan delivered to the City Clerk shall include a map and description of the wards.

(6) If in any year population figures are not available at least one year and five months before the first general election following the decennial census, the City Council may, by ordinance, shorten the time periods provided for Ward Commission action in paragraphs (2), (3), (4), and (5) of this subsection.

(d) Ward Plan; Criteria. In preparation of its plan for dividing the City into wards for the election of Council members, the Commission shall apply the following criteria which, to the extent practicable, shall be applied and given priority in the order in which they are herein set forth.

(1) Wards shall be equal in population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five percent (5%) of the average population of a City Council ward, calculated by dividing the total city population according to the most recent census by six (6).

(2) Wards shall consist of contiguous territory unless such is physically impossible given City boundaries.

(3) Consistent with the foregoing provisions, the aggregate length of all district boundaries shall be as short as possible.

(4) Ward boundaries will be set in alleyways or closed alleyways whenever possible with the aim of placing houses across the street from each other in the same ward.

(e) Effect of Enactment. The new City Council wards and boundaries as of the date of enactment shall supersede previous Council wards and boundaries for all purposes of the next regular City election, including nominations. The new wards and boundaries shall supersede previous wards and boundaries for all other purposes as of the date on which all Council members elected at that regular City election take office.

Section 6.05. Initiative, Citizen Referendum, and Recall.

(a) General Authority for Initiative, Citizen Referendum, and Recall.

(1) Initiative. The registered voters of the City shall have power to propose ordinances to the Council and, if the Council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a City election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes, or salaries of City officers or employees.

(2) Citizen Referendum. The registered voters of the City shall have power to require reconsideration by the Council of any adopted ordinance and, if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at a City election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

(3) Recall. The registered voters of the City shall have power to recall elected officials of the City, but no recall petition shall be filed against any official within six months after the official takes office, nor, in case of a member subjected to a recall election and not removed, until at least six months after the election.

(b) Commencement of Proceeding; Petitioners' Committee; Affidavit. Any five (5) registered voters may commence initiative, citizen referendum, or recall proceedings by filing with the City Clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance, citing the ordinance sought to be reconsidered, or stating the name and title of the officer sought to be recalled accompanied by a statement, not to exceed two hundred (200) words, of the reasons for the recall. The reason or reasons for recall shall be in conformity with or more stringent than the reasons as set out in Title 51 Oklahoma Statutes (1981), Section 93, namely: (1) Any willful failure or neglect to diligently and faithfully perform any duty enjoined upon such officer by the laws of this state (2) Intoxication or incapacitation in any public place within the state produced by alcohol or an illegal substance voluntarily taken; and (3) Committing any act constituting a violation of any penal statute involving moral turpitude. Such an act has been committed, in the sense of this section, when the official involved has been convicted thereof by a court of record. Grounds for recall should relate to and affect the administration of the official's office, and be of a substantial nature directly affecting the rights and interests of the public. Promptly after receipt of a recall petition, the Clerk shall serve, personally or by certified mail, a copy of the affidavit on the elected officer sought to be recalled. Within ten (10) days of service of the affidavit, the elected officer sought to be recalled may file a statement with the City Clerk, not to exceed two hundred (200) words, in response. Promptly after the affidavit of the petitioners' committee is filed, and the response, if any, of the elected official sought to be recalled is filed, the Clerk shall issue the appropriate petition blanks to the petitioners' committee.

(c) Petitions.

(1) Number of Signatures. Initiative and citizen referendum petitions must be signed by registered voters of the City equal in number to at least twenty-five percent (25%) of the total number of votes cast at the preceding general City election. Recall petitions must be signed by registered voters of the City equal in number to at least twenty-five percent (25%) of the total number of votes cast for governor in the City or ward at the last general state election at which a governor was elected.

(2) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Initiative and citizen referendum petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered. Recall petitions shall contain the name and title of the official sought to be recalled, the

statement of grounds for the recall, and the response of the official sought to be recalled, if any. If no response was filed, the petition shall so state.

(3) Affidavit of Circulator. Petitions may be circulated only by registered qualified electors of the City or ward concerned. The person who circulates each copy of the petition shall sign an affidavit on each page of the copy stating:

A) the number of signatures thereon;

B) that he personally circulated the paper;

C) that each signer signed the petition in his presence;

D) that he believes them to be genuine signatures of the persons whose names they purport to be;

E) that he believes each signer to be a registered qualified elector of the City or ward concerned, and;

F) that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be considered or the reason for recall and response, if any.

(4) Time for Filing Referendum and Recall Petitions. Referendum petitions must be filed within thirty (30) days after adoption by the Council of the ordinance sought to be reconsidered. Recall petitions must be filed within thirty (30) days of the filing of the petitioners' affidavit initiating the recall procedure.

(d) Procedure after Filing.

(1) Certificate of Clerk; Amendment. Within thirty (30) days after the petition is filed, the City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the Clerk within five (5) business days after receiving the copy of the insufficiency certificate and files a supplementary petition upon additional papers within ten (10) business days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of § 6.05 (c), and within ten (10) business days after it is filed the Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under paragraph (2) of this subsection within the time required, the Clerk shall promptly present his or her certificate to the

Council and the certificate shall then be a final determination as to the sufficiency of the petition.

(2) Court Review; New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

(e) Referendum Petitions; Suspension of Effect of Ordinance. When a referendum petition is filed with the City Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (1) There is a final determination of insufficiency of the petition, or
- (2) The petitioners' committee withdraws the petition, or
- (3) The Council repeals the ordinance, or
- (4) The election in which the voters fail to reject the ordinance is certified.

(f) Action on Petitions.

(1) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance in the manner provided in Article 2 or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) days or fails to repeal the referred ordinance within thirty (30) days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the City. The Council shall promptly order a recall election to be held not less than forty (40) days, nor more than fifty (50) days of the date the recall petition was finally determined sufficient.

(2) Submission to Voters of Proposed or Referred Ordinances. The vote of the City on a proposed or referred ordinance shall be held not less than thirty (30) days and not later than one (1) year from the date of the final Council vote thereon. If no regular City election is to be held within the period prescribed in this subsection, the Council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

(3) Withdrawal of Petitions. An initiative, referendum, or recall petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the day scheduled for a vote of the City by filing with the City Clerk a request for withdrawal signed by at least two-thirds (2/3) of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

(g) Results of Election.

(1) Initiative. If a majority of the registered voters voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(2) Referendum. If a majority of the registered voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

(3) Recall. The recall election shall be an election to fill the office held by the incumbent sought to be recalled. There shall be no primary. Any qualified person, including the incumbent, may file as a candidate for the office. The candidate receiving the greatest number of votes in the recall election shall be elected. If a candidate other than the incumbent is elected, the incumbent shall be recalled from office effective as of the time when the result of the election is certified. The successful candidate must qualify within one (1) month thereafter; and if he fails to do so, the office shall be vacant, and the vacancy shall be filled in accordance with § 2.06 (c). A candidate thus elected and qualifying shall serve for the unexpired term. If the incumbent is a candidate and receives the greatest number of votes, he shall continue in office without interruption. A person who has been recalled from an office, or who has resigned from such office while recall proceedings were pending against him, may not hold any office or position of employment in the City government within three (3) years after his recall or resignation.

(4) General Election Provisions. The provisions of this Charter relating to City elections shall also govern initiative, referendum, and recall elections insofar as they are applicable and are not superseded by the provisions of this Article.

ARTICLE 7. GENERAL PROVISIONS

Section 7.01. Conflicts of Interest, Board of Ethics, and Code of Conduct.

(a) Conflicts of Interest. The use of public office for private gain is prohibited. The City Council shall implement this prohibition by ordinance, the terms of which shall include, but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official; the unethical or illegal use of confidential information; and appearances by City officials before other City agencies on behalf of private interests. This ordinance shall include a statement of purpose and shall provide for reasonable public disclosure of finances by City officials with major decision-making authority over monetary expenditures and contractual and regulatory matters and, insofar as permissible under state law, shall provide for fines and imprisonment for violations.

(b) Board of Ethics. The City Council shall, by ordinance, establish an independent Board of Ethics to administer and enforce the conflict of interest and financial disclosure ordinances. No member of the Board may hold elective or appointed office under the City or any other government or hold any political party office. Insofar as possible under state law, the City Council shall authorize the Board to issue binding advisory opinions, conduct investigations on its own initiative and on referral or complaint from officials or citizens, subpoena witnesses and documents, refer cases for prosecution, impose administrative fines, and to hire independent counsel, subject to notification to the City Council. The City Council shall appropriate sufficient funds to the Board of Ethics to enable it to perform the duties assigned to it and to provide annual training and education of City officials and employees, including candidates for public office, regarding the Code of Ethics. All City boards and committees shall promptly report in writing any findings of unethical activity by an elected or appointed official to the Board of Ethics.

(c) Code of Conduct.

(1) The City Council shall create and approve a written Code of Conduct for the City of McAlester. This Code shall describe, in general terms, ethical and unethical behavior and shall give examples of specific acts or failures to act that shall be considered violations of this policy, while not precluding non-specified items. This Code shall be reviewed at least annually, amended as necessary, and re-approved by the Council.

(2) All City Council members, City officers, and employees shall be supplied with a copy of the Code of Conduct upon taking office or being employed by the City and at least annually thereafter. After each receipt of the Code, they shall certify in writing that they have read and understand the Code, have adhered to the Code, and are not aware of any violation of the Code by any Council member or City employee. Any exceptions shall be noted in writing. These certifications will be maintained in the City's administrative and personnel files.

(3) City officers and employees who violate any provision of the Code of Conduct shall be subject to disciplinary action up to and including dismissal. Persons who violate the Code may also be subject to prosecution under State or Federal Law.

(d) Nepotism. Neither the city manager, the council, nor any other authority of the city government, may appoint or elect any person related to the mayor or any other councilman, to the city manager, or to himself, or, in the case of a plural authority, to one of its members, by affinity or consanguinity within the third degree, to any office or position of profit in the city government; but this shall not prohibit an officer or employee already in the service of the city from continuing and being promoted therein.

Section 7.02. Prohibitions.

(a) Activities Prohibited.

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, gender, age, sexual orientation, disability, religion, country of origin, or political affiliation.

(2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this Charter or the rules and regulations made there under, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

(3) No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.

(b) Penalties. Any person convicted of a violation of this section shall be ineligible for a period of five (5) years following such conviction to hold any City office or position and, if an officer or employee of the City, shall immediately forfeit his or her office or position. The City Council shall establish by ordinance such further penalties as it may deem appropriate.

Section 7.03. Political Activity, Coercion of City Officers and Employees.

(a) Political Activities. Municipal employees may attend and express their views at City Council meetings, or any other public meetings of municipal employees. Any municipal employee may actively participate in partisan and nonpartisan political activities, provided, the political activity in which the employee participates shall be exercised only during off-duty hours and while not in uniform. Any federal statutes restricting the political activities of certain municipal employees shall supersede the provisions of this section as to such employees.

(b) Coercion. It shall be unlawful for the City Council, officers, supervisors, or any employee of the City to directly or indirectly coerce or attempt to coerce any municipal employee to participate or refrain from participation in municipal political activities or public meetings.

ARTICLE 8. CHANGES TO THE CHARTER

Section 8.01. Proposal of Charter Changes.

A proposition to change this Charter may be either in the form of a proposed amendment to a part or parts of the Charter or of a proposed new Charter.

Changes to this Charter may be framed and proposed:

- (a) In the manner provided by the laws and Constitution of the State of Oklahoma, or
- (b) By ordinance of the Council containing the full text of the proposed amendment or new Charter and effective upon adoption, or
- (c) By the voters of the City.

The Council may create a Charter Commission by ordinance to propose amendments to the Charter or propose a new Charter. The Charter Commission shall submit its proposals to the Council. If after Council and public review and editing of the proposals, a majority of the Council approves the proposed changes, the proposed Charter amendments or new Charter shall be submitted to a vote of the people.

Proposal of an amendment by the voters of the City shall be by petition containing the full text of the proposed amendment and shall be governed by the same procedures and requirements prescribed in Article 6 for initiative petitions until such time as a final determination as to the sufficiency of the petition is made, except that there shall be no limitation as to subject matter and that the petition must be signed by registered voters of the City equal in number to at least twenty-five percent (25%) of the total number of votes cast at the preceding general election. The petitioners' committee may withdraw the petition at any time before the fifteenth (15th) day immediately preceding the day scheduled for the City vote on the amendment.

Section 8.02. Election.

The election authorities shall submit the proposed amendment or new Charter to the voters of the City at an election, which shall be announced by a notice containing the complete text of the proposed Charter amendment or the new Charter in one or more newspapers of general circulation in the City as provided by the laws of the State of Oklahoma. Copies of the proposed amendment or new Charter shall be available at a reasonable price set by the Council and the amendment or new Charter shall be posted on a website or available through other publicly accessible electronic means. The election on the proposed Charter amendment or new Charter shall be conducted according to the laws and Constitution of the State of Oklahoma.

Section 8.03. Adoption of Amendment or New Charter.

If a majority of those voting upon a proposed Charter amendment or new Charter vote in favor of it, the amendment or New Charter shall become effective at the time fixed in the amendment or new Charter or, if no time is therein fixed, thirty (30) days after its adoption by the voters and approval by the governor as provided by the State Constitution.

ARTICLE 9. TRANSITION AND SEVERABILITY.

Section 9.01. When Charter goes into Effect.

This Charter shall go into effect immediately upon its ratification by a vote of a majority of the qualified electors of the city voting upon the question at an election and its approval by the governor as provided by the State Constitution; and this Charter shall supersede the heretofore existing Charter as of that time and become the organic law of the City of McAlester.

Section 9.02. Officers and Employees to Continue.

When this new Charter goes into effect, the Mayor and other Councilmen under the previous Charter shall remain in office and be respectively Mayor and Councilmen of their respective wards, as the case may be, and shall continue in office until their respective terms expire. All other City officers and employees under the previous Charter including members of boards and commissions shall continue in their respective offices and positions of employment under this Charter until their respective terms expire or until their services are terminated in accordance with the provisions of this Charter and ordinances relating to the creation, change, and abolition of offices and removal of officers and employees, as the case may be.

Section 9.03. Ordinances Continued.

All ordinances, insofar as they are not inconsistent with this Charter, shall continue in effect until they are repealed or until they expire by their own limitations.

Section 9.04. Pending Actions and Proceedings.

The adoption of this Charter shall not abate or otherwise affect any action or proceeding, civil or criminal, pending when it takes effect, brought by or against the municipality or any office, department, division, agency, or officer thereof.

Section 9.05. Severability.

(a) If a court of competent jurisdiction holds any section or part of this Charter invalid, such holding shall not affect the remainder of this Charter nor the context in which such section or part so held invalid may appear, except to the extent that an entire section or part may be inseparably connected in meaning and effect with that section or part.

(b) If a court of competent jurisdiction holds a part of this Charter invalid, or if a change in the State Constitution or Law renders a part of this Charter invalid or inapplicable, the Council, by ordinance, may take such appropriate action as will enable the City government to function properly.

