

The City of Durant encourages participation from all its citizens. If participation at any public meeting is not possible due to a disability, notification to the City Clerk at least 48 hours prior to the scheduled meeting is encouraged in order to make the necessary accommodations. The City of Durant may waive the 48-hour rule if interpreters for the deaf (signing) or translation services for limited English proficient (LEP) individuals are not necessary accommodation.

DURANT CITY UTILITIES AUTHORITY

6:00 PM

**Roscoe J. Hatfield
Council Chambers
300 West Evergreen
Durant, Oklahoma
AGENDA**

July 8, 2025

CALL TO ORDER

ROLL CALL

ORDER OF BUSINESS

1. Consent Items

To help streamline meetings and allow the focus to be on other items requiring strategic thought, the "Consent Items" portion of the agenda groups the routine, procedural, and self-explanatory non-controversial items together. These items are voted on in a single motion (one vote). However, any Council member requesting further information on a specific item thus removes it from the "Consent Items" section for individual attention and separate vote.

- a. Consider Approval of Regular Meeting Minutes of June 9, 2025

2. Consider Items Removed from Consent

3. Information Items

4. Administration

- a. Consider Approval of Agreement Between Durant City Utilities Authority and Wall Engineering, LLC for Professional Services for 24" Watermain Improvements Project

5. New Business

ADJOURNMENT

CERTIFICATE

This is to certify that in conformity with the Oklahoma Open Meeting Act, public notice of the date, time and place of this meeting was filed with the City Clerk of Durant on the 10th day of December 2024 and that an agenda of said meeting was posted at the place of such meeting at 1:30 p.m. on the 3rd day of July 2025.



Cynthia J. Price, City of Durant



The City of Durant

[AGENDA_ITEM_DEPARTMENT]

Memorandum

Date: 7/8/2025
To: Mayor and City Council
From: Cynthia Price, City Clerk
Re: Consider Approval of Regular Meeting Minutes of June 9, 2025

Council Information / Action Requested

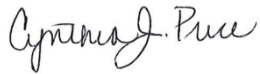
Approval of Regular Meeting Minutes of June 9, 2025

City Staff Information / Action Follow-up, if Council authorizes this action:

ATTACHMENTS:

1. DCUA Meeting Minutes 06092025

This is to certify that in conformity with the Oklahoma Open Meeting Act, public notice of the date, time and place of this meeting was filed with the City Clerk of Durant on the 10th day of December 2024 and that an agenda of said meeting was posted at the place of such meeting at 3:50 p.m. on the 6th day of June 2025.



Cynthia J. Price, City of Durant

**MINUTES OF THE MEETING OF DURANT CITY UTILITIES AUTHORITY
June 9, 2025 AT 6:00 PM, Roscoe J. Hatfield Council Chambers
300 West Evergreen
Durant, Oklahoma**

CALL TO ORDER

Chairman Tucker called the meeting to order at 6:01 p.m.

ROLL CALL

Present:

Trustee Lauran Fuller

Trustee Humphrey Miller

Trustee Danny Sherrer

Vice Chairman Mike Simulescu

Chairman Martin Tucker

City Manager Pam Polk

City Clerk Cynthia J. Price

Absent:

City Attorney Tom Marcum

ORDER OF BUSINESS

1. Consent Items

To help streamline meetings and allow the focus to be on other items requiring strategic thought, the "Consent Items" portion of the agenda groups the routine, procedural, and self-explanatory non-controversial items together. These items are voted on in a single motion (one vote). However, any Council member requesting further information on a specific item thus removes it from the "Consent Items" section for individual attention and separate vote.

a. Consider Approval of Regular Meeting Minutes of May 13, 2025

Motion To: Approve Consent Item as Presented

Motion By: Humphrey Miller

Seconded By: Lauran Fuller

Ayes: Fuller, Miller, Sherrer, Simulescu, Tucker

Nays: None

Abstain: None

2. Consider Items Removed from Consent

3. Information Items

4. Administration

5. Public Hearings

a. 1. Public Hearing on Proposed FY2025-2026 Budget (Resolution R-2025-03);

2. Consider Approval of Motion to File Durant City Utilities Authority FY2025-2026 Financial Plan with Durant City Council as Beneficiary.

