



## McAlester City Council

# NOTICE OF MEETING

## Special Meeting of the City of McAlester Council

### Agenda

Tuesday, June 7, 2011 – 5:30 pm  
McAlester City Hall – Council Chambers  
28 E. Washington Ave.

Kevin E. Priddle.....	Mayor
Weldon Smith.....	Ward One
Steve Harrison .....	Ward Two
John Browne.....	Vice-Mayor, Ward Three
Robert Karr .....	Ward Four
Buddy Garvin.....	Ward Five
Sam Mason .....	Ward Six
Peter J. Stasiak.....	City Manager
William J. Ervin.....	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](http://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.*

### ROLL CALL

### Public Hearing

1. Receive Public comment on City of McAlester Proposed Fiscal Year 2011/2012 Annual Operating Budget.

### SCHEDULED BUSINESS

1. Consider, and act upon, a standard Agreement for Engineering Services with Mehlburger Brawley, Inc. to provide professional engineering services, as needed, for a period of one year.

2. Consider, and act upon, a Work Order with Mehlburger Brawley, Inc. to provide professional engineering services for the design of Elks Road Improvements and Extension.
3. Presentation, discussion and possible action on the operation and associated business of the municipal landfill

## **ADJOURNMENT**

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## **CERTIFICATION**

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*I certify that this Notice of Meeting was posted on this \_\_\_\_\_ day of \_\_\_\_\_, 2011 at \_\_\_\_\_ a.m./ p.m. as required by law in accordance with Section 303 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](http://www.cityofmcalester.com).*

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Cora M. Middleton, CMC, City Clerk



# McAlester City Council

## AGENDA REPORT

Meeting Date: June 7, 2011  
Department: Public Works Department  
Prepared By: John C. Modzelewski, PE  
Date Prepared: May 24, 2011

Item Number: 1  
Account Code: \_\_\_\_\_  
Budgeted Amount: \_\_\_\_\_  
Exhibits: 1

### Subject

Consider, and act upon, a standard Agreement for Engineering Services with Mehlburger Brawley, Inc. to provide professional engineering services, as needed, for a period of one year.

### Recommendation

Motion to approve a Standard Agreement for Engineering Services with Mehlburger Brawley, Inc. to provide professional engineering services, as needed, for a period of one year.

### Discussion

The intent of this Standard Agreement for Engineering Services is to allow the City of McAlester to request Mehlburger Brawley, Inc. to provide professional services for Specific Projects. These services will be authorized through future Work Orders for specific projects.

The engineering services will include, but not be limited to, surveying, preparing easement descriptions, engineering design, preparing construction plans and specifications, construction administration, and other pertinent work.

### Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	<u>JCM</u>	<u>05/24/11</u>
City Manager	<u>PJS</u>	<u>05/24/11</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  
WORK ORDER 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

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AMERICAN COUNCIL OF ENGINEERING COMPANIES

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AMERICAN SOCIETY OF CIVIL ENGINEERS

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THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. C-700, 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.

EJCDC No. E-505 (2004 Edition)  
**City of McAlester / McAlester Public Works Authority**

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- 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 – TERM; TIMES FOR RENDERING SERVICES**

#### **3.01 *Term***

- A. This Agreement shall be effective and applicable to Work Orders issued hereunder for one (1) year from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

#### **3.02 *Times for Rendering Services***

- A. The times for performing services or providing deliverables will be stated in each Work Order. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time.
- 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 Specific 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 a Work Order 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 – PAYMENTS TO ENGINEER**

#### **4.01 *Invoices***

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Work Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

### 5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project 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 shall serve as Owner's prime professional under each Work Order. Engineer may employ 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.
- 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 and the Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of the Effective Date of each Work Order. Changes to these requirements after the Effective Date of each Work Order 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 who requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.
- G. Engineer shall not at any time supervise, direct, or have control over a 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 a Contractor, for security or safety at any Site, for safety precautions and programs incident to a Contractor's work in

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 such 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 Specific Project by Owner. Engineer grants Owner a license to use the Documents on the Specific Project, extensions of the Specific 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 Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific 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 its 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; (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 Specific 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. Owner shall require Contractors 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 (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee, and to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractors.
- B. All policies of property insurance relating to a Specific Project shall contain provisions to the effect that Engineer's and its 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.