/__ / For the Proposition

/__ / Against the Proposition

SECTION 2. Such Proposition shall be by Proclamation signed by the Mayor and attested by the City Clerk setting forth the Proposition to be voted upon, the number and location of the polls and places, the hours of opening and closing the polls; the ballots shall set forth the Proposition to be voted upon substantially as set forth in **SECTION 1** hereof; the returns of said election shall be made and canvassed by the County Election Board.

PASSED and APPROVED this _____ day of _____, 2008.

CITY OF MCALESTER, OKLAHOMA
A Municipal Corporation

ATTEST:

By _____

Cora Middleton, City Clerk

I have attached a copy of one of the AICPA newsletters I author. On page 4 of this newsletter edition, is an article on the AICPA's Government Audit Committee Toolkit, including an internet link to get you to the site with these tools. These would be helpful tools for you and the Committee, as they have been tailored to government entities.

At the present point in time, there is no federal requirement for state or local government units to have an audit committee. That doesn't mean that the SOX concepts and requirements won't filter down at some time in the future. There is no current move to do that, but you never know.

As to the charter requiring an A&F Committee, I concur it is a good idea. As long as the details of the qualifications for membership, specifics of duties and method of meeting, etc. are in ordinance form, the charter requirement is preferred by me.

Good to see you at the OML workshop! I , and I know the citizens of McAlester, appreciate all you have done and are doing!

Take care,

Mike

Michael A. Crawford, CPA

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McAlester City Council

AGENDA REPORT

Meeting Date: March 12, 2008 **Item Number:** 4
Department: City Council
Prepared By: Cora Middleton for **Account Code:** _____
Date Prepared: March 4, 2008 **Budgeted Amount:** _____
Exhibits: Two

Subject

Discussion, and possible action concerning amendment of the City of McAlester "skateboard" ordinance, Section. 102-15 Use of roller skates, skateboards, etc., on roadways and sidewalks.

Recommendation

Discussion

The current ordinance appears to be inadequate in terms of controlling unwanted "skateboarding" and similar activities and associated damage. Complaints have been received from the Masonic Temple, the Medical Arts Building, the Library, and the McAlester School System (old High School Building, Arch Thompson Auditorium, and Bob Brumley gymnasium).

Accordingly, it is proposed that the City Manager and City Attorney develop and present appropriate amendments to Section 102.15 no later than the first regular Council meeting in April.

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	<u>CM</u>	<u>03/04/08</u>
City Manager	<u>MBR</u>	<u>03/04/08</u>

The following are suggestions for such an amendment:

("skateboard" is used to indicate all of these human powered devices.)

1. Section 102.15 (b) should be expanded to define the central business district as running from Jefferson Avenue (instead of Washington Avenue) to Wyandotte Avenue;
2. Any owner of property outside the central business district may prohibit "skateboard" activities on his property by posting a sign. (The location, size, and language of the sign to be determined.);
3. Section 102.15 (a) (2) permits "skateboards" on roadways,..., "In residential areas where no sidewalks are provided;..." The amendment should add language along the lines of: "Any person using "skateboards" upon any street, sidewalk or premises open to the public shall be subject to the provisions applicable to and shall have the same rights and duties as the driver of a bicycle as provided by ..(appropriate code)";
4. Some jurisdictions include language on: a) protective headgear for persons under 16 years of age, and b) lighting and reflectors (fore and aft) and reflective clothing when operating between sunset and sunrise;
5. Penalties for violation of the Section 102.15 rules should be specified. Common municipal fines are often in the range of \$25 to \$100 and eventual forfeiture of the "skateboard" is sometimes included. Some municipalities mail a copy of the citation to the parents or guardians of person under the age of 16 years of age.
6. Add a clause which makes clear that all "skateboard" activities are pursued at the individuals own risk and property owners are to be held harmless unless they specifically solicit "skateboard" activity.
7. The definitions of the types of "skateboards" may need to be updated.
8. Other?

the care of any party at the trial of any action at law to recover damages.

Code 1974, § 28-23(e))

State law references—Accidents and accident reports, 47 O.S. § 10-101 et seq.; authority of city to require accident reports, 47 O.S. § 10-117.

Sec. 102-12. Riding on portion of vehicle not intended for passengers.

No person shall ride on any vehicle upon any portion thereof not designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty, or to persons riding within truck compartments in space intended for merchandise.

Code 1974, § 28-17)

Sec. 102-13. Boarding or alighting from moving vehicles.

No person shall board or alight from any vehicle while such vehicle is in motion.

Code 1974, § 28-19)

Sec. 102-14. Obstructing free passage with vehicle.

It shall be an offense for any person to obstruct or block any street, alley, crosswalk, sidewalk or lane with any kind of vehicle, so as to interfere with or obstruct the free passage or access to the same.

Code 1974, § 28-6(b))

Sec. 102-15. Use of roller skates, skateboards, etc., on roadways and sidewalks.

(a) No person upon roller skates, or riding in or by means of a skateboard, coaster, toy vehicle, or similar device, shall go upon the roadway except as follows:

- (1) When crossing a street on a crosswalk;
- (2) In residential areas where no sidewalks are provided; and
- (3) Upon streets which are set aside as play streets as authorized by ordinance.

No person upon roller skates, or riding in or by means of a skateboard, coaster, toy vehicle, or

similar device, shall ride upon a hill or street that, by so riding, would constitute an immediate danger to themselves and/or vehicular traffic.

(b) It shall be unlawful for any person upon roller skates, skateboard, coaster, toy vehicle, or similar devices to ride on the roadways or sidewalks within the central business district of the city, which is defined as the area between A Street and 6th Street, and Washington Avenue to Wyandotte Avenue. This section shall not apply to areas within the above defined central business district which are residential occupancy.

(Code 1974, § 28-21)

Sec. 102-16. Transporting alcoholic beverages in open containers.

No person shall transport in any vehicle upon the public highways, streets or alleys of the city any alcoholic beverage, except in the original container which shall not have been opened and the seal upon which shall not have been broken, and from which the original cap or cork shall not have been removed, unless the opened container is in the trunk or rear compartment, which shall include the spare tire compartment in a station wagon or panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while it is in motion.

Cross reference—Alcoholic beverages, § 6-28 et seq.

State law reference—Similar provisions, 21 O.S. § 1220, 37 O.S. § 537(a)(7).

Sec. 102-17. Careless driving.

The operator of every vehicle, while driving upon the streets and highways of this city, shall devote full time and attention to such driving and the failure to do so shall be deemed careless driving.

(Ord. No. 2060, § 1, 4-8-97)

Sec. 102-18. Driving: licensing of vehicle.

No person shall operate any vehicle upon the streets of the city without that vehicle being licensed in the manner now provided by the law of the State of Oklahoma, which is hereby incorporated into this Code as if fully set out in this section.

(Ord. No. 2124, § 1, 11-28-00)



McAlester City Council

AGENDA REPORT

Meeting Date: March 12, 2008 Item Number: 5
Department: City Council
Cora Middleton for
Prepared By: Councilman W. Smith Account Code: _____
Date Prepared: March 4, 2008 Budgeted Amount: _____
Exhibits: _____

Subject

Discussion, and possible action, concerning amending the City of McAlester Code, Section 10. Animals.

Recommendation

Discussion

Complaints have been received concerning the many dogs and cats running loose in the city. In some cases, dogs running loose have displayed an attitude and size that caused citizens to be fearful and there have been some reports of injury (unconfirmed). The McAlester Code, Section 10 Animals, appears to need amending or perhaps to be entirely rewritten in order to improve it and significantly reduce the number of animals running loose, some of which are occasionally perceived as dangerous.

Bad animal regulations and laws are common across the U.S, and many of these have been adopted as the result of an emotional response to the actions of one animal, an irresponsible owner, or because of the perceived "reputation" of a particular breed. It is not the intent of this proposal that McAlester adopt such laws. It may be that improved enforcement of the current codes and the adoption of a meaningful, graduated fine structure for violations of the animal codes, particularly Section 10.11 Running at large, would go a long way toward solving the problem.

Accordingly, it is proposed that the City Manager and City Attorney develop and present appropriate amendments to Section 10 or a rewritten Section 10 no later than the second regular Council meeting in April. Public input and discussion should probably be solicited before final action is taken.

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	<u>CM</u>	<u>03/04/08</u>
City Manager	<u>MBR</u>	<u>03/04/08</u>



McAlester City Council

AGENDA REPORT

Meeting Date:	March 12, 2008	Item Number:	6
Department:	City Council	Account Code:	
Prepared By:	Cora Middleton for Councilman W. Smith	Budgeted Amount:	
Date Prepared:	March 4, 2008	Exhibits:	One

Subject

Discussion, and possible action, concerning adoption of the draft proposed charter language regarding the budget process and the capital program process (with slight modification) for fiscal year 2008-09.

Recommendation

Discussion

The proposed draft charter contains a considerable amount of new material with regard to the budget and capital program processes. The current charter is silent with respect to most of these budgeting requirements. Even though the proposed charter has not been approved by the council or the voters, following the budgetary guidelines in the proposed charter will enhance the informational content and transparency of these budget processes and lead to better budgets. No apparent conflict is raised with the current charter by following the provisions below of the proposed charter. Budget. Sections 5.02 through 5.06 of the proposed charter contain the language that is being proposed to be followed in the budget process for the fiscal year 2008-09. the city manager is required to submit this budget to the council at least 45 days prior to the last day of the fiscal year. This would be around the middle of May and should not impose a unreasonable burden on the city manager. The other time requirements in these sections also appear feasible for this year's work. Capital Program. Sections 5.11 and 5.12 address the capital program process. As written, the proposed charter requires the city manager to submit the capital program by the fifteenth of March. As this might impose a burden this year, the recommendation is that all such time requirements in these sections be relaxed by one month. Accordingly, the city manager would have until the last day of May to adopt this program with or without amendments. In addition, Section 5.11 (b) (3) requires a time horizon of 5 years. For purposes of this temporary adoption, a time horizon of one year would appear to be more reasonable.

Approved By

	Initial	Date
Department Head	CM	03/04/08
City Manager	MBR	03/04/08

Sections of the current charter and proposed charter applicable to the Budget process.

Current Charter: Section 2-4 Council Powers. (3) To raise revenue and make appropriations; and to regulate bond elections, the issuance of bonds, sinking funds, the refunding of indebtedness, salaries, and wages, and all other fiscal affairs of the city;

Current Charter: Section City manager: Powers and duties. (5) Prepare and submit the annual budget and capital program to the city council, and implement the final budget approved by the city council to achieve the goals of the city.

The following are from the **Proposed Charter:**

Section 5.02. Submission of Budget and Budget Message.

Each year the City Manager shall submit to the City Council and the Audit and Finance Advisory Committee a budget for the ensuing fiscal year and an accompanying message. These submissions will be due forty-five (45) days prior to the last day of the fiscal year.

Section 5.03. Budget Message.

The City Manager's message shall explain the budget both in fiscal terms and in terms of the work programs, linking those programs to organizational goals and community priorities. It should outline the proposed financial policies of the City for the ensuing fiscal year and the impact of those policies on future years. It should describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the City's debt position, including factors affecting the ability to raise resources through debt issues, and include such other material as the City Manager or City Council deem desirable.

Section 5.04. Budget.

The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the City Manager deems desirable or the City Council may require for effective management and an understanding of the relationship between the budget and the City's strategic goals, consistent with state law. The City Manager shall also provide a list of all current City positions by department and division, their current annual pay, any additional pay such as longevity or incentive pay, the value of all benefits, and any proposed changes to positions, assignments, or pay. The budget shall begin with a clear general summary of its contents, shall show in detail all estimated income, indicating the proposed property tax levy if any, and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. Current year "actual" figures shall be authentic figures through the date they are available and estimated figures for the remaining portion of the fiscal year. It shall indicate in separate sections:

- (1) The proposed goals and expenditures for current operations during the ensuing fiscal year, detailed for each fund by department and division or by other organization unit, activity, or objectives, or other means as state law permits, method of financing such expenditures, and methods to measure outcomes and performance related to the goals. An Emergency Fund will be included in the budget and every reasonable attempt shall be

made to maintain this fund at a minimum of ten percent (10%) of the total operating budget including capital improvements. A separate account shall be maintained for the Emergency Fund and the City Council shall define by ordinance under what circumstances withdrawals may be made from the Emergency Fund account;

- (2) Proposed longer-term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by department and division or by other organization unit when practicable, the proposed method of financing each such capital expenditure, and methods to measure outcomes and performance related to the goals; and
- (3) The proposed goals, anticipated income and expense for the ensuing year for each utility or other enterprise fund or internal service fund operated by the City, and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance exclusive of reserves.

Nothing in this section shall be construed to prevent the use of "purpose-based" budgeting or any other budget format acceptable to the State of Oklahoma.

Section 5.05. City Council Action on Budget.

(a) Notice and Hearing. Within one (1) week of receiving the proposed budget from the City Manager, the City Council shall publish in one or more newspapers of general circulation in the City the general summary of the budget and a notice stating:

- (1) The times and places where copies of the message and the entire detailed budget are available for inspection by the public and purchase at a reasonable price set by the Council; and
- (2) The time and place, not less than two weeks after such publication, for a public hearing(s) on the budget.

The entire budget shall also be available on a website or other means of publicly available electronic distribution.

(b) Amendment before Adoption. After the public hearing(s), the City Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income plus carried forward fund balance.

(c) Adoption. The City Council shall adopt the budget no later than seven (7) days before the end of the current fiscal year or any other applicable deadline of State Law. If it fails to adopt the budget by this date, the budget for the amounts appropriated for operations in the current fiscal year will be deemed adopted.

(d) Publish defined. As used in this article, the term "publish" means to print in the contemporary means of information sharing, which includes but is not limited to, one or more newspapers of general circulation in the City and in a website or other means of publicly available electronic distribution.

Section 5.06. Appropriation and Revenue Ordinances.

To implement the adopted budget, the City Council shall adopt, prior to the beginning of the fiscal year:

- (1) an appropriation ordinance making appropriations by department, division, or other organizational unit, activities or objectives;
- (2) ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.

Sections of the current charter and proposed charter applicable to the Capital Program process.

Current Charter: Section 3-2 City manager: Powers and Duties. (8) Keep the city council fully advised as to the financial condition and future needs of the city; **(11)** Assist the council to develop long term goals for the city and strategies to implement these goals.

Current Charter: Section 4-4 Public Improvements. Public improvements may be made by the city government, itself or by contract. ... (The rest of the section is on contracts and bidding.)

The following are from the **Proposed Charter**:

Section 5.11. Capital Program.

(a) Submission to City Council. The City Manager shall prepare and submit to the City Council and the Audit and Finance Advisory Committee a five (5)-year or longer capital program no later than the fifteenth (15th) day of March.

(b) Contents. The capital program shall include:

- (1) A clear general summary of its contents;
- (2) Identification of the long-term goals of the community;
- (3) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five (5) fiscal years or longer next ensuing, with appropriate supporting information as to the necessity for each, regardless of whether funding is available for any such capital expenditure or improvement;
- (4) Cost estimates and recommended time schedules for each improvement or other capital expenditure;
- (5) Method of financing upon which each capital expenditure is to be reliant;
- (6) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired;
- (7) Methods to measure outcomes and performance of the capital plan related to the long-term goals of the community.