Agenda Item 5(a)(1)

Hearing opened to public.

Call for comment.

No comment.

Public hearing closed.

Agenda Item 5(a)(2)

Motion To: Approve Motion to File Durant City Utilities Authority FY2025-2026 Financial Plan with Durant City Council as Beneficiary

Motion By: Lauran Fuller

Seconded By: Humphrey Miller

Ayes: Fuller, Miller, Sherrer, Simulescu, Tucker

Nays: None

Abstain: None

6. New Business

There was no new business.

ADJOURNMENT

Motion To: Adjourn Meeting

Motion By: Martin Tucker

Seconded By: Humphrey Miller

Ayes: Fuller, Miller, Sherrer, Simulescu, Tucker

Nays: None

Abstain: None



The City of Durant

[AGENDA_ITEM_DEPARTMENT]

Memorandum

Date: 7/8/2025
To: Mayor and City Council
From:
Re: Information Items

Council Information / Action Requested

City Staff Information / Action Follow-up, if Council authorizes this action:

ATTACHMENTS:



The City of Durant

[AGENDA_ITEM_DEPARTMENT]

Memorandum

Date: 7/8/2025
To: Mayor and City Council
From:
Re: Administration

Council Information / Action Requested

City Staff Information / Action Follow-up, if Council authorizes this action:

ATTACHMENTS:



The City of Durant

[AGENDA_ITEM_DEPARTMENT]

Memorandum

Date: 7/8/2025
To: Mayor and City Council
From: Phillip Hightower, Public Works Director
Re: Consider Approval of Agreement Between Durant City Utilities Authority and Wall Engineering, LLC for Professional Services for 24" Watermain Improvements Project

Council Information / Action Requested

Approval of Agreement Between Durant City Utilities Authority and Wall Engineering, LLC for Professional Services for 24" Watermain Improvements Project

City Staff Information / Action Follow-up, if Council authorizes this action:

ATTACHMENTS:

1. Durant 24in Watermain Engineering Agreement 070825 Agenda

DURANT CITY UTILITIES AUTHORITY

24" WATERMAIN IMPROVEMENTS

JULY 2025

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

IN COOPERATION WITH

OKLAHOMA WATER RESOURCES BOARD



WALL ENGINEERING PROJECT # DU-25-01
WE FIRM CERTIFICATE OF AUTHORIZATION #5413

WALL ENGINEERING, LLC
SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of July 8th, 2025 (“Effective Date”) between Durant City Utilities Authority (“Owner”) and Wall Engineering, LLC (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows: 24” Watermain Improvements (“Project”).

Subject to other terms herein, including without limitation 5.01, Engineer’s Scope of Services (“Services”) under this Agreement are generally identified as follows:

- Participate in meetings with the Owner’s representatives, consultants and any Local, State, Federal Agencies or governmental entities as required to define the project scope and design requirements.
- Provide, or cause to be provided, Topographic Survey as required for project design. Fee for Topographic Survey is included in fee schedule.
- Obtain Property & ROW survey information. If Owner does not have complete Property and ROW information additional survey may be required and would be separately authorized.
- Prepare Engineering Report, Engineering Plans and Specifications for infrastructure improvements for the Project.
- Obtain approval of the Plans and Specifications from the Owner and seek approval from Oklahoma DEQ (fee to be paid by Owner).
- Prepare bid packages, and assist Owner in obtaining bids from constructors
- Prepare Contract documents and coordinate contract execution by Owner and Owner’s selected Constructors.
- Provide general engineering contract administration during construction to include general overview of Constructors work, review and approval of Constructor’s pay estimates, review of change order requests, and facilitate the acceptance of the work performed by the Constructor.
- Provide certain Inspection Services during Construction as outlined herein
- Conduct Final Inspection and Project Closeout.
- Prepare final “As-Built” drawings.