#### 6.05 *Suspension and Termination*

##### A. *Suspension*

- 1. By Owner: Owner may suspend a Work Order upon seven days written notice to Engineer.



and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.

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.
3. *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 principal office of the Owner is located.

#### 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. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in any Contract Documents prepared for any Specific Project 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 this Agreement, any Work Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury 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. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Engineer in Exhibit I, "Allocation of Risks," if any.
- 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 this Agreement, any Work Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury 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 Specific 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 any Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) 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 damages 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

1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
2. *Additional Services* – Services to be performed for or furnished to Owner by Engineer in accordance with a Work Order which are not included in Basic Services for that Work Order.
3. *Agreement* – This "Standard Form of Agreement between Owner and Engineer for Professional Services – Work Order Edition" including those Exhibits listed in Article 8 and any duly executed Work Order.
4. *Application for Payment* – The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Basic Services* – Specified services to be performed for or furnished to Owner by Engineer in accordance with a Work Order.
7. *Bid* – The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
8. *Bidding Documents* – The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
9. *Change Order* – A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
10. *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.
11. *Construction Agreement* – The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.

20. *Defective* – An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.
21. *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.
22. *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 a Contractor. Shop Drawings are not Drawings as so defined.
23. *Effective Date of the Construction Agreement* – The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
24. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
25. *Effective Date of the Work Order* – The date indicated in the Work Order on which it becomes effective, but if no such date is indicated, it means the date on which the Work Order is signed and delivered by the last of the two parties to sign and deliver.
26. *Field Order* – A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
27. *General Conditions* – That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.
28. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
29. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
30. *PCBs* – Polychlorinated biphenyls.
31. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at 32 degrees Fahrenheit and 14.7 pounds per square inch absolute, such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

- 42. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements the General Conditions.
- 43. *Work Order* – A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
- 44. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, the total 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 a Specific Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
- 45. *Work* – The entire completed construction or the various separately identifiable parts thereof required to be provided by a Contractor under Contract Documents for a Specific Project. Work includes and is the result of a Contractor performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the applicable Contract Documents.
- 46. *Work Change Directive* – A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
- 47. *Written Amendment* – A written amendment of the Contract Documents signed by Owner and a Contractor on or after the Effective Date of a Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

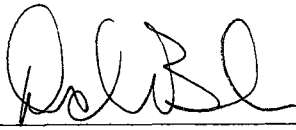
OWNER: City of McAlester / McAlester  
Public Works Authority

ENGINEER: Mehlburger Brawley, Inc.

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

Name: Kevin Priddle

Title: Mayor / Chairman

By: 

Name: Dale Burke, P.E.

Title: Vice President

Engineer License or Firm's  
Certificate No. (if required by law) 5392

State of: Oklahoma

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

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

Address for giving notices:

City of McAlester / McAlester PWA

PO Box 578

McAlester, OK 74501

DESIGNATED REPRESENTATIVE  
(see Paragraph 8.03.A):

Peter Stasiak

Title: City Manager

Phone Number: (918) 423-9300

Facsimile Number: (918) 421-4970

E-Mail  
Address: N/A

Address for giving notices:

Mehlburger Brawley, Inc.

719 S. George Nigh Expressway

McAlester, OK 74501

DESIGNATED REPRESENTATIVE  
(see Paragraph 8.03.A):

Robert Vaughan, P.E.

Title: Project Manager

Phone Number: (918) 420-5500

Facsimile Number: (918) 420-5501

E-Mail  
Address: rvaughan@mb-eng.com

This is **EXHIBIT A**, consisting of 11 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated May 26, 2011.

## **Schedule of Engineer's Services**

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Services to be provided under a Work Order may include the following:

### **PART 1 – BASIC SERVICES**

#### *A.1.01 Study and Report Phase*

##### **A. The Engineer shall:**

1. Consult with Owner to define and clarify Owner's requirements for a Specific Project and available data.
2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B which are not part of Engineer's Basic Services, and, if requested, assist Owner in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of a Specific Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate the number of alternate solutions available to Owner listed in the Work Order for a Specific Project, and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for a Specific Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, operation and maintenance cost, 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. This Report will be accompanied by Engineer's opinion of Total Project Costs for each solution which is so recommended for a Specific Project with each component separately itemized, including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Engineer and, on the basis of information furnished by Owner, 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.