The above shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

(c) Debt Limitations. Any resolution or ordinance adopted by the council permitting or approving the creation of any indebtedness or obligation by a municipal beneficiary trust in excess of \$500,000 must be approved by a majority of the qualified electors of the City of McAlester;

provided that for purposes of this provision, the terms "indebtedness or obligation" shall include the aggregate rental required to be paid for the entire term of a lease.

- (d) Public Improvements.** Public improvements may be made by the City government itself or by contract. The Council shall award all contracts for such improvements; provided that the Council may authorize the City Manager to award such contracts not exceeding an amount to be determined by the Council and subject to such regulations as the Council may prescribe. The City will follow State Law on bidding.

Section 5.12. City Council Action on Capital Program.

- (a) Notice and Hearing.** Within one (1) week of receiving the capital budget from the City Manager, the City Council shall publish in one or more newspapers of general circulation in the City and on a website or other publicly available means of electronic distribution, the general summary of the capital program and a notice stating:

- (1) The times and places where copies of the entire detailed capital program are available for inspection by the public and purchase at a reasonable price set by the Council; and
- (2) The time and place, not less than two (2) weeks after such publication, for a public hearing(s) on the capital program.

Public discussion and suggestions on the capital program will be actively solicited until the fifteenth (15th) day of April.

- (b) Adoption.** The City Council by resolution shall adopt the capital program with or without amendment after the public hearing(s) on or before the last day of April of the current fiscal year. If the City Council fails to adopt the capital program by such date, the current capital program will continue in effect.



February 1, 2008

City of McAlester
Attn: Mr. Mark Roath
28 E Washington
McAlester, Oklahoma 74501

RE: City of McAlester seismic permit request

Dear Mr. Roath:

Geokinetics, Inc. is conducting a seismic test covering approx. 215,000 acres in Pittsburg County, Oklahoma. The City of McAlester falls on the Western edge of this seismic survey and therefore necessitates the approval of a short term seismic permit from the City. In order to conduct urban seismic operations inside the city limits we would like to use Vibroseis buggies on some city streets as a method of source/energy. All vibe point locations will be approved through the City Engineers office to assure all operations are conducted safely and that we do not perform any vibroseis operations directly over water or sewer lines. Additionally, we would like to hire off duty city police officers to escort Vibe trucks through the city for safety purposes. In the past, cities have requested third party seismology contractors to monitor all vibroseis operations within the city limits so that these monitors can be available to answer any citizen's questions or concerns during the testing.

We would also like approval to place seismic cables/geophones through the city limits. These cables are temporary and will be secured so they can be driven over with no harm to anyone or any property. Geokinetics, Inc. will be getting permission from private landowners where the cables/geophones will need to cross private lands that are inside the city.

We respectfully request the opportunity to be present at the city council meeting to assist in addressing any questions or concerns they may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Carsten', with a large, sweeping flourish extending to the right.

Jason Carsten
Project Manager

JAC/Ch

Cc; File

(Page 2 of 2)



PROSPECT: PANOLA V 3-D
PERMIT 1723
2 1 2008

City of McAlester
28 E Washington
McAlester OK 74501

Geokinetics USA, Inc. (formerly Quantum Geophysical, Inc.) and/or its assigns hereby requests your permission to conduct a seismographic survey, including the right to ingress and egress for such purposes, across your land in Pittsburg County, Oklahoma, and more fully described below:

Geokinetics, Inc. or its assigns will be responsible for damages to City property or the Municipal Water Supply directly caused by our seismic operations.

- Tract ID 0000-02-06N-14E-0-201-01: 20.47 acres (100.00% Surface Int in 20.47 ac), 20.47 ac out of 211.55 ac of Sec 2, Sec 2, T6N, R14E, Pittsburg County.
- Tract ID 0000-13-06N-14E-0-301-02: 5.00 acres (100.00% Surface Int in 5.00 ac), S2NWNWSW, Sec 13, T6N, R14E, Pittsburg County.
- Tract ID 0000-14-06N-14E-0-102-01: 101.79 acres (100.00% Surface Int in 101.79 ac), SW dia 1/2 of E 657' of S 310' of SWNWNE; SWNE; S2SWNWSENE; W2SWSENE; NESWSENE; tr in SW corner of E2, Sec 14, T6N, R14E, Pittsburg County.
- Tract ID 0000-19-06N-15E-0-404-01: 5.83 acres (100.00% Surface Int in 5.83 ac), Tract in SWSE, Sec 19, T6N, R15E, Pittsburg County.
- Tract ID 0000-24-05N-14E-0-303-01: 64.99 acres (100.00% Surface Int in 64.99 ac), Tract in SW & SE (Municipal Airport), Sec 24, T5N, R14E, Pittsburg County.
- Tract ID 0000-24-05N-14E-0-402-01: 40.00 acres (100.00% Surface Int in 40.00 ac), NESE, Sec 24, T5N, R14E, Pittsburg County.
- Tract ID 0000-24-05N-14E-0-407-01: 8.66 acres (100.00% Surface Int in 8.66 ac), Tract in N2NWSESE, Sec 24, T5N, R14E, Pittsburg County.
- Tract ID 0000-25-05N-14E-0-201-01: 187.30 acres (100.00% Surface Int in 187.30 ac), NENW; E2NWNW; S 520' of SWNWNW; E 60' of N 800' of W2NWNW; E2SWNW; NWSW; E 299' of S 361' of SWSWNW; N 412' of N2SENW; N 730' of W 1580' of S2SW; W 260' of W2E2SW; tract in W2SENW (Municipal Airport), Sec 25, T5N, R14E, Pittsburg County.
- Tract ID 0100-00-0150-001-0-001-00: 1.21 acres (100.00% Surface Int in 1.21 ac), City of McAlester: block 150, lots 1-3, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-0151-001-0-001-00: 2.81 acres (100.00% Surface Int in 2.81 ac), City of McAlester: block 151, lots 1-2; E 60' of lot 3; lot 4-6, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-018-000-0-000-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 18, N 20' & N 20' of closed Buchannon Ave, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-032-000-0-000-00: 2.31 acres (100.00% Surface Int in 2.31 ac), City of McAlester: block 32 except E 10' of lot 2, lot 1, E 10' of lot 27, lot 28 & vacant alley lying adj, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-039-005-0-005-00: 0.07 acres (100.00% Surface Int in 0.07 ac), City of McAlester: block 39, N 20' of lot 5, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-039-006-0-006-01: 0.07 acres (100.00% Surface Int in 0.07 ac), City of McAlester: 39, N 20' of lot 6, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-040-002-0-002-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 40, W 200' of lot 2, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-046-001-0-001-01: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 46, N part of lot 1; part of RWY ROW E & adj to lot 1, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-047-001-0-001-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 47, tract in lot 1, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-048-001-0-001-00: 0.05 acres (100.00% Surface Int in 0.05 ac), City of McAlester: block 48, N 20' of lot 1, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-048-009-0-009-01: 0.09 acres (100.00% Surface Int in 0.09 ac), City of McAlester: block 48, N 20' of lot 9, Sec 31, T6N, R15E, Pittsburg County.
- Tract ID 0100-00-056-001-0-001-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 56 except E 35', Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-069-014-0-014-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 69, lot 14, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-070-001-0-001-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 70, lots 5-12, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-083-001-0-001-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: lot 24, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-152-000-0-000-01: 15.44 acres (100.00% Surface Int in 15.44 ac), City of McAlester: block 153, 160, 162, 197-199, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-152-001-0-001-00: 1.36 acres (100.00% Surface Int in 1.36 ac), City of McAlester: block 152, lots 1-3 including alley lying on S side, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-153-001-0-001-00: 1.38 acres (100.00% Surface Int in 1.38 ac), City of McAlester: block 153, lots 1-8, Sec 5, T5N, R15E, Pittsburg County.
- Tract ID 0100-00-154-001-0-001-00: 2.76 acres (100.00% Surface Int in 2.76 ac), City of McAlester: block 154, lots 1-8, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-159-003-0-003-00: 1.38 acres (100.00% Surface Int in 1.38 ac), City of McAlester: block 159, part of lot 4, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-160-001-0-001-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 160, lots 1-18, part of lots 19-22, lots 23-32, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-160-019-0-019-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 160, part of lots 19-22, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-162-001-0-001-00: 2.41 acres (100.00% Surface Int in 2.41 ac), City of McAlester: block 162, lot 1-6, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-164-001-0-001-00: 1.21 acres (100.00% Surface Int in 1.21 ac), City of McAlester: block 164, lots 1-3; E/2 of lot 4, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-164-004-0-004-00: 0.48 acres (100.00% Surface Int in 0.48 ac), City of McAlester: block 164, W2 of lot 4; lot 5, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-164-006-0-006-00: 1.69 acres (100.00% Surface Int in 1.69 ac), City of McAlester: block 164, lots 6-10, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-195-001-0-001-00: 1.98 acres (100.00% Surface Int in 1.98 ac), City of McAlester: block 195, lots 1-10 & N 40' of W 322' of Jackson Ave lying Adj, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-196-002-0-002-00: 0.59 acres (100.00% Surface Int in 0.59 ac), City of McAlester: block 196, lot 2 & W2 of lot 5, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-197-001-0-001-00: 0.71 acres (100.00% Surface Int in 0.71 ac), City of McAlester: block 197, part of lot 1, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-199-001-0-001-00: 3.80 acres (100.00% Surface Int in 3.80 ac), City of McAlester: block 199, part of lot 5, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-208-001-0-001-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 208, lots 1-5, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-212-001-0-001-00: 1.98 acres (100.00% Surface Int in 1.98 ac), City of McAlester: block 212, lots 1-19, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-221-007-0-007-02: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 221, N 12' of S 62' of lot 7, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-226-006-0-006-00: 1.21 acres (100.00% Surface Int in 1.21 ac), City of McAlester: block 226, lots 6-8, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-234-006-0-006-00: 1.86 acres (100.00% Surface Int in 1.86 ac), City of McAlester: block 234, lots 6-9, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-246-006-0-006-00: 0.10 acres (100.00% Surface Int in 0.10 ac), City of McAlester: block 246, lot 6, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-248-003-0-003-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 249, lot 8 (Oakhill Cemetery), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-271-003-0-003-02: 0.66 acres (100.00% Surface Int in 0.66 ac), City of McAlester: block 271, S 30' of lot 3; lot 4 (New Library), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-281-000-0-000-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 281-290 (Oakhill Cemetery), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-292-003-0-003-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 292, part of lots 3-4, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-298-004-0-004-01: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 298, E 20' of lot 4, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-301-008-0-008-00: 0.13 acres (100.00% Surface Int in 0.13 ac), City of McAlester: block 301, S 55' of lot 8, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-318-001-0-001-00: 0.42 acres (100.00% Surface Int in 0.42 ac), City of McAlester: block 318, lots 1-2; W 53' of lot 3 (City Hall), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-319-004-0-004-00: 0.05 acres (100.00% Surface Int in 0.05 ac), City of McAlester: block 319, part of lot 4 (Genealogical & Historical Society), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-331-005-0-005-00: 0.39 acres (100.00% Surface Int in 0.39 ac), City of McAlester: block 331, lots 5-6; E 40' of 15th St lying Adj, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-333-000-0-000-00: 2.68 acres (100.00% Surface Int in 2.68 ac), City of McAlester: block 333 N of relocated Hwy 270, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-334-004-0-004-01: 0.65 acres (100.00% Surface Int in 0.65 ac), City of McAlester: block 334, N 70' of lots 4-5, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-335-001-0-001-01: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 335, part of lot 1, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-336-001-0-001-00: 3.40 acres (100.00% Surface Int in 3.40 ac), City of McAlester: block 336, lots 1-8, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-337-005-0-005-00: 2.89 acres (100.00% Surface Int in 2.89 ac), City of McAlester: block 337, part of lot 5, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-346-011-0-011-01: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 346, E 7.5' of lot 11; lot 12, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-350-006-0-006-01: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 350, E 10' of lot 19; W 22' of lot 6-16, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-359-001-0-001-01: 1.15 acres (100.00% Surface Int in 1.15 ac), City of McAlester: block 359, lot 1, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-360-000-0-000-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 360, N 57' of RR lying Adj to lots 1-13, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-362-001-0-001-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 362, E 25' of lot 1-2, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-362-002-0-002-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 362, E 25' of lot 2, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-367-000-0-000-01: 1.68 acres (100.00% Surface Int in 1.68 ac), City of McAlester: block 367; N2 & N 10' of alley & S 33' of choctaw Ave; E 40' of 15th St & W 40' of 16th St, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-368-000-0-000-00: 2.76 acres (100.00% Surface Int in 2.76 ac), City of McAlester: block 368, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-394-007-0-007-00: 0.27 acres (100.00% Surface Int in 0.27 ac), City of McAlester: block 394, lot 7 & S2 of lot 8, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-430-001-0-001-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 430, S 57' of lot 1 (parking Taco Pronto, People Feeders, Graywood, Taco Mayo), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-430-002-0-002-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 430, N 23' of lot 2, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-430-002-0-002-02: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 430, E 25' of lots 2-12, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-431-011-0-011-01: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 431, W 20' of lot 11, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-442-004-0-004-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 442, S 30' of E 50' of lot 4, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-443-006-0-006-00: 0.14 acres (100.00% Surface Int in 0.14 ac), City of McAlester: block 443, N 72' of lot 6, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-444-005-0-005-03: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 444, part of lot 5, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-476-004-0-004-00: 0.59 acres (100.00% Surface Int in 0.59 ac), City of McAlester: block 476, lots 4-6 (Sandy Creek Canal), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-477-005-0-005-00: 2.36 acres (100.00% Surface Int in 2.36 ac), City of McAlester: block 477, part of lots 1-4 (Chadick Park & Canal), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-482-008-0-008-00: 1.10 acres (100.00% Surface Int in 1.10 ac), City of McAlester: block 482, lots 8-9 (Komar), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-488-001-0-001-00: 2.33 acres (100.00% Surface Int in 2.33 ac), City of McAlester: block 488, part of lots 1-2, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-488-007-0-007-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 488, lots 7-8 (Chadick Park), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-489-001-0-001-00: 2.57 acres (100.00% Surface Int in 2.57 ac), City of McAlester: block 489, lots 1-2, 7-8 (Chadick Park), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-490-001-0-001-00: 0.92 acres (100.00% Surface Int in 0.92 ac), City of McAlester: block 490, lots 1-3, 6-8 (Chadick Park), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-490-005-0-005-00: 0.15 acres (100.00% Surface Int in 0.15 ac), City of McAlester: block 490, W 55' of lot 5, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-517-001-0-001-02: 0.33 acres (100.00% Surface Int in 0.33 ac), City of McAlester: block 517, NE corner of lot 1, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-525-010-0-010-01: 0.40 acres (100.00% Surface Int in 0.40 ac), City of McAlester: block 525, part of lot 10, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-532-004-0-004-00: 0.31 acres (100.00% Surface Int in 0.31 ac), City of McAlester: block 532, E 90' of lot 4, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-536-007-0-007-00: 0.12 acres (100.00% Surface Int in 0.12 ac), City of McAlester: block 536, N 40' of lot 7, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-536-020-0-020-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 536, N 40' of lot 20, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-545-006-0-006-00: 0.19 acres (100.00% Surface Int in 0.19 ac), City of McAlester: block 545, lot 6, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-556-004-0-004-00: 0.44 acres (100.00% Surface Int in 0.44 ac), City of McAlester: block 556, lot 4 (Part of Miami Ave), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-592-001-0-001-00: 0.75 acres (100.00% Surface Int in 0.75 ac), City of McAlester: block 592, lot 1; E2 of lot 2 & 10th lying Adj, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-592-007-0-007-00: 0.60 acres (100.00% Surface Int in 0.60 ac), City of McAlester: block 592, lots 7-13 (Puterbaugh Park), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-600-004-0-004-00: 0.01 acres (100.00% Surface Int in 0.01 ac), City of McAlester: block 600, tract in SW corner of lot 4, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-614-010-0-010-00: 0.13 acres (100.00% Surface Int in 0.13 ac), City of McAlester: block 614, N 55' of lot 10, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-615-001-0-001-00: 2.81 acres (100.00% Surface Int in 2.81 ac), City of McAlester: block 615 (Chaney Park), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0100-00-632-001-0-001-02: 0.01 acres (100.00% Surface Int in 0.01 ac), City of McAlester: block 632, tract in SE corner of lot 1, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-006-002-0-002-00: 0.32 acres (100.00% Surface Int in 0.32 ac), City of McAlester: block 6, W 50' of lot 2; W 50' of lot 3, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-017-002-0-002-00: 0.06 acres (100.00% Surface Int in 0.06 ac), City of McAlester: block 17, W 50' of lot 2, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-049-004-0-004-00: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 49, part of lot 4, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-085-009-0-A09-00: 0.17 acres (100.00% Surface Int in 0.17 ac), City of McAlester: block 85A, lot 9 (N Fire Station), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-094-005-0-005-00: 0.64 acres (100.00% Surface Int in 0.64 ac), City of McAlester: block 94, lots 5-6 (Mullins Park), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-095-001-0-001-00: 4.91 acres (100.00% Surface Int in 4.91 ac), City of McAlester: block 95, lots 1-12 (Mullins Park), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-096-003-0-003-00: 0.65 acres (100.00% Surface Int in 0.65 ac), City of McAlester: block 96, part of lots 3-4 (Mullins Park), Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-139-001-0-001-01: 0.61 acres (100.00% Surface Int in 0.61 ac), City of McAlester: block 139, lane in lot 1, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-196-003-0-003-02: 0.25 acres (100.00% Surface Int in 0.25 ac), City of McAlester: block 196, part of lot 32, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-207-003-0-003-00: 0.29 acres (100.00% Surface Int in 0.29 ac), City of McAlester: block 207, part of lot 3; S 60' of W2 of lot 4, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0105-00-207-004-0-004-03: 0.20 acres (100.00% Surface Int in 0.20 ac), City of McAlester: block 207, S 60' of E2 of lot 4, Sec 5, T5N, R15E, Pittsburg County.