Items specifically excluded from the scope of work (but may be included as additional services) include:

- Payment of fees for bid advertisement
- Payment of fees for ODEQ Permitting
- Property Survey & Deed Prep (if needed)
- Easement Survey & Preparation (if needed)

In addition to those items set forth in the Agreement, Owner shall:

- Give thorough consideration to all documents and other information presented by Engineer and informing Engineer of all decisions within a reasonable time so as not to delay the Services.
- Make provision for the Personnel of Engineer to enter public and private lands as required for Engineer to perform necessary preliminary surveys and other investigations required under this scope of work.
- Obtain the necessary lands, easements and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this Agreement unless specifically outlined otherwise.
- Furnish Engineer such plans and records of construction and operation of existing facilities, available aerial photography, reports, surveys, or copies of the same, related to or bearing on the proposed work as may be in the possession of Owner. Such documents or data will be returned upon completion of the Services or at the request of Owner.
- Furnish Engineer a current boundary survey with easements of record plotted for the Project property.
- Pay all ODEQ plan review and advertising costs in connection with the Project.
- Provide legal, accounting, and insurance counseling services necessary for the Project and such auditing services as Owner may require.
- Furnish permits, permit fees, and approvals from all governmental authorities having jurisdiction over the Project and others as may be necessary for completion of the Project.
- Engineer shall be entitled to rely upon and shall not be responsible for the accuracy, completeness and timeliness of services and information furnished by Owner or Owner's consultants.

Any additional services beyond this Scope of Services specifically listed herein would be performed as requested based on current hourly rates or as a negotiated lump sum agreement, and may include an appropriate adjustment to the schedule.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above (“Additional Services”).
- B. Engineer shall complete its Services based on a mutually agreeable schedule.
- C. 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.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer’s invoice, then (1) the amounts due Engineer will be increased at the rate of 2.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly and within 30 days advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment*

- A. Owner shall pay Engineer for Primary Engineer Services as follows:
 - 1. **Total Fee of \$3,078,229.00 which equates to 8.85% of total project cost (without transaction costs) of \$34,798,549.00 outlined as follows:**

a. Basic Engineering including ER & Funding Docs	\$1,978,579.00
b. Contract Documents, Bidding and Procurement	\$58,880.00
c. Construction Engineering	\$606,570.00
d. Survey & Data Collection	\$182,800.00
e. Construction Inspection & Oversight	\$240,000.00
f. As-Builts & Project Closeout	\$11,400.00
 - 2. In addition to the above fee amount, reimbursement for the following expenses: **None.**
 - 3. The portion of the compensation amount billed monthly for Engineer's Services will be based upon Engineer's estimate of the percentage of the total Services actually completed during the billing period.

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times the standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1. Alternatively, if agreed to, Owner shall pay Engineer a negotiated lump sum amount. As an example, Additional Services may include, among others: Services due to changes in the Project, Services necessitated by the enactment or revision of codes, laws or regulations, and preparation for and attendance at public presentations, meetings or hearings relating to the Project.

3.01 *Termination*

A. The obligation to continue performance 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 Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its Services is a substantial failure to perform and a basis for termination for cause and suspension of Services.

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 are delayed for more than 90 days for reasons beyond Engineer's control, including without limitation Owner's suspending of the Project, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.L.

c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.

d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.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 of notice; 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, by Owner effective upon Engineer's receipt of written notice from Owner.

3. Either Party may terminate this Agreement immediately upon notice to the other Party, and without incurring any liability, if the non-terminating Party has: (i) been adjudicated bankrupt; (ii) filed a voluntary petition in bankruptcy or had an involuntary petition filed against it in bankruptcy; (iii) made an assignment for the benefit of creditors; (iv) had a trustee or receiver appointed for it; (v) becomes insolvent; or (vi) any part of its property is put under receivership.

- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, Engineer's consultants' charges, if any, and costs attributable to termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, agents and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, agents and legal representatives (and said assigns) of such other party, in respect of all covenants, rights, agreements, duties and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law, and except that Owner may assign this Agreement to a lender providing financing to the Project if the lender agrees to assume Owner's rights and obligations hereunder, including any payments due to Engineer by Owner. Furthermore, Engineer may engage professional services subconsultants in the performance of the work, such as licensed surveyors, hydrologists, geologists/hydrogeologists, electrical, mechanical, structural, geotechnical, hydraulic, and other specialized engineering experts in their respective fields, to the extent deemed necessary by the Engineer. 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, nothing in this Agreement shall be construed to create a contractual relationship with, or a cause of action in favor of, or to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. 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.

5.01 *General Considerations*

- 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 any services performed or furnished by Engineer. Subject to the foregoing standard of care, 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.
- B. Engineer shall not at any time supervise, direct, control, have authority over or be responsible for any Constructor's work, or any Constructor's means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and

performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor, nor shall Engineer be responsible for any Constructor's failure to perform the work in accordance with the requirements of the Contract Documents.

- C. Engineer shall not be responsible for the acts or omissions of any Constructor or any of Constructor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made on interpretations or clarifications of the construction contract or the Contract Documents given by Owner without consultation and written approval of Engineer. The Engineer shall have authority to act on behalf of Owner only to the extent provided in this Agreement or with express written authorization.
- D. Engineer shall visit the Project at intervals appropriate to the stage of construction to become familiar with the progress and quality of Constructor's work and to determine, in general, if the work observed is being performed in a manner indicating that the work, when completed, will be in accordance with the Contract Documents. However, Engineer shall not be required to make extensive or continual on-site inspections. If Engineer reviews Constructor's submittals, such as Shop Drawings, Product Data or Samples, that review is only for the limited purpose of checking for general conformance with information given and the design concept in the Contract Documents. Such review is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are Constructor's responsibility. Engineer's review shall not constitute approval of a deviation from the requirements of the Contract Documents unless Constructor has specifically informed Engineer in writing of such deviation at the time of submittal and Engineer has given specific written acknowledgment of the specific deviation. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to properly furnish and perform its work.
- E. Engineer's estimates (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because 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 estimates of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- F. Owner understands that the construction cost estimates developed by Engineer do not establish a limit for the construction contract amount. If the actual amount of the low construction bid or resulting construction contract exceeds the construction budget established by Owner, Engineer will not be required to re-design the Services without additional compensation.
- G. Engineer has the authority to reject work that does not conform to the Contract Documents and may require inspection or testing of the work, however a decision made in good faith by Engineer shall not give rise to any duty or responsibility of Engineer to any Constructor performing any work. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction Contract Documents other than those made by Engineer or its consultants.
- H. All documents prepared or furnished by Engineer are Instruments of Service, and Engineer retains exclusively an ownership and property interest (including the copyright and the right of reuse) in

such documents, whether or not the Project is completed. Owner shall have a limited license to use the Instruments of Service on the Project, extensions of the Project, and for related uses of the Owner, including use solely on this Project by Constructor, subject to Owner performing its obligations under this Agreement, including receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the Instruments of Service and 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, on any other project, or for any other use or purpose, 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, is improper and will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;
 3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including all attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
 4. such limited license to Owner shall not create any rights in third parties.
- I. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol. Contemporaneous with this Agreement, Owner and Engineer shall designate in writing specific individuals to act as Owner's and Engineer's representatives with respect to the duties and responsibilities of the Parties to this Agreement.
- J. In accepting and utilizing any form of digital data generated and provided by Engineer for its Services, Owner agrees that all such digital data are Instruments of Service of Engineer. Owner is aware that differences may exist between the digital data delivered and the printed hardcopy document. In the event of a conflict between the original signed document prepared by Engineer and digital data, the original signed and sealed hard-copy document shall govern. Under no circumstances shall delivery of digital data for use by Owner be deemed a sale by Engineer, and Engineer makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall Engineer be liable for indirect or consequential damages as a result of Owner's use or reuse of the digital data.
- K. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, representatives and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages such as loss of use, lost profits, financing, and other such damages arising out of, resulting from, or in any way related to this Agreement or the Project, (2) to the extent damages are covered by property insurance, waive any and all claims or rights against each other for damages, except such rights as they may have to the proceeds of insurance, (3) agree that Engineer's total liability to Owner and maximum recovery from Engineer for any damages, claims, costs or expenses under this Agreement, whether in contract, tort or otherwise, shall be limited to the scope of services provided and further limited to the total amount of compensation received by Engineer under this