### *A.1.03 Final Design Phase*

- A. After determination by Owner of the scope, extent, character, or design requirements of a Specific Project, including the acceptance of any specific modifications by Owner of a preceding phase or Specific Project, Engineer shall:
1. On the basis of the above acceptance, direction and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with 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 a Specific Project and assist Owner in consultations with appropriate authorities.
  3. Provide Owner a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer.
  4. Prepare and furnish Bidding Documents for review and approval by Owner, its legal counsel, and other advisors, as appropriate, and assist Owner in the preparation of other related documents.
  5. Submit the number of final copies of the Bidding Documents and a current opinion of probable Construction Cost to Owner within the time period set forth in the Work Order.
- B. 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 the Work Order whether or not the work under such contracts is to proceed concurrently.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established is identified in the Work Order.
- D. 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.5 have been delivered to Owner.

### *A.1.04 Bidding or Negotiating Phase*

- A. The Engineer shall:
1. Assist Owner in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding



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 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 Work in progress :
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the 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 the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Engineer in the Work Order 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 such observations, Engineer will determine in general if Contractor's 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 of the Specific Project, 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 the integrity of the design concept of the completed project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. 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 Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Work, or 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 its work in accordance with the Contract Documents.
8. *Defective Work.* Have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Engineer believes that such work will not

- 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, the Work has progressed to the point indicated, the quality of such 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 the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the 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 the Work as it is performed and furnished have been exhaustive, extended to every aspect of the 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 the 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 the 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 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.*

- a. Receive and review maintenance and operating instructions, schedules, and guarantees.
- b. Receive bonds, certificates, or other evidence of insurance not previously submitted and 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 Engineer's review will be limited as provided in paragraph A.1.05.A.11.
- c. Engineer shall transmit these documents to Owner.

17. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any

- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in the Work Order, will terminate at the end of the Correction Period.

## **PART 2 – ADDITIONAL SERVICES**

### *A.2.01 Additional Services Requiring Owner's Authorization in Advance*

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by Owner as indicated in a Work Order.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with a Specific Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for a Specific 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 a Specific Project.
  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.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of a Specific 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 the Work Order 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 with respect to Exhibit B.
  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 a Specific 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.

22. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make the 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 any Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for a Specific Project or an excessive number of substitutions.
24. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
25. 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.
26. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work on a Specific Project by Owner prior to its Substantial Completion.
27. Evaluating an unreasonable claim or an excessive number of claims or requests for information submitted by a Contractor or others in connection with the Work on a Specific Project.
28. Other services performed or furnished by Engineer not otherwise provided for in this Agreement or a Work Order.

### **Schedule of Owner's Responsibilities**

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Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Work Order.

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific 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 Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of the Specific Project.
- C. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, furnish or otherwise make available such additional Specific 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 a Specific Project, the Site and adjacent areas.
  - 6. Data or consultations as required for a Specific Project but not otherwise identified in the Agreement, the Exhibits thereto, or the Work Order.

- 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 in the Work Order the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work of the Specific Project designed or specified by Engineer, designate in the Work Order a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors. Define and set forth in the Work Order the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- P. 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 for the Specific Project with appropriate professional interpretation thereof.
- Q. 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.
- R. Provide Engineer with the findings and reports generated by any independent testing laboratory, if Engineer is required to review such documents.
- S. Additional Owner responsibilities: NONE

This is **EXHIBIT C**, consisting of 6 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated May 26, 2011.

## **Payments to Engineer for Services and Reimbursable Expenses**

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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 Method of Payment*

- A. Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in each Work Order:
1. Method A: Lump Sum
  2. Method B: Standard Hourly Rates
  3. Method C: Direct Labor Costs Times a Factor
  4. Method D: Percentage of construction cost.

#### *C.2.02 Explanation of Methods*

A. Method A – Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Method B – Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.