Tract ID 0319-00-002-001-0-011-00: 2.01 acres (100.00% Surface Int in 2.01 ac), The Village Addition #3: block 2, lot 11, Sec 8, T5N, R15E, Pittsburg County.

Tract ID 1500-00-000-000-0-000-01: 1.12 acres (100.00% Surface Int in 1.12 ac), Townsite Addition #1: tract beginning on N ROW of Electric Ave, Sec 36, T6N, R14E, Pittsburg County.

Tract ID 1500-00-000-171-0-171-01: 1.07 acres (100.00% Surface Int in 1.07 ac), Townsite Addition #1: tract in lot 171 (City Barn), Sec 36, T6N, R14E, Pittsburg County.

Tract ID 1500-00-000-172-0-172-01: 1.25 acres (100.00% Surface Int in 1.25 ac), Townsite Addition #1: lot 172, Sec 36, T6N, R14E, Pittsburg County.

Tract ID 1500-00-000-173-0-173-01: 1.07 acres (100.00% Surface Int in 1.07 ac), Townsite Addition #1: lot 173 less N 308', Sec 36, T6N, R14E, Pittsburg County.

Tract ID 1500-00-000-200-0-200-01: 0.50 acres (100.00% Surface Int in 0.50 ac), Townsite Addition #1: S 50' of lots 200-203; S 50' of E 30' of lot 204; S 50' of W 100' of abandon ROW of Choctaw RY & Light Co lot 200, Sec 36, T6N, R14E, Pittsburg County.

Tract ID 1500-00-000-204-0-204-01: 2.90 acres (100.00% Surface Int in 2.90 ac), Townsite Addition #1: W 70' of lot 204; lot 205; E2 of lot 206, Sec 36, T6N, R14E, Pittsburg County.

Tract ID 1512-00-000-0140-014-00: 25.49 acres (100.00% Surface Int in 25.49 ac), Townsite Addition #4: S 360' of lot 14-14 1/2; lots 37-40, Sec 8, T5N, R15E, Pittsburg County.

Tract ID 1512-00-000-015-0-015-00: 5.03 acres (100.00% Surface Int in 5.03 ac), Townsite Addition #4: lot 15 1/2, Sec 8, T5N, R15E, Pittsburg County.

Tract ID 1512-00-000-061-0-061-04: 0.85 acres (100.00% Surface Int in 0.85 ac), Townsite Addition #4: tract in lot 61, Sec 8, T5N, R15E, Pittsburg County.

Tract ID 1512-00-000-062-0-062-09: 0.25 acres (100.00% Surface Int in 0.25 ac), Townsite Addition #4: part of lot 62, Sec 8, T5N, R15E, Pittsburg County.

Tract ID 1512-00-000-062-0-062-11: 0.25 acres (100.00% Surface Int in 0.25 ac), Townsite Addition #4: part of lot 62, Sec 8, T5N, R15E, Pittsburg County.

Tract ID 1512-00-000-062-0-062-13: 0.25 acres (100.00% Surface Int in 0.25 ac), Townsite Addition #4: part of lot 62, Sec 8, T5N, R15E, Pittsburg County.

Tract ID 1512-00-000-062-0-062-15: 0.25 acres (100.00% Surface Int in 0.25 ac), Townsite Addition #4: part of lot 62, Sec 8, T5N, R15E, Pittsburg County.

Tract ID 1512-00-000-062-0-062-18: 0.25 acres (100.00% Surface Int in 0.25 ac), Townsite Addition #4: part of lot 62, Sec 8, T5N, R15E, Pittsburg County.

Tract ID 1516-00-000-036-0-036-00: 1.58 acres (100.00% Surface Int in 1.58 ac), Tract in lot 36, Sec 4, T5N, R15E, Pittsburg County.

Tract ID 1516-00-000-038-0-038-00: 42.84 acres (100.00% Surface Int in 42.84 ac), Townsite Addition #5: tract in lots 38-44, Sec 4, T5N, R15E, Pittsburg County.

Therefore, we shall pay you a total of \$20,000.00.

This permit shall include any surface or mineral interests you own within this seismic survey, including but not limited to, the surface interests described above.

Our operations will be conducted in accordance with standard industry practices and in a prudent and careful manner, and we agree to indemnify and hold you harmless from all liability and claims, if any, which may result from the operations conducted under this permit. In the unlikely event that this survey is cancelled or moved, we will notify you and this permit shall become null and void. Unless otherwise voided by conditions stated herein, this agreement shall survive any lease, sale, trade or conveyance of property interests described above and made after executed date of this agreement and will be binding on successors or assigns.

If your permission is granted, please so indicate by signing this permit form in the space provided below and return one copy of the permit in the enclosed courtesy envelope and retain the other copy for your records. Please fill in your phone number if it is not already indicated below.

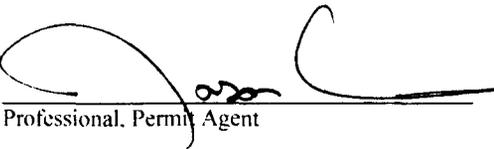
It is very important that you include your SSN or Tax I.D. for payment and inform us of any Oil and Gas lease and tenant renter information affecting the lands covered by this permit. Permittee represents that he/she has full legal authority to grant permission for entry to the described lands for the purpose of conducting the requested survey.

Yours Truly,

This form should be returned to:

Geokinetics USA, Inc.

216 E Choctaw Suite 102, McAlester, OK 74501



Professional Permit Agent

If you have any questions, please call me:
(918) 426-4114 Office (918) 426-4113 Fax

Permission Granted By:

City of McAlester

SSN or Tax I.D.: _____

Date: _____

Your current telephone number: _____

Your e-mail address, if any: _____

Please provide the names and phone numbers of any tenants or renters of your property:

Tenant Owner(s): _____

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/04/2008

PRODUCER USI Southwest 840 Gessner Suite 600 Houston, TX 77024 713 490-4600	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURED Geokinetics Inc., et al See Attached List of Named Insureds 1500 CityWest Blvd., Suite 800 Houston, TX 77042	INSURERS AFFORDING COVERAGE
	INSURER A: American Home Assurance Company	19380
	INSURER B: Commerce & Industry Insurance Co.	19410
	INSURER C: XL Specialty Insurance Company	37885
	INSURER D:	
	INSURER E:	

COVERAGES **COVERAGES AS OF 01/23/08**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/>	GL4807123	07/31/07	07/31/08	EACH OCCURRENCE	\$1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$50,000
						MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
						PRODUCTS - COMP/OP AGG	\$2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CA4806730	10/01/07	07/31/08	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	BE4891038	07/31/07	07/31/08	EACH OCCURRENCE	\$25,000,000
						AGGREGATE	\$25,000,000
							\$
							\$
							\$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC1590555	01/01/08	07/31/08	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
						E.L. EACH ACCIDENT	\$1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000
C		OTHER Non-Owned Aviation Liab	NAQ3043129	07/31/07	07/31/08		\$10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Named Insured includes: Geokinetics, Inc., Geokinetics Exploration, Inc., Geokinetics USA, Inc., Geokinetics International, Inc., Geokinetics International Holdings, Inc., Geokinetics Processing, Inc., Geokinetics Management, Inc., Advanced Seismic Technology, Inc., Geokinetics Services Corp., Quantum Geophysical, Inc.
 (See Attached Descriptions)

CERTIFICATE HOLDER City of McAlester 28 E. Washington Ave. McAlester, OK 74501	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

DESCRIPTIONS (Continued from Page 1)

Blanket Additional Insurance and Waiver of Subrogation are included in the General Liability, Auto Liability and Excess Liability where required by written contract. Blanket Alternate Employer and Waiver of Subrogation are included in the Worker's compensation when required by written contract.



McAlester City Council

AGENDA REPORT

Meeting Date:	<u>March 11, 2008</u>	Item Number:	<u>8</u>
Department:	<u>Public Works</u>	Account Code:	<u></u>
Prepared By:	<u>George Marcangeli</u>	Budgeted Amount:	<u></u>
Date Prepared:	<u>March 4, 2008</u>	Exhibits:	<u>Three</u>

Subject

Consider, and act upon, a Contract for Engineering Services with NRS, Inc. for a CDBG Small Cities water and sewer project in southwest McAlester.

Recommendation

Motion to approve Contract, in the amount of \$22,100.00, for professional Engineering Services with NRS, Inc. for Oklahoma Department of Commerce Project Number 12557 CDBG 06.

Discussion

The City of McAlester accepted a \$ 79,500 grant offer from the Oklahoma Department of Commerce for a water and sewer improvement grant on February 21, 2007. The total estimated project cost is \$ 159,000, with \$79,500 of matching funds from the City. This project was included in the approved FY 07-08 City Budget and funds are available to complete the project.

On behalf of the City of McAlester, KEDDO solicited proposals from three (3) engineering firms in Oklahoma. Two (2) of the firms submitted proposals for this project. KEDDO reviewed the proposals and advised the City Engineer by letter on January 18, 2008 that the highest rated firm was NRS, Inc. of McAlester. A copy of the letter and the Engineer Evaluation Sheets and the RFQ is enclosed for the Council's review.

It is recommended by the City Engineer that the Council approve the proposed contract so that this project can proceed to design and construction. The professional engineering costs are eligible project costs.

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	<u>GEM</u>	<u>03/04/08</u>
City Manager	<u>MBR</u>	<u>03/04/08</u>

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
FUNDING AGENCY EDITION**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

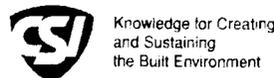
This document has been approved and endorsed by

The Associated General Contractors of America



and the

Construction Specification Institute



This document has been accepted by the
United States Department of Agriculture
Rural Utilities Services, Water and Waste Programs

City of McAlester
CDBG Sewer and Water Improvements
NRS Project No. MC-08-01

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract, Funding Agency Edition (No. C-710, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other.

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TABLE OF CONTENTS

Page

Article 1 – Services of Engineer.....	1
1.01 Scope.....	1
Article 2 – Owner’s Responsibilities.....	1
2.01 General.....	1
Article 3 – Schedule For Rendering Services.....	2
3.01 Commencement.....	2
3.02 Time for Completion.....	2
Article 4 – Invoices and Payments.....	2
4.01 Invoices.....	2
4.02 Payments.....	2
Article 5 – Opinions of Cost.....	3
5.01 Opinions of Probable Construction Cost.....	3
5.02 Designing to Construction Cost Limit.....	3
5.03 Opinions of Total Project Costs.....	3
Article 6 – General Considerations.....	3
6.01 Standards of Performance.....	3
6.02 Design without Construction Phase Services.....	4
6.03 Use of Documents.....	4
6.04 Insurance.....	5
6.05 Suspension and Termination.....	5
6.06 Controlling Law.....	6
6.07 Successors, Assigns, and Beneficiaries.....	6
6.08 Dispute Resolution.....	7
6.09 Environmental Condition of Site.....	7
6.10 Indemnification and Mutual Waiver.....	8
6.11 Miscellaneous Provisions.....	8
Article 7 – Definitions.....	9
7.01 Defined Terms.....	9
Article 8 – Exhibits, Attachments and Special Provisions.....	10
8.01 Exhibits and Attachments Included.....	10
8.02 Total Agreement.....	11
8.03 Designated Representatives.....	11
8.04 Federal Requirements.....	11

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of March 3, 2008 ("Effective Date") between

City of McAlester ("Owner) and

NRS INC. ("Engineer").

Owner intends to CDBG Sewer and Water Improvements

Community Development Block Grant ("Project")

Financial assistance for this Project is expected to be provided by Commerce (ODOC) and Local Funds ("Agency),
through the Oklahoma Department of
a governmental entity. Nothing herein creates any contractual relationship between Agency and Engineer.

Owner and Engineer agree as follows

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C, and in a manner acceptable to Owner. Engineer shall submit its invoices to Owner no more than once per month. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice and funds are available for the Project, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.2 shall be

applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. The retention of such Consultants shall not reduce the Engineer's obligations to Owner under this Agreement.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations. Engineer shall comply with Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.

- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract, Funding Agency Edition" as prepared by the Engineers Joint Contract Documents Committee (No. C-710, 2002 Edition) unless both parties mutually agree to use other General Conditions by specific reference.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.
- K. All Contract Documents and Applications for Payment shall be subject to Agency concurrence.

6.02 *Design without Construction Phase Services*

- A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer that may be connected in any way thereto.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Not Used
- B. Not Used
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of paragraph 5.04 of the "Standard General Conditions of the Construction Contract, Funding Agency Edition," (No. C-710, 2002 Edition) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Not Used
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. Not Used

6.05 *Suspension and Termination*

- A. *Suspension.*
 - 1. By Owner: Owner may suspend the Project upon seven days written notice to Engineer.
 - 2. By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.
- B. *Termination.* The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
- 3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.05, Engineer will be entitled to invoice Owner and to receive payment for all acceptable services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

E. *Delivery of Project Materials to Owner.* Prior to the effective date of termination, the Engineer will deliver to Owner copies of all completed Documents and other Project materials for which Owner has compensated Engineer. Owner's use of any such Documents or Project materials shall be subject to the terms of Paragraph 6.03.

6.06 *Controlling Law*

A. This Agreement is to be governed by the law of the state in which the Project is located, its conflict of laws provisions excepted.

6.07 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors,

administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under law.
- B. Not Used

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.

- E. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.
- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. *Environmental Indemnification.* In addition to the indemnity provided under paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damage caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

- B. *Survival*. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*. To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract, Funding Agency Edition," prepared by the Engineers Joint Contract Documents Committee (No. C-710, 2002 Edition):
 - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
 - 2. *Agency* – The Federal or state agency named on page 1 of this Agreement.
 - 3. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.
 - 4. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 - 5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 - 6. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.

7. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
8. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
9. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective. If no such date is indicated it means the date on which Agency concurs with the Agreement.
10. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
11. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
12. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
13. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
14. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

ARTICLE 8 – EXHIBITS, ATTACHMENTS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- A. Exhibit A, "Owner's Consultant," consisting of 9 pages.
- B. Exhibit B, "Owner's Responsibilities," consisting of 3 pages.
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 4 pages.
- D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 4 pages.
- E. Exhibit E, "Notice of Acceptability of Work," consisting of 2 pages.
- F. Exhibit F, "Construction Cost Limit," consisting of 1 page.
- G. Exhibit G, Not Used.
- H. Exhibit H, Not Used

I. Exhibit I. Not Used

J. Exhibit J. Not Used

Attachment I. "Fee Schedule" consisting of 2 pages.

8.02 *Total Agreement*

A. This Agreement (consisting of pages 1 to 37, inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer for the Project and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument.

8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

8.04 *Federal Requirements*

A. *Agency Concurrence.* Signature of a duly authorized representative of Agency in the space provided on the signature page hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements

B. *Audit and Access to Records.* For all negotiated contracts and negotiated modifications (except those of \$10,000 or less), Owner, Agency, the Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

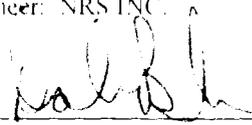
C. *Restrictions on Lobbying.* Engineer and each Consultant shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable Agency regulations. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

D. *Suspension and Debarment.* Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Owner: City of McAlester

Engineer: NRS INC.



By: Don R. Lewis

By: Dale Burke

Title: Mayor

Title: Vice President

Date Signed: _____

Date Signed: _____

Engineer License or Certificate No. 5201

State of: Oklahoma

Address for giving notices:

Address for giving notices:

City of McAlester

NRS INC.

P.O. Box 578

521 S. 2nd Street

McAlester, OK 74501

McAlester, OK 74501

Designated Representative (see paragraph 8.03.A):

Designated Representative (see paragraph 8.03.A):

George Marcangeli

Dale Burke, P.E.

Title: City Engineer

Title: Vice President

Phone Number: (918) 423-9300

Phone Number: (918) 420-5500

Facsimile Number: (918) 421-4970

Facsimile Number: (918) 420-5501

E-Mail Address: N/A

E-Mail Address: daleburke@nrsok.com

AGENCY CONCURRENCE

Agency: Oklahoma Department of Commerce

By (Signature): _____

Typed Name: _____

Title: _____

Date: _____

EXHIBIT A

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 3, 2008.

Owner's Consultant's Services

PART I – BASIC SERVICES

Article I of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

A.1.01 *Study and Report Phase*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate all reasonable alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. In accordance with Agency guidance, prepare an engineering report (the "Report") which will, as appropriate, contain schematic layouts, sketches, operation and maintenance costs, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase tasks or deliverables:
 - a. Environment Report in accordance with Agency requirements.
 - b. Provide engineering information for applications and supporting documents for private or governmental grants, loans, or advances in connection with the Project.
 - c. Prepare feasibility studies and preliminary ranges of rate schedules if required for the Project.
7. Furnish 3 review copies of the Report and any other deliverables to Owner and Agency within ninety (90) calendar days of authorization to begin services and review it with Owner.
8. Revise the Report and any other deliverables in response to Owner's and Agency's comments, as appropriate, and furnish five (5) copies of the revised Report and any other deliverables to the Owner and Agency within sixty (60) calendar days of receipt of all such comments.

- B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to and accepted by Owner and Agency, as appropriate.

A.1.02 *Preliminary Design Phase*

- A. After acceptance by Owner and Agency of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 3. Provide to Owner three copies of maps showing the general location of required construction easements and permanent easements and the land to be acquired.
 4. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 5. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
 6. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: NONE
 7. Furnish 2 review copies of the Preliminary Design Phase documents and any other deliverables to Owner (and Agency, if required) within sixty (60) calendar days of authorization to proceed with this phase, and review them with Owner.
 8. Revise the Preliminary Design Phase documents and any other deliverables in response to comments from Owner (and Agency), as appropriate, and furnish to Owner (and Agency) two (2) copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within thirty (30) calendar days after receipt of all such comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner (and Agency, if required).

A.1.03 *Final Design Phase*

- A. After acceptance by Owner (and by Agency, if required) of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. If appropriate, Specifications shall conform to the 16-division format of the Construction Specifications Institute.
 2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.

3. Advise Owner of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer.
 4. Perform or provide the following additional Final Design Phase tasks or deliverables: NONE
 5. Prepare and furnish Bidding Documents for review by the Owner, its legal counsel, its other advisors, regulatory agencies, and Agency, within one hundred twenty (120) calendar days of authorization to proceed with this phase, and assist Owner in the preparation of other related documents. Bidding documents will comply with Agency's requirements in effect as of the date of Owner authorizing work in this phase.
 6. Revise the Bidding Documents in accordance with comments and instructions from the Owner, regulatory agencies, and Agency, as appropriate, and submit three (3) final copies of the Bidding Documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner and Agency within sixty (60) calendar days after receipt of all such comments and instructions (including additional comments to the revised Bidding Documents.)
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A.1.03.A.6 have been delivered to and accepted by Owner and Agency.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A.1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner and Agency of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
 4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 5. Determine the acceptability of substitute materials and equipment proposed when substitution is necessary because the specified item is incompatible with the Project or fails to comply with applicable codes.
 6. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: NONE

7. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A.1.05 *Construction Phase*

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.

2. *Resident Project Representative (RPR).* Unless otherwise notified in writing by Owner, Engineer shall provide the services of Resident Project Representative (RPR) at the Site to assist Engineer and to provide more continuous observations of such work on a full-time basis unless part-time services are expressly approved by Agency and this Agreement is amended accordingly. Engineer will, prior to the pre-construction conference, submit a resume of the RPR's qualifications for approval by Owner and Agency. The duties, responsibilities, and limitations of authority of the RPR are as set forth in Exhibit D. The furnishing of such Resident Project Representative service will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.

3. *Selecting Independent Testing Laboratory.* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, paragraph B.2.01.O.

4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site. If RPR services are provided by Engineer, ensure RPR attends Pre-Construction Conference.

5. *Schedules.* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

6. *Baselines and Benchmarks.* As appropriate, establish baselines or control points and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

7. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work while it is in progress:

a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
8. *Defective Work.* Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
11. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A.2.01.A.23 of this Exhibit A.
13. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor.* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

15. *Applications for Payment.* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
16. *Contractor's Completion Documents.* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A.1.05.A.11, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in paragraph A.1.05.A.11.
17. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner, the Agency's representative, and Contractor, conduct a pre-final inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner, Agency, and Contractor.
18. *Record Drawings.* Prepare and furnish to Owner a set of reproducible Project Record Drawings showing appropriate record information based on Record Drawing information from Contractor and Project documentation received from RPR.
19. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables:
NONE
20. *Final Notice of Acceptability of the Work.* In company with Owner's and Agency's representative, conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A.1.05.A.15.b) to the best of

Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A.1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction-Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.
- C. *Limitation of Responsibilities.* Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A.1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner, Engineer, during the Post-Construction Phase, shall:
 - 1. Provide assistance in connection with the adjusting of Project equipment and systems.
 - 2. Assist Owner in training Owner's staff to operate and maintain Project equipment and systems.
 - 3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
 - 4. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
 - 5. Perform or provide the following additional Post-Construction Phase tasks or deliverables: NONE
 - 6. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period for Contractor's Work to ascertain whether any portion of the Work is subject to correction.
- B. The Engineer shall provide a total of forty (40) hours of assistance and necessary reimbursable expenses in providing services during the Post-Construction Phase.
- C. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Construction Contract's Correction Period.

PART 2 – ADDITIONAL SERVICES

A.2.01 *Additional Services Requiring Owner's Advance Written Authorization and Agency's Concurrence*

- A. If authorized in writing by Owner, with Agency concurrence, Engineer shall furnish or obtain from others Additional Services of the types listed below.
 - 1. Preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project (which are not part of Basic Services).

2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control. Redesign to reduce Project costs to within the funds available as stated in Exhibit F shall not be considered Additional Services.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A.1.01.A.4.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Engineer's Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in paragraph A.1.03.C.
10. Services (which are not part of Basic Services) during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F. Rebidding or renegotiating contracts to reduce the contract costs to funds available as stated in Exhibit F shall not be considered Additional Services.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A.1.05.A.6. and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.

17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.
22. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make compensation commensurate with the extent of the Additional Services rendered.
23. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
24. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
25. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
26. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

EXHIBIT B

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 3, 2008.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B.2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas, if not part of Engineer's services.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Furnish as appropriate other services or authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. If Resident Project Representative services are not to be provided pursuant to paragraph A.1.05.A.2 or otherwise, provide a qualified representative to observe the progress and quality of the Work.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- P. Provide inspection or monitoring services by an individual or entity other than Engineer (and disclose the identity of such individual or entity to Engineer) as Owner determines necessary to verify:
 - 1. that Contractor is complying with any Laws or Regulations applicable to Contractor's performing and furnishing the Work; or
 - 2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to paragraphs B.2.01.O and P.
- R. Perform or provide the following additional services: NONE

EXHIBIT C

This is **EXHIBIT C**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 3, 2008.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C.2.01 Compensation for Basic Services (other than Resident Project Representative Services) - Percentage of Construction Cost Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. For services performed or furnished under paragraph A.1.01, the Lump Sum amount of N/A Dollars after the Study and Report Phase Services are considered complete as defined in Exhibit A.
 2. For services performed or furnished under paragraphs A.1.02 through A.1.06 (excluding the services of the Resident Project Representative), an amount equal to a percent of the Construction Cost. Actual compensation will be based on fee schedule included in Attachment 1.
 3. The Percent of Construction Cost compensation for services performed or furnished under paragraphs A.1.02 through A.1.06 shall be payable as follows:
 - a. A sum which equals 30 percent of the total compensation payable under paragraph C.2.01.A.2, after the Preliminary Design Phase documents are revised and submitted to Owner (and Agency, if required).
 - b. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a, equals 50 percent of the total compensation payable under paragraph C.2.01.A.2, after the Final Design Phase documents are completed and submitted to Owner and Agency.
 - c. A sum which, together with the compensation provided under paragraph C.2.01.A.3.a and b, equals 70 percent of the total compensation payable under paragraph C.2.01.A.2, after Final Design Phase services are considered complete as defined in Exhibit A.
 - d. A sum which, together with the compensation provided in paragraphs C.2.01.A.3.a, b, and c, equals 80 percent of the total compensation payable under paragraph C.2.01.A.2, after Bidding or Negotiating Phase services are considered complete as defined in Exhibit A.
 - e. A sum equal to 15 percent of the total compensation payable under paragraph C.2.01.A.2 will be paid for general engineering review of the Contractor’s Work during the construction period on percentage ratios identical to those approved by the Engineer as a basis upon which to make partial payments to the Contractor(s). Payments will be made on a monthly basis. However, payment under this paragraph and of such additional sums as are due the Engineer by reason of any necessary adjustments in the payment computations will be in an amount so that the aggregate of the sums paid to the Engineer under paragraphs C.2.01.A.3.a through C.2.01.A.3.e will equal 95 percent of the total compensation payable under paragraph C.2.01.A.2 as appropriately adjusted to reflect the actual Construction Cost incurred by Owner.

- f. A final payment which, together with the compensation provided in paragraphs C.2.01.A.3.a through C.2.01.A.3.e, equals 100 percent of the total compensation payable under paragraph C.2.01.A.2, shall be made when it is determined that all services required by this Agreement under paragraphs A.1.02 through A.1.05 have been completed. Such payment includes payment for Post Construction phase services under paragraph A.1.06. Engineer remains responsible to Owner for the technical adequacy and completeness of such services.
4. Progress invoicing prior to award of the Construction Agreement shall be based on Engineer's most recent estimate of probable Construction Cost for the Project, with appropriate adjustment upon award of the Construction Agreement(s). The initial construction award amount shall set the percentage figure to be applied in making such adjustments, and shall remain constant thereafter regardless of the impact of Change Orders. Final invoicing shall be based on final Construction Cost, including all Change Orders.
5. As a basis for payment to Engineer, Construction Cost will be based on one or more of the following determinations with precedence in the order listed for Work designed or specified by Engineer:
 - a. For Work designed or specified and incorporated in the completed Project, the actual final cost of the work performed by Contractor and paid by Owner.
 - b. For Work designed or specified but not constructed, the lowest bona fide Bid received from a qualified bidder for such Work; or, if the Work is not bid, the lowest bona fide negotiated proposal for such Work.
 - c. For Work designed or specified but not constructed upon which no such Bid or proposal is received, Engineer's most recent opinion of probable Construction Cost.
 - d. Labor furnished by Owner for the Project will be included in the Construction Cost at current market rates including a reasonable allowance for overhead and profit. Materials and equipment furnished by Owner will be included at current market prices.
 - e. No deduction is to be made from Engineer's compensation on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).

C.2.02 *[Not used]*

C.2.03 *[Not used]*

C.2.04 *Compensation for Resident Project Representative Services – Percentage of Construction Cost Method of Payment*

A. Owner shall pay Engineer for:

1. *Resident Project Representative Services.* For services of Engineer's Resident Project Representative, if any, under paragraph A.1.05 of Exhibit A of the Agreement, an amount equal to a percent of the Construction Cost. Actual cost will be based on fees schedule included in Attachment I. This amount includes compensation for Resident Project Representative's services, and those of any assistants to the Resident Project Representative. The percentage of Construction Cost noted herein accounts for labor, overhead, profit, and Reimbursable Expenses.
2. The total compensation for Resident Project Representative services is based on the Contract Times established in the Contract Documents and such compensation shall not be exceeded without written approval of Owner and concurrence of Agency.
3. Payment for Resident Project Representative Services shall be on a monthly basis prorated according to the number of months stated in C.2.04.A.2.