2. 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.2.02.D.A.1, after the Preliminary Design Phase documents are revised and submitted to Owner.
  - b. A sum which, together with the compensation provided under paragraph C.2.02.D.A.2.a, equals 50 percent of the total compensation payable under paragraph C.2.02.D.A.1, after the Final Design Phase documents are completed and submitted to Owner.
  - c. A sum which, together with the compensation provided under paragraph C.2.02.D.A.2.a and b, equals 70 percent of the total compensation payable under paragraph C.2.02.D.A.1, 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.2.02.D.A.2.a, b, and c, equals 80 percent of the total compensation payable under paragraph C.2.02.D.A.1, 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.2.02.D.A.1 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.2.02.D.A.2.a through C.2.02.D.A.2.e will equal 95 percent of the total compensation payable under paragraph C.2.02.D.A.1 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.2.02.D.A.2.a through C.2.02.D.A.2.e, equals 100 percent of the total compensation payable under paragraph C.2.02.D.A.1, 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.
3. 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.



- 2.) 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.2.03 Reimbursable Expenses*

Costs incurred by Engineer in the performance of the Work Order in the following categories constitute Reimbursable Expenses:

- A. Transportation and subsistence incidental thereto; advertisements, postage, and shipping costs; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls, faxes, and telegrams; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Specific Project-related items in addition to those required under Exhibit A. If authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment. Reimbursable expenses shall be paid as actual expense incurred times a factor of 1.2 plus time expended by the Engineer in the performance of the additional service at the rate specified in appendix 1 of this exhibit C.
- B. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to a Specific Project, the latter multiplied by a Factor of 1.2.

### *C.2.04 Serving as a Witness*

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of 1.2 times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

### *C.2.05 Other Provisions Concerning Payment*

- A. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Work Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*
  - 1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - 2. When estimated compensation amounts have been stated in a Work Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by

This is **Appendix 1 to Exhibit C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated May 26, 2011.

## **Fee Schedule**

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### **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>
0 - \$30,000	14.56
\$40,000	14.04
\$50,000	13.57
\$60,000	13.21
70,000	12.90
80,000	12.69
90,000	12.38
100,000	12.08
200,000	11.02
300,000	10.23
400,000	9.72
500,000	9.27
600,000	8.82
700,000	8.59
800,000	8.40
900,000	8.23
1,000,000	8.04
2,000,000	7.43
3,000,000	7.18
4,000,000	6.92
5,000,000	6.67
10,000,000	6.0

This is **Appendix 2 to Exhibit C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated May 26, 2011.

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**Schedule of Fees**

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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
Per Diem	\$ 80.00/day
Mileage	\$ 0.45/Mile

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(Appendix 2 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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**Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

The following duties, responsibilities, and limitations of authority may be incorporated in the Work Order for a Specific Project:

**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 may provide full time representation or may provide representation to a lesser degree.
- 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 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 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 limitations set forth in Paragraph A.1.05 of Exhibit A as incorporated in the Work Order are applicable.
- C. The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the Owner and in the Contract Documents, and are further limited and described 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 a 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.

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 Start-ups*

- a. Consult with Engineer in advance of scheduled major inspections, tests, and systems start-ups 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 a Specific 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 Specific 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 Specific 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.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the 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 a Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated May 26, 2011.

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**NOTICE OF ACCEPTABILITY OF WORK**

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PROJECT:

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OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER: MEHLBURGER BRAWLEY, INC.

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To:

OWNER

And To:

CONTRACTOR

From:

Mehlburger Brawley  
ENGINEER

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The Engineer hereby gives notice to the above Owner 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 and the terms and conditions set forth on the reverse side hereof.

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Work Order Edition** dated May 26, 2011.

## **Construction Cost Limit**

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Paragraph 5.02 of the Agreement is amended and supplemented to include the following when incorporated in the Work Order for a Specific Project:

### **F.5.02 *Designing to Construction Cost Limit***

- A. A Construction Cost limit may be set forth in the Work Order.
- B. In such case, a bidding or negotiating contingency will be added to any Construction Cost limit.
- 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 of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of a Specific 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, and Owner shall consent to an adjustment in such 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 Specific Project within a reasonable time, or (3) cooperate in revising the Specific Project's scope, extent, or character to the extent consistent with the Specific 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. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of Engineer's Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. 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 limit.