4. As a basis for payment to Engineer, Construction Cost will be based on one or both of the following determinations. No deduction is to be made from Engineer's compensation on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).
 - a. For Work incorporated in the completed Project but not limited to that furnished by Owner itself, the current market value of the labor material, and equipment furnished.
 - b. For other Project construction, including but not limited to that furnished by Owner itself, the current market value of the labor, materials, and equipment furnished.

C.2.05 *Compensation for Additional Services – Standard Hourly Rates Method of Payment*

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General.* For services of Engineer's employees engaged directly on the Project pursuant to paragraph A.2.01 of Exhibit A, except for services as a consultant or witness under paragraph A.2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation authorized under this paragraph shall not be exceeded without written approval of Owner and concurrence of Agency.

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under paragraph C.2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a Factor of 1.2.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January, 2007) to reflect equitable changes in the compensation payable to Engineer.

C. Other Provisions Concerning Payment For Additional Services

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of 1.2.
2. Factors. The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement Between Owner and ENGINEER for Professional Services** dated March 3, 2008.

Schedule of Fees

Principal	\$150.00 hour
Project Manager Engineering Mgr.	\$135.00 hour
Project Engineer	\$125.00 hour
Professional Engineer	\$115.00 hour
Construction Manager	\$115.00 hour
Engineering Intern	\$ 75.00/hour
Senior Project Representative	\$ 75.00/hour
Project Representative (Inspector)	\$ 65.00/hour
Engineer Technician	\$ 70.00/hour
CAD Technician	\$ 55.00/hour
Administrative Assistant	\$ 50.00/hour
Secretary	\$ 35.00/hour
Survey Crew	\$150.00/hour
Per Diem	\$ 80.00/day
Mileage	\$ 0.45/Mile

(Appendix 1 to Exhibit C – Standard Hourly Rates Schedule)

EJCDC E-510 Standard Form of Agreement Between Owner and Engineer for Professional Services, Funding Agency Edition
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EXHIBIT D

This is **EXHIBIT D**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 3, 2008.

Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Paragraph 1.01.A of the Agreement is amended and supplemented to include the following agreement of the parties:

D.1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D shall provide full time representation unless representation to a lesser degree is approved by Agency.
- B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in section A.1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. *Inspections, Tests, and System Startups:*
 - a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.
10. *Records:*
 - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in a Substantial Completion (pre-final) inspection, and assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Observe Contractor-arranged inspections required by Laws and Regulations applicable to the Work, including but not limited to those performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- d. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

EXHIBIT E

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 3, 2008.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: CDBG Sewer and Water Improvements

OWNER: City of McAlester

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: TBD

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT: TBD

CONSTRUCTION CONTRACT DATE: TBD

ENGINEER: NRS INC.

To: City of McAlester
OWNER

And To: TBD
AGENCY

And To: TBD
CONTRACTOR

The Engineer hereby gives notice to the above Owner, Agency, and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated March 3, 2008, and the terms and conditions set forth on the reverse side of this Notice.

By: _____

Title: Vice President

Dated: _____

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the date hereof.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referred to on the front side of this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to on the front side of this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

EXHIBIT F

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services dated March 3, 2008**.

Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

F.5.02 *Designing to Construction Cost Limit*

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of Dollars
- B. A bidding or negotiating contingency of percent will be added to any Construction Cost limit established.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit.
- G. All services of Engineer in respect of paragraph F.5.02.F shall be at the sole expense of Engineer. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost.

ATTACHMENT 1 – FEE SCHEDULE

This is **ATTACHMENT 1**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 3, 2008.

Fee Schedule

I 1.01 *General*

The engineering and inspection fees indicated below are the recommended allowable for funding agency financed projects in Oklahoma.

I 1.02 *Engineering Services Fee Schedule (for services as defined in A.1.02 through A.1.06 excluding the services of Resident Project Representative as defined by Exhibit A of this Agreement)*

<u>Net Construction Cost of Entire Project</u>	<u>Percent Fee</u>
\$60,000	13.2
70,000	12.6
80,000	12.3
90,000	12.0
100,000	11.9
200,000	10.5
300,000	9.7
400,000	8.9
500,000	8.5
600,000	8.2
700,000	8.0
800,000	7.8
900,000	7.7
1,000,000	7.5
2,000,000	6.7
3,000,000	6.4
4,000,000	6.3
5,000,000	6.2
10,000,000	6.0

I 1.03 Resident Project Representative Services Fee Schedule (for services as defined in A.1.02 of Exhibit A of this Agreement)

<u>Net Construction Cost</u>	<u>Percent Fee</u>
\$100,000 or less	5.0 (or negotiated lump sum)
200,000	4.2
300,000	3.8
400,000	3.5
500,000	3.2
600,000	3.0
700,000	2.8
800,000	2.65
900,000	2.5
1,000,000	2.4
2,000,000	2.3
3,000,000	2.2
4,000,000	2.1
5,000,000	2.0
10,000,000	1.9

WORK ORDER FOR PROFESSIONAL SERVICES

CITY OF McALESTER

W. O. MC-08-01

This will constitute authorization by the City of McAlester (Owner) for NRS INC. to proceed with the following described as "Project":

Project: CDBG Sewer and Water Improvements

- Prepare engineering Plans and Specifications for Sewer and Water.
- Prepare Application for "Permit to Construct" and Submit P&S to the Oklahoma Department of Environmental Quality for authorization.
- Prepare bid packages, and assist owner in obtaining bids from contractor(s) for the construction of the improvements.
- Review and approve material submittals from contractor(s).
- Provide construction management services including review of contractors work, approving contractors pay estimates, review change order requests, and be the final judge of acceptance of the work performed by the contractor.
- Provide Inspection Services during Construction.
- Perform all work in accordance with STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES as Prepared by ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE (EJCDC).

For performing the services described, the Engineer is to be paid on the standard fee scale outlined in the EJCDC Contract. The fee is based on a percentage of actual construction cost. Based on an estimated construction cost of \$136,600.00 the engineering fee is to be \$15,700.00 and the inspection fee is to be \$6,400.00.

The fee for engineering services shall be further broken down as follows:

Design, Plans and Specifications, 70%	\$ 10,990.00
Bidding, 10%	\$ 1,570.00
Construction Management, 20%	\$ 3,140.00
Project Inspection	<u>\$ 6,400.00</u>
Total	\$ 22,100.00

WORK ORDER FOR PROFESSIONAL SERVICES
CITY OF McALESTER, OKLAHOMA
W. O. MC-08-01
PAGE TWO

Payment for services shall be made upon completion by the Engineer and approval by the Owner.

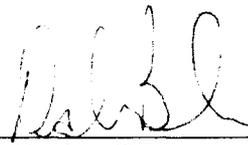
APPROVED:

City of McAlester, Oklahoma

By: _____
Don R. Lewis
Mayor

ACCEPTED:

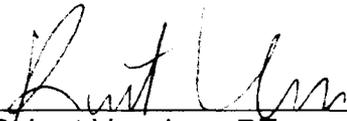
NRS INC.

By:  _____
Dale Burke, PE
Vice President

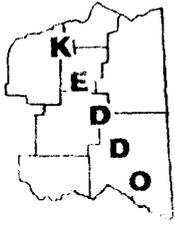
ATTEST:

Cora Middleton
City Clerk

ATTEST:

 _____
Robert Vaughan, PE
Project Manager

DATE: _____



KIAMICHI ECONOMIC DEVELOPMENT DISTRICT OF OKLAHOMA

A Regional Trust Authority of Local Governments

January 18, 2008

MEMBER AND
SUPPORTING AGENCIES

Oklahoma Association
of Regional Councils

Oklahoma Planning
League

Association of
County Commissioners
of Oklahoma

Oklahoma Rural Water
Districts Association

Oklahoma Association of
Area Agencies on Aging

Walmart Oklahoma
Employment and
Training Center

Oklahoma Senior Centers

Oklahoma Rural
Market Council

Kiamichi County

National Association of
Dietetic Organizations

Oklahoma Association of
Community Planners

National Association of
Architects and Engineers

Professional Association
of Court Reporters

Statewide Association of
County Commissioners

Oklahoma State
Optical Association

George Marrangeli, P.E., City Engineer
City of McAlester
PO Box 578
McAlester, OK 74502

Re: Request for Qualifications of Engineering Services for the City of
McAlester

Dear George:

I had solicited three engineering firms' proposals as required by the CDBG guidelines. As you are aware we only received two proposals and I have evaluated them after our discussions on January 17, 2008. Please find enclosed the evaluation sheets for both. The consideration can only be on the basis of qualifications. The cost is normally negotiated prior to contracts and work orders. However, I am familiar with both firms and know that they both use the Rural Development fee schedule which is also satisfactory for the Oklahoma Department of Commerce.

Due to the fact of NRS having a local office located closer to the project and being more familiar with this particular project I felt should receive a higher evaluation. Please feel free to contact me if you have any questions at 1-800-722-8180.

Sincerely,

Danny Baldwin,
Projects Director

ENGINEER EVALUATION SHEET

Qualifications packet received by deadline.

Qualifications packet complete with required registration/certification.

Satisfactory references.

YES	NO
X	
X	
X	

Rating: 1 to 5 with 1=poor, 2=fair, 3=satisfactory, 4=good, 5=excellent

RATING

Training/certification.

4

Water/Wastewater system project experience.

4

Ability to work with ODEQ and/or Oklahoma Dept. of Health for necessary permits.

4

Proximity of a full time office to the job.

5

Municipality's prior experience with this firm.

5

Total Rating

22

Name of Firm: NRS, Inc.

Address: 521 South 2nd Street, McAlester, OK 74501

Telephone: (918) 420-5500

ENGINEER EVALUATION SHEET

Qualifications packet received by deadline.

Qualifications packet complete with required registration/certification.

Satisfactory references.

YES	NO
X	
X	
X	

Rating: 1 to 5 with 1=poor, 2=fair, 3=satisfactory, 4=good, 5=excellent

RATING

Training/certification.

4

Water/Wastewater system project experience.

4

Ability to work with ODEQ and/or Oklahoma Dept. of Health for necessary permits.

4

Proximity of a full time office to the job.

4

Municipality's prior experience with this firm.

4

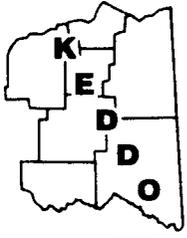
Total Rating

20

Name of Firm: SMC Consulting Engineers

Address: 815 W Main Street Oklahoma City, OK 73106

Telephone: (405) 232-7715



KIAMICHI ECONOMIC DEVELOPMENT DISTRICT OF OKLAHOMA

A Regional Trust Authority of Local Governments

December 12, 2007

**MEMBER AND
SUPPORTER OF:**

Oklahoma Association
of Regional Councils

Oklahoma Municipal
League

Association of
County Commissioners
of Oklahoma

Oklahoma Rural Water
Districts Associations

Oklahoma Association of
Area Agencies on Aging

Workforce Oklahoma
Employment and
Training Association

Oklahoma Senior Advocates

Oklahoma Rural
Elderly Coalition

Kiamichi Country

National Association of
District Organizations

Oklahoma Association of
Conservation Districts

National Association of
Area Agencies on Aging

American Association
of Retired Persons

National Association of
County Commissioners

Oklahoma Fire
Fighters Association

City of McAlester
P.O. Box 578
McAlester, OK 74502

Re: City of McAlester water/wastewater rehabilitation project

Dear Sir:

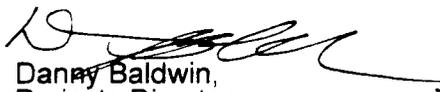
The City of McAlester has received initial approval for a Community Development Block Grant through the Oklahoma Department of Commerce in the amount of \$79,500. The existing wastewater collection and water distribution system is owned and operated by the authority. The total estimated cost of the project is approximately \$159,000. This grant will enable the City to repair and replace sewer line mains and manholes as well as waterlines in areas depicted on the map.

McAlester is located in Pittsburg County, Oklahoma. A detailed project description including site locations and map is attached.

On-site inspections will be carried out while construction is in progress. No individuals will be displaced as a result of this project. The City will obtain the necessary ODEQ permit to construct.

In order to complete the environmental review on this project we would appreciate a written response on the proposed project from your agency within 30 days. Please comment on any effects this project may have upon the environment as it relates to your agency's areas of concern. The City does not anticipate that the proposed project will have a significant impact on the environment. We would appreciate your assistance and response. If you need any further information or wish to discuss the project please contact me at (918)465-2367.

Sincerely,


Danny Baldwin,
Projects Director

Enclosure

QUALIFICATIONS PACKET FOR ENGINEERING SERVICES

I. GENERAL INFORMATION

- A. The purpose of this Request for Qualifications (RFQ) is to obtain the services of a registered professional engineer or engineering firm to assist with the Community Development Block Grant (CDBG) received from the Oklahoma Department of Commerce (ODOC) for a **water distribution and wastewater collection rehabilitation** project. All qualified Offerors will be considered without regard to race, creed, color, sex, disability or national origin.
- B. Who May Respond: Only an engineer or engineering firm who has previously provided engineering services for **water/wastewater rehabilitation or line replacement** or comparable experience will be eligible.
- C. Instructions and Offer Submission:
1. Closing Submission Date: Qualifications must be submitted no later than **5:00 p.m. on January 11, 2008**. Following Qualification opening a review committee will evaluate each submitted in accordance with the valuation criteria stated later in this RFQ.
 2. Inquiries: Inquiries should be directed to **George Marcangeli, P.E. c/o City of McAlester P.O. Box 578, McAlester, OK 74502.**
 3. Conditions of Submittal: All costs associated with the preparation of an offer in response to this RFQ will be the responsibility of the offeror and will not be reimbursed by the **City of McAlester**, Oklahoma.
 4. Composition: All offers must be submitted in writing. The offer must include the following:
 - a. Statement of Qualifications;
 - b. Statement of previous experience;
 - c. Brief explanation of technical competence.
 5. Instructions to Prospective Engineers or Engineering Firms:
 - a. Your Offer should be addressed as follows:

George Marcangeli, P.E., City Engineer
City of McAlester
P.O. Box 578
McAlester, OK 74502

- b. Offers may be mailed or hand delivered. It is important that the offeror's qualifications be submitted in a sealed envelope clearly marked on the lower left hand corner with the following information:

**CDBG ENGINEERING QUALIFICATIONS AND OFFER OF SERVICES:
City of McAlester**

It is the responsibility of the offeror's to ensure that the qualifications packet is received by the date and time specified above.

1. **Right to Reject:** The **City** reserves the right to reject any and all Offers received in response to this RFQ. A contract for the accepted Offer will be based only on the factors described in the RFQ.
2. **Small and Minority-Owned Businesses:** Efforts will be made to utilize small and minority-owned businesses.
3. **Notification of Award:** A decision to select the successful engineer or engineering firm will be made within seven (14) days after the opening of the qualifications packets. All offerors submitting packets in response to the RFQ will be informed in writing of the name of the successful bidder.
4. **Anticipated Start and Completion Dates of the Contract:** The contract is scheduled to start no than **January 23rd, 2008** and will be for **one (1) year**. The **City** will also contract for administrative services that will be needed throughout the design and construction phases of the project. The successful engineer or engineering firm is expected to cooperate fully with the administrator in accomplishing the project.
5. At the discretion of the **City**, the engineering contract may be extended to coincide with the contract received from ODOC.

II SPECIFICATION SCHEDULE

A. **Scope of Services:** Below are the services to be provided by the **City**:

1. With the assistance of the **Administrator**, be present at and provide requested information or testimony at any and all associated Public Hearings.
2. Provide necessary information for and assist in the preparation of Release of Funds requirements for contract with the Oklahoma Department of

Commerce/Division of Community Affairs and Development. **Coordinate with the administrator the Request for Payments to ensure consistency with the drawdown procedures established by ODOC/DCAD for the CDBG program.**

3. Prepare and submit required Engineering Reports, Plans and Drawings for approval of ODEQ and/or the Oklahoma Dept. of Health.
4. Prepare final plans and drawings and secure Permit to construct as issued by ODEQ.
5. Establish and maintain all proper project files in City principal offices as related to engineering. These files should demonstrate compliance with all applicable State, Local and Federal regulations. The engineer must cooperate with the administrator who must monitor project files throughout the program to ensure they are complete and that all necessary documentation is being retained in the community's files.
6. Assist the administrator in preparation of all proposal documents for the bidding process consistent with state and federal regulations.
7. Assist the administrator in evaluation of submitted bids.
8. Conduct all required engineering activities during the construction phase such as periodic inspections and supervision as are agreed to during negotiations.
9. Assist in the preparation of close-out documents to include Project Completion Report, and Certificates of Completion.
10. Construct and prepare for dissemination bid document and related materials for construction of project.

B. Time Frame for Work Performance:

1. With the assistance of the Administrator, be present at and provide requested information or testimony at any and all associated Public hearings. Ongoing as needed.
2. Provide necessary information for and assist in the preparation of Release of Funds requirements for contract with the Oklahoma Department of Commerce/Division of Community Affairs and Development. Coordinate with the community the Request for Payments to ensure consistency with the draw down procedures established by ODOC/DCAD for the CDBG Program. Ongoing as needed.

3. Prepare and submit required Engineering Reports, Plans and Drawings satisfactorily completed under the direct supervision of the individual or firm. The names, addresses, contact person and telephone number of the entity assisted as well as when the job was conducted must be provided in the qualifications packet, together with a brief description of the completed job.

C. Organization Structure and Qualifications:

1. The offeror must provide a brief description of the engineer's firm or business including the following:
 - a. Years in business under current firm name;
 - b. Years in business under any previous firm name(s);
 - c. If the firm qualifies as a small or minority firm.
 - d. Address and telephone number of Main Office.
2. To be considered, the offer or must meet the minimum requirements listed below:

D. If an individual is to be the job engineer, he/she:

1. Must be a registered professional engineer in the State of Oklahoma
2. Must have successfully completed a minimum of one (1) water/wastewater line and manhole construction or replacement/refurbish engineering job within the past five (5) years.
3. Must provide a detailed list of all water/wastewater line and manhole construction or replacement/refurbish engineering jobs previously completed by the individual. The list must include the name, address and telephone number of the individual(s) locally responsible for program or contract oversight;
4. A detailed resume listing education and experience. Any continuing professional education must be provided.

E. If an engineering firm will administer the contract:

1. An individual engineer must be designated who will be primarily responsible for the engineering on this job and who:
 - (a) Must be a registered professional engineer in the State of Oklahoma.

- (b) Must have successfully completed a minimum of one (1) water/wastewater line and manhole construction or replacement/refurbish engineering job within the past five (5) years.
2. Must provide a detailed list of all water/wastewater line and manhole construction or replacement/refurbishment engineering jobs previously completed by the firm. The list must include the name, address and telephone number of the individual(s) locally responsible for program or contract oversight;
3. Firm employees or partners other than the designated engineer who will also be assisting must have a minimum of one (1) year of experience in assisting with the engineering of water/wastewater line and manhole construction or replacement/refurbish engineering jobs within the past five (5) years.
4. A senior partner or equivalent must be designated as the individual engineer, unless other employees meet the same qualifications of the individual engineer in B. 2a. (1) above;
5. Complete resumes detailing each individual's education, certifications and experience must be provided in the proposal.

III QUALIFICATION EVALUATION

- A. Offers may be judged non-responsive and removed from further consideration if any of the following occur:
 1. The Qualifications Packet is not received by the submission deadline stated in this RFQ.
 2. The proposal dose not indicate required registration or certification.
 3. Any references regarding previous engineering jobs do not report satisfactory work or report difficulty in working with the individual or firm.
- B. Evaluation of each offer will be based on the following criteria:
 1. Only those submittals that meet the minimum qualifications and experience listed in the **Offeror's Minimum Requirements** will be judged responsible.

2. The responsible offeror who is judged by the City Engineer to possess the most desirable combination of (1) the most relevant experience; (2) a demonstrated ability to work in close cooperation which gets approval of ODEQ and/or the Oklahoma Department of Health; and experience on CDBG projects. Initial submissions by **March 1, 2008**.
3. Prepare final plans and drawings and secure Permit to construct as issued by ODEQ. Completed by **April 15, 2008**.
4. Establish and maintain all proper project files in City principal offices as related to engineering. These files should demonstrate compliance with all applicable State, Local and Federal regulations. The engineer must cooperate with the administrator who must monitor project files throughout the program to ensure they are complete and that all necessary documentation is being retained in the community's files. Established by **January 23, 2008**. Maintenance ongoing.
5. Assist the administrator in preparation of all proposal documents for the bidding process consistent with state and federal regulations. Completed by **July 1, 2008**.
6. Assist the administrator in evaluation of submitted bids. Ongoing as needed.
7. Conduct all required engineering activities during the construction phase such as periodic inspections and supervision as are agreed to during negotiations. Ongoing as required.
8. Assist in the preparation of close-out documents to include Project Completion Report, and Certificates of Completion. Ongoing as required.
9. Preparation of bid document and related materials for construction of project.
10. Negotiated Price: The price of services will be as are negotiated prior to signing a contract.
11. Payment: Payment shall be made as is agreed to during negotiations prior to signing a contract. The billing shall be at the rate established in the Statement of Price.

IV. OFFEROR'S MINIMUM REQUIREMENTS

The offeror shall submit information regarding the offeror's prior experience and the organization structure and qualifications of the offeror.

- A. Prior Experience: All offers must contain the following minimum qualifications to be considered for the job: **A minimum of one (1) water/wastewater line and manhole construction or replacement/refurbishment engineering job within the past five (5) years; (2) experience with Community Development Block Grant projects; (3) the nearest proximity of a full time office to the job**

SMC Consulting Engineers
815 W. Main St.
Oklahoma City, OK 73106

NRS Engineering
521 S. 2nd Street
McAlester, OK 74501

POE & Associates, INC.
525 Central Park Dr., Suite 250
Oklahoma City, OK 73105



McAlester City Council

AGENDA REPORT

Meeting Date: March 11, 2008 **Item Number:** 9
Department: Public Works
Prepared By: George Marcangeli **Account Code:** _____
Date Prepared: March 4, 2008 **Budgeted Amount:** _____
Exhibits: Four

Subject

Consider, and act upon, proposed Water Purchase Contracts with Pittsburg County Rural Water District No. 5, Pittsburg County Rural Water District No. 9 and Pittsburg County Rural Water District No. 16.

Recommendation

Motion to approve Water Purchase Contracts with Pittsburg County Rural Water District No. 5, Pittsburg County Rural Water District No. 9 and Pittsburg County Rural Water District No. 16 for the period of January 1, 2008 through December 31, 2008.

Discussion

The attached Contracts were prepared by the City staff and mailed to the rural water districts for their governing board's approval. The Council approved the wholesale water rate of \$2.56 per 1,000 gallons in the attached contracts at a regular Council meeting on December 20, 2007.

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	<u>GEM</u>	<u>03/04/08</u>
City Manager	<u>MBR</u>	<u>03/04/08</u>



December 7, 2007

VIA CERTIFIED AND REGULAR MAIL

Pittsburg County RWD #5
P O Box 102
McAlester, OK 74502

RE: WHOLESALE WATER PURCHASE CONTRACT

Dear Chairman:

On September 11, 2007, the McAlester City Council appointed a three (3) member council subcommittee to meet with the City Manager and City Engineer to review the water rates being charged to wholesale water customers. As you are aware, the wholesale water rate has not been increased by the City of McAlester for the past 9 years, since July 1, 1998. The present rate being charged is \$2.01/1000 gallons, the same since July 1, 1998.

The council subcommittee has concluded several meetings with the City staff and is proposing a new wholesale water rate to all wholesale customers that is scheduled to go into effect on January 1, 2008. The proposed rate will be \$ 2.56/1000 gallons. The proposed rate was determined by reviewing the Consumer Price Index (CPI) changes since July 1, 1998. The full City Council will review and act upon the proposed rate at the regular council meeting of December 11, 2007.

Attached for your review is a copy of the "City of McAlester Wholesale Water Rate Analysis" dated October 25, 2007, which shows the calculations that were used to arrive at the proposed new rate. Also attached for your review is a copy of a proposed new "Water Purchase Contract" between your rural water district and the City of McAlester.

Please review the enclosed information and contact the City Engineer's office at (918) 423-9300, Ext. 4992, if you have any questions regarding the proposed rate and contract. The executed contract should be returned to my office as soon as possible.

Sincerely,

George Marcangeli
City Engineer

cc: Don Lewis, Sam Mason, Buddy Garvin, Wholesale Water Rate Committee
Mark Roath, City Manager

WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into as of the 1st day of January, 2008, by and between the City of McAlester, Oklahoma, hereinafter referred to as the “CITY”, and Pittsburg County Rural Water District No. 5, hereinafter referred to as the “District”.

WITNESSETH:

WHEREAS, the District has been organized and established under the provisions of Section 1301-1322, 82 Oklahoma Statutes, for the purpose of constructing and operating a water supply distributions system serving water users in the District, and to accomplish this purpose, the District will require a supply of treated water; and

WHEREAS, the City owns and operates a water distribution system contiguous to Pittsburg County Rural Water District No.5, which distribution system is currently capable of serving the present customers of the City system and the estimated number of water users to be served by the said District; and

WHEREAS, the District has negotiated with the City for the purchase of water from said City.

1. THE CITY HEREBY AGREES:

A. Quality and Quantity

To furnish the District customers, during the term of this contract or any renewal or extension thereof, potable treated water in such quantity as may be required by the District.

B. Point of Delivery and Pressure

That water will be furnished at a reasonably constant normal pressure from the City system from such point or points as may be agreeable to the parties hereto.

It is understood that there may be some interruption in the delivery of water by the City to the District. The City will not be held liable for such interruption period. The City will give reasonable notice of such interruption to the District, where possible.

Emergency failure of pressure or supply due to main supply main breaks, power failure, flood, fire and use of water to fight fire, earthquakes or other catastrophe, shall excuse the City from providing water service for such reasonable period of time as may be necessary to restore service. In the event of such an emergency, the service may be interrupted without notice and without liability to the City.

C. Billing Procedure

To furnish the Secretary-Treasurer of the District at McAlester, Oklahoma, not later than the 10th day of each month, with an itemized statement of the amount of water furnished the District during the preceding month.

D. Metering Equipment

To furnish, install, operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the District and to test such metering equipment whenever requested by the District but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above and below the test result shall be deemed to be accurate. The previous readings of any meter disclosed to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless City and District shall agree upon a different amount. The metering equipment shall be read on the 10th of each month.

II. THE DISTRICT AGREES:

A. Rates and Payment Rate

To pay the City not later than the 20th day of each month for water delivered at a rate of \$2.56 per 1,000 gallons from January 1, 2008 through Dec. 31, 2008.

On Jan. 1, 2009, and each January 1st thereafter, the above rates shall be adjusted after a review of the Consumer Price Index (CPI-U) for the preceding calendar year. The CPI-U is the consumer price index for all items for urban customers, U.S. City average, that is calculated by the U.S. Department of Labor Statistics on a monthly and annual basis.

II. IT IS FURTHER MUTUALLY AGREED BETWEEN THE CITY AND THE DISTRICT AS FOLLOWS:

A. Terms of Contract

This contract shall be in effect for one (1) year with a one-year renewal option at the agreement of both parties.

B. Failure to Deliver

In the event of any extended shortage of water, or the supply of water available to the City is otherwise diminished over an extended period of time, the supply of water to the District customers shall be reduced or diminished in the same ratio or proportion as the supply to the City

customers is reduced or diminished.

In cases of voluntary or mandatory rationing of non-essential uses of water, when so notified by the City, the District shall be responsible for notifying its customers of the nature and extent of the rationing and/or restrictions.

C. Modification of Contract

It is mutually agreed that the provisions of this contract may be modified or altered by mutual agreement of the parties.

It is stipulated that the wholesale water rate stated herein is based on operation, maintenance, and administrative costs of production and the delivery of potable water and an estimated cost for required modification and/or upgrading of our water treatment facility. At such time as the scope of an additional Water Treatment Plant and ancillary equipment is determined to meet increased water consumption on the City of McAlester water system, rates may be adjusted by the City to reflect updated charges for capital to finance a portion of projected constructed costs. Further, upon completion of construction, rates will be adjusted to reflect actual construction costs.

D. Regulatory Agencies

That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in the State of Oklahoma, and the City and District will collaborate in obtaining such permits, certificates or the like, as may be required to comply therewith.

E. Assignment

This contract may be assigned by the said District to the United States Government, or other financing agency, as a consideration for any loans to the District, made or insured, or to be made or insured, in financing the construction or extension of the water system of said water district. Except as above stated, this contract shall not be sublet or assigned by either of the parties hereto without written consent of the other party.

F. Miscellaneous

That the construction of the water supply distribution system by the District is being financed by a loan from (or a loan insured by) the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the District are conditioned upon the approval, in writing, of the State Director of Oklahoma, of the Farmers Home Administration.

G. Successor to the District

That in the event of any occurrence rendering the District incapable of performing under this contract, any successor of the District, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the District hereunder

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in three counterparts, each of which shall constitute an original.

CITY OF McALESTER, OKLAHOMA
A Municipal Corporation

By _____
Mayor

ATTEST:

City Clerk

Pittsburg County RWD. No. ⁵⁸⁴~~36~~
Pittsburg County, Oklahoma

By *John W. Davis*
Chairman

ATTEST:

John Henley
City Manager

Approved as to form and legality this _____ day of _____ 2008 .

By _____
City Attorney

WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into as of the 1st day of January, 2008, by and between the City of McAlester, Oklahoma, hereinafter referred to as the "CITY", and Pittsburg County Rural Water District No. 9, hereinafter referred to as the "District".