# McAlester City Council

## AGENDA REPORT

Meeting Date: June 7, 2011  
Department: Public Works Department  
Prepared By: John C. Modzelewski, PE  
Date Prepared: May 24, 2011

Item Number: 2  
Account Code: \_\_\_\_\_  
Budgeted Amount: \_\_\_\_\_  
Exhibits: 1

### Subject

Consider, and act upon, a Work Order with Mehlburger Brawley, Inc. to provide professional engineering services for the design of Elks Road Improvements and Extension.

### Recommendation

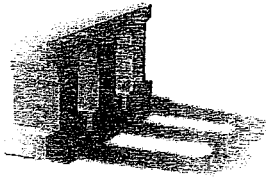
Motion to approve a \$67,000 Work Order with Mehlburger Brawley, Inc. to provide professional engineering services for the design of Elks Road Improvements and Extension.

### Discussion

This project includes the roadway design for improvements and the extension of Elks Road from the US 69 Access Road, south into the Southside Development Center. The scope of works will include evaluate and propose alternatives for the Elks Road improvements and extension including possible easements and utility impacts; prepare engineering plans and specifications; prepare contract documents; coordinate contract execution and perform preconstruction conference; provide construction management services and Resident Project Representative Services during construction.

### Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	<u>JCM</u>	<u>05/24/11</u>
City Manager	<u>PJS</u>	<u>05/24/11</u>



## MEHLBURGER BRAWLEY

THE MERGING OF NRS, INC.  
THE MEHLBURGER FIRM - BRAWLEY ENGINEERING CORP.

### Work Order for Professional Services

#### City of McAlester

#### Project Number MC-11-01

This will constitute authorization by the City of McAlester (Owner) for Mehlburger Brawley, Inc. (Engineer) to proceed with the following described as "Project":

Project Name: Elks Road Improvements / Extension

Project Description: Roadway Design for Improvements / Extension of Elks Road from US 69 Access Road, south into the Southside Business Development Center

- Evaluate and propose alternatives for roadway improvements / extension including possible easements and utility impacts. Upon City approval of proposed preliminary plan, proceed with the design phase.
- Prepare Engineering Plans and Specifications, for City review and approval.
- Upon City approval of plans, prepare bid packages, and assist owner in obtaining bids from contractors for the construction of the improvements.
- Prepare contract documents, coordinate contract execution and perform preconstruction conference.
- Provide construction management services including review and approve material submittals, shop drawings, contractors pay estimates, change order requests, and work performed by the contractor.
- Provide Resident Project Representative 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 based on a lump sum basis. The engineering fee for the project is \$50,000.00 and the resident project representative fee is \$17,000.00.

The fee for engineering services shall be further broken down as follows:

Engineering Design Fee	\$ 35,000.00
Engineering during construction and bidding	\$ 15,000.00
Resident Project Representative, during construction	\$ 17,000.00
Total Fees	\$ 67,000.00

APPROVED:  
City of McAlester


By: \_\_\_\_\_  
Kevin Priddle  
Mayor

ATTEST:

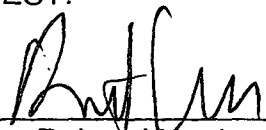
\_\_\_\_\_

DATE: \_\_\_\_\_

ACCEPTED:  
Mehlburger Brawley, Inc.

By:  \_\_\_\_\_  
Dale Burke, P.E.  
Vice President

ATTEST:

 \_\_\_\_\_  
Robert Vaughan, P.E.  
Project Manager



# McAlester City Council

## AGENDA REPORT

Meeting Date: June 7, 2011  
Department: Public Works  
Prepared By: John C. Modzelewski, PE  
Date Prepared: June 2, 2011

Item Number: 3  
Account Code: \_\_\_\_\_  
Budgeted Amount: \_\_\_\_\_  
Exhibits: \_\_\_\_\_

### Subject

Presentation, discussion and possible action on the operation and associated business of the municipal landfill.

### Recommendation

Presentation, discussion and taking action on the operation and associated business of the municipal landfill will provide Administration direction for moving forward with the City's solid waste management program.

### Discussion

The City Council has held workshops to discuss the City of McAlester's options for operation of the municipal landfill. The discussion has included the expansion of the sanitary landfill, fee structure for residential trash, operating hours, City's roll off collection business, compliance with ODEQ requirements and management of the landfill.

**Please bring your "Trash Talk IV" book as a reference during the discussion.**

### Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	JCM	06/02/11
City Manager	PJS	06/02/11