WITNESSETH:

WHEREAS, the District has been organized and established under the provisions of Section 1301-1322, 82 Oklahoma Statutes, for the purpose of constructing and operating a water supply distributions system serving water users in the District, and to accomplish this purpose, the District will require a supply of treated water; and

WHEREAS, the City owns and operates a water distribution system contiguous to Pittsburg County Rural Water District No. 9, which distribution system is currently capable of serving the present customers of the City system and the estimated number of water users to be served by the said District; and

WHEREAS, the District has negotiated with the City for the purchase of water from said City.

1. THE CITY HEREBY AGREES:

A. Quality and Quantity

To furnish the District customers, during the term of this contract or any renewal or extension thereof, potable treated water in such quantity as may be required by the District.

B. Point of Delivery and Pressure

That water will be furnished at a reasonably constant normal pressure from the City system from such point or points as may be agreeable to the parties hereto.

It is understood that there may be some interruption in the delivery of water by the City to the District. The City will not be held liable for such interruption period. The City will give reasonable notice of such interruption to the District, where possible.

Emergency failure of pressure or supply due to main supply main breaks, power failure, flood, fire and use of water to fight fire, earthquakes or other catastrophe, shall excuse the City from providing water service for such reasonable period of time as may be necessary to restore service. In the event of such an emergency, the service may be interrupted without notice and without liability to the City.

C. Billing Procedure

To furnish the Secretary-Treasurer of the District at McAlester, Oklahoma, not later than the 10th day of each month, with an itemized statement of the amount of water furnished the District during the preceding month.

D. Metering Equipment

To furnish, install, operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the District and to test such metering equipment whenever requested by the District but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above and below the test result shall be deemed to be accurate. The previous readings of any meter disclosed to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless City and District shall agree upon a different amount. The metering equipment shall be read on the 10th of each month.

II. THE DISTRICT AGREES:

A. Rates and Payment Rate

To pay the City not later than the 20th day of each month for water delivered at a rate of \$2.56 per 1,000 gallons from January 1, 2008 through Dec. 31, 2008.

On Jan. 1, 2009, and each January 1st thereafter, the above rates shall be adjusted after a review of the Consumer Price Index (CPI-U) for the preceding calendar year. The CPI-U is the consumer price index for all items for urban customers, U.S. City average, that is calculated by the U.S. Department of Labor Statistics on a monthly and annual basis.

II. IT IS FURTHER MUTUALLY AGREED BETWEEN THE CITY AND THE DISTRICT AS FOLLOWS:

A. Terms of Contract

This contract shall be in effect for one (1) year with a one-year renewal option at the agreement of both parties.

B. Failure to Deliver

In the event of any extended shortage of water, or the supply of water available to the City is otherwise diminished over an extended period of time, the supply of water to the District customers shall be reduced or diminished in the same ratio or proportion as the supply to the City

customers is reduced or diminished.

In cases of voluntary or mandatory rationing of non-essential uses of water, when so notified by the City, the District shall be responsible for notifying its customers of the nature and extent of the rationing and/or restrictions.

C. Modification of Contract

It is mutually agreed that the provisions of this contract may be modified or altered by mutual agreement of the parties.

It is stipulated that the wholesale water rate stated herein is based on operation, maintenance, and administrative costs of production and the delivery of potable water and an estimated cost for required modification and/or upgrading of our water treatment facility. At such time as the scope of an additional Water Treatment Plant and ancillary equipment is determined to meet increased water consumption on the City of McAlester water system, rates may be adjusted by the City to reflect updated charges for capital to finance a portion of projected constructed costs. Further, upon completion of construction, rates will be adjusted to reflect actual construction costs.

D. Regulatory Agencies

That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in the State of Oklahoma, and the City and District will collaborate in obtaining such permits, certificates or the like, as may be required to comply therewith.

E. Assignment

This contract may be assigned by the said District to the United States Government, or other financing agency, as a consideration for any loans to the District, made or insured, or to be made or insured, in financing the construction or extension of the water system of said water district. Except as above stated, this contract shall not be sublet or assigned by either of the parties hereto without written consent of the other party.

F. Miscellaneous

That the construction of the water supply distribution system by the District is being financed by a loan from (or a loan insured by) the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the District are conditioned upon the approval, in writing, of the State Director of Oklahoma, of the Farmers Home Administration.

G. Successor to the District

That in the event of any occurrence rendering the District incapable of performing under this contract, any successor of the District, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the District hereunder

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in three counterparts, each of which shall constitute an original.

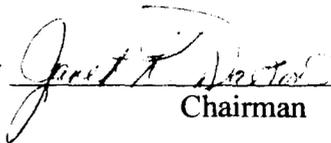
CITY OF McALESTER, OKLAHOMA
A Municipal Corporation

By _____
Mayor

ATTEST:

City Clerk

Pittsburg County RWD. No. 9
Pittsburg County, Oklahoma

By  _____
Chairman

ATTEST:


Clerk

Approved as to form and legality this _____ day of _____ 2008 .

By _____
City Attorney

WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into as of the 1st day of January, 2008, by and between the City of McAlester, Oklahoma, hereinafter referred to as the "CITY", and Pittsburg County Rural Water District No. 16, hereinafter referred to as the "District".

WITNESSETH:

WHEREAS, the District has been organized and established under the provisions of Section 1301-1322, 82 Oklahoma Statutes, for the purpose of constructing and operating a water supply distributions system serving water users in the District, and to accomplish this purpose, the District will require a supply of treated water; and

WHEREAS, the City owns and operates a water distribution system contiguous to Pittsburg County Rural Water District No.16, which distribution system is currently capable of serving the present customers of the City system and the estimated number of water users to be served by the said District; and

WHEREAS, the District has negotiated with the City for the purchase of water from said City.

1. THE CITY HEREBY AGREES:

A. Quality and Quantity

To furnish the District customers, during the term of this contract or any renewal or extension thereof, potable treated water in such quantity as may be required by the District.

B. Point of Delivery and Pressure

That water will be furnished at a reasonably constant normal pressure from the City system from such point or points as may be agreeable to the parties hereto.

It is understood that there may be some interruption in the delivery of water by the City to the District. The City will not be held liable for such interruption period. The City will give reasonable notice of such interruption to the District, where possible.

Emergency failure of pressure or supply due to main supply main breaks, power failure, flood, fire and use of water to fight fire, earthquakes or other catastrophe, shall excuse the City from providing water service for such reasonable period of time as may be necessary to restore service. In the event of such an emergency, the service may be interrupted without notice and without liability to the City.

C. Billing Procedure

To furnish the Secretary-Treasurer of the District at McAlester, Oklahoma, not later than the 10th day of each month, with an itemized statement of the amount of water furnished the District during the preceding month.

D. Metering Equipment

To furnish, install, operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the District and to test such metering equipment whenever requested by the District but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above and below the test result shall be deemed to be accurate. The previous readings of any meter disclosed to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless City and District shall agree upon a different amount. The metering equipment shall be read on the 10th of each month.

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On Jan. 1, 2009, and each January 1st thereafter, the above rates shall be adjusted after a review of the Consumer Price Index (CPI-U) for the preceding calendar year. The CPI-U is the consumer price index for all items for urban customers, U.S. City average, that is calculated by the U.S. Department of Labor Statistics on a monthly and annual basis.

II. IT IS FURTHER MUTUALLY AGREED BETWEEN THE CITY AND THE DISTRICT AS FOLLOWS:

A. Terms of Contract

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customers is reduced or diminished.

In cases of voluntary or mandatory rationing of non-essential uses of water, when so notified by the City, the District shall be responsible for notifying its customers of the nature and extent of the rationing and/or restrictions.

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It is stipulated that the wholesale water rate stated herein is based on operation, maintenance, and administrative costs of production and the delivery of potable water and an estimated cost for required modification and/or upgrading of our water treatment facility. At such time as the scope of an additional Water Treatment Plant and ancillary equipment is determined to meet increased water consumption on the City of McAlester water system, rates may be adjusted by the City to reflect updated charges for capital to finance a portion of projected constructed costs. Further, upon completion of construction, rates will be adjusted to reflect actual construction costs.

D. Regulatory Agencies

That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in the State of Oklahoma, and the City and District will collaborate in obtaining such permits, certificates or the like, as may be required to comply therewith.

E. Assignment

This contract may be assigned by the said District to the United States Government, or other financing agency, as a consideration for any loans to the District, made or insured, or to be made or insured, in financing the construction or extension of the water system of said water district. Except as above stated, this contract shall not be sublet or assigned by either of the parties hereto without written consent of the other party.

F. Miscellaneous

That the construction of the water supply distribution system by the District is being financed by a loan from (or a loan insured by) the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the District are conditioned upon the approval, in writing, of the State Director of Oklahoma, of the Farmers Home Administration.

G. Successor to the District

That in the event of any occurrence rendering the District incapable of performing under this contract, any successor of the District, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the District hereunder

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in three counterparts, each of which shall constitute an original.

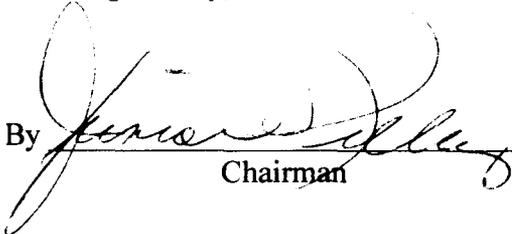
CITY OF McALESTER, OKLAHOMA
A Municipal Corporation

By _____
Mayor

ATTEST:

City Clerk

Pittsburg County RWD. No. 16
Pittsburg County, Oklahoma

By 
Chairman

ATTEST:

Clerk

Approved as to form and legality this _____ day of _____ 2008 .

By _____
City Attorney



McAlester City Council

AGENDA REPORT

Meeting Date: March 12, 2008 Item Number: 10
Department: City Manager
Prepared By: Mark B. Roath Account Code: _____
Date Prepared: March 4, 2008 Budgeted Amount: _____
Exhibits: One

Subject

Consider, and act upon, a Resolution abolishing the position of Assistant City Engineer and establishing the new Utilities Director position within the City of McAlester Classification and Compensation Plan.

Recommendation

Motion to approve a Resolution abolishing the Assistant City Engineer position and establishing the new Utilities Director position within the current City Classification and Compensation Plan.

Discussion

At its meeting on January 8, 2008, the City Council adopted an ordinance establishing the Utilities Department as well as creating the position of Utilities Director to head that new department. In so doing, the City Council recognized that the position of Assistant City Engineer would no longer be needed since that individual would be promoted to the new position under the Reorganization Plan.

The proposed Resolution establishes the Utilities Director position in the pay range of A20 (\$51,264 to \$67,932) within the City's Classification and Compensation Plan.

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	_____	_____
City Manager	<u>MBR</u>	<u>03/04/08</u>

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF McALESTER, OKLAHOMA
ABOLISHING THE POSITION OF ASSISTANT CITY ENGINEER
AND ESTABLISHING THE UTILITIES DIRECTOR POSITION
WITHIN THE CITY'S CLASSIFICATION AND COMPENSATION**

WHEREAS, the City Council has established a new Utilities Department on January 8, 2008;

WHEREAS, the City Council has established the position of Utilities Director to head the new department;

WHEREAS, the City Council has determined that it is in the best interest of the City to place the Utilities Director position with the City's Classification and Compensation Plan.

WHEREAS, the City Council has further determined that it is in the best interest of the City to abolish the current Assistant City Engineer position, which is no longer needed with the new position of Utilities Director.

**NOW, THEREFOR, BE IT RESOLVED BY THE MAYOR AND CITY
COUNCIL OF THE CITY OF McALESTER, OKLAHOMA, THAT:**

- Section 1. The position of Assistant City Engineer is hereby abolished.
- Section 2. The Utilities Director position is established within the City's Classification and Compensation Plan.
- Section 3. The Utility Director pay range shall be A20.
- Section 4. All resolutions and parts of resolutions in conflict herewith are hereby rescinded.

PASSED and APPROVED at a regular meeting of the City Council of the City of McAlester, Oklahoma, and duly signed by the Mayor this ____ day of March 2008.

**CITY OF McALESTER, OKLAHOMA,
A Municipal Corporation**

By _____
Don R. Lewis, Mayor

ATTEST:

Cora Middleton, City Clerk

Council Chambers
Municipal Building
February 26, 2008

The McAlester Airport Authority met in regular session on Tuesday, February 26, 2008, at 6:00 P.M. after proper notice and agenda was posted February 22, 2008.

Present: Sam Mason, Haven Wilkinson, Buddy Garvin, Weldon Smith, Donnie Condit, Travis Read, Don Lewis & Robert Ivester
Absent: None
Presiding: Don Lewis, Chairman

A motion was made by Mr. Condit and seconded by Mr. Wilkinson to approve the following:

- **Approval of the Minutes from the February 12, 2008, Regular Meeting of the McAlester Airport Authority.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item H regarding the Claims for the period of February 13, 2008 through February 26, 2008.** *(Sherry Alessi, Assistant City Treasurer)* In the amount of: \$1,047.38.

There was no discussion, and the vote was taken as follows:

AYE: Trustees Wilkinson, Garvin, Mason, Smith, Condit, Read & Chairman Lewis
NAY: None

Chairman Lewis declared the motion carried.

There being no further business to come before the Authority, Mr. Condit moved for the meeting to be adjourned, seconded by Mr. Wilkinson. The vote was taken as follows:

AYE: Trustees Wilkinson, Garvin, Mason, Smith, Condit, Read & Chairman Lewis
NAY: None

Chairman Lewis declared the motion carried.

ATTEST:

Don Lewis, Chairman

Cora Middleton, Secretary

Council Chambers
Municipal Building
February 26, 2008

The McAlester Public Works Authority met in Regular session on Tuesday, February 26, 2008, at 6:00 P.M. after proper notice and agenda was posted February 22, 2008.

Present: Sam Mason, Donnie Condit, Buddy Garvin, Travis Read, Weldon Smith,
Don Lewis & Robert Ivester
Absent: None
Presiding: Don Lewis, Chairman

A motion was made by Mr. Read and seconded by Mr. Smith to approve the following:

- **Approval of the Minutes from the February 12, 2008, Regular Meeting of the McAlester Public Works Authority.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item H regarding the Claims for the period of February 13, 2008 through February 26, 2008.** *(Sherry Alessi, Assistant City Treasurer)* In the amount of: \$103,664.92.
- **Confirm action taken on City Council Agenda Item 3 regarding the determination of the permitted uses, if any, of sales tax revenue received in excess of that needed to make required principal and interest payments on the Series 1999A, 1999B, and 2002 McAlester Public Works Authority bond issues.** *(Weldon Smith, Councilmember)*

There was no discussion, and the vote was taken as follows:

AYE: Trustees Garvin, Mason, Smith, Condit, Read, Wilkinson & Mayor Lewis
NAY: None

Chairman Lewis declared the motion carried.

There being no further business to come before the Authority, Mr. Read moved for the meeting to be adjourned, seconded by Mr. Smith. The vote was taken as follows:

AYE: Trustees Garvin, Mason, Smith, Condit, Read, Wilkinson & Mayor Lewis
NAY: None

Chairman Lewis declared the motion carried

ATTEST:

Don Lewis, Chairman

Cora Middleton, Secretary