Agreement, and (4) agree that Engineer is not responsible for damages arising from any circumstances beyond Engineer's reasonable control, including without limitation, strike or labor disputes, severe weather disruptions, natural disasters, fire or other acts of God, riots, epidemics, war or other emergencies, failure of any governmental agency to act in a timely manner, failure of performance by Owner or Constructors, or discovery of any hazardous substances or differing and unforeseeable site conditions.

- L. The limitations set forth in the waivers above apply regardless of whether the claim is based in contract, tort, or negligence including gross negligence, strict liability, warranty, indemnity, error and omission, or any other cause whatsoever.
- M. No other warranties or causes of action of any kind, whether statutory, express or implied (including all warranties of merchantability and fitness for a particular purpose and all warranties arising from course of dealing or usage of trade) shall apply. Owner's exclusive remedies and Engineer's only obligations arising out of or in connection with defective Services (patent, latent or otherwise), whether based in contract, in tort (including negligence and strict liability), or otherwise, shall be those stated in the Agreement.
- N. Owner shall procure and maintain insurance as set forth workers' compensation (if applicable), general liability, motor vehicle damage and injuries, and other insurance necessary and sufficient to protect Owner's and Engineer's interests in the Project. Owner agrees that should he/she not have sufficient knowledge and expertise to ascertain levels of proper insurance required, that a insurance professional will be consulted. Owner shall cause Engineer to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project. If Owner requires additional liability coverages greater than those discussed in Section 5.01 K, the owner shall obtain Owner's Protective Professional Indemnity (OPPI) insurance to cover damages in excess of the total liability of the Engineer as specified in Section 5.01K, and shall coordinate with insurance experts to ensure proper coverage in the interest of the Owner.
- O. Owner shall require any consultant and/or contractor additionally working on this project to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary and sufficient to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such general liability insurance purchased and maintained by consultants and/or contractors for the Project.
- P. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent 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 such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- Q. Owner and Engineer agree to informally discuss and negotiate each dispute and any claim between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated by a mediator agreed upon by the parties. The Mediator's fee and any filing fees shall be shared equally by Owner and Engineer. If mediation is unsuccessful, then the parties may exercise their rights at law.
- R. This Agreement is to be governed by the law of the state in which the Project is located.

- S. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.
- T. Engineer's Services and Additional Services do not include: providing any general insurance-related advice include amounts of coverage required, recommendations, counseling, or research, or enforcement of insurance requirements. It is the responsibility of the Owner to review and verify the submitted requirements and type of policies / riders outlined in the Contract Documents are reasonable and valid for project type. The amounts/type inserted by Engineer are for reference only and Engineer has no assumed responsibility or stated/implied expertise.
- U. Engineer has no stated or implied expertise in matter outside and not specifically referenced in this Agreement or within Engineer's standard area of practice. Examples include, but are not limited to, legal representation for review of Agreements and Contract Documents, municipal advisers, financial advisers, bond council, insurance professionals for review of insurance and bonding limits and requirements, accountants, and auditors. Owner should consult with relevant professionals for any matters not specific to this Agreement.
- V. The invalidity of any provision of this Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make it legal and enforceable, and if not, then that provision shall be stricken and all remaining provisions shall be valid and enforceable.
- W. Engineer 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.
- X. Except to the extent expressly included as part of the Services, Engineer will not provide research regarding utilities or survey utilities located and marked by their owners. Furthermore, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, Engineer is not responsible for knowing whether underground utilities are present or knowing the exact location of such utilities for design and cost estimating purposes. In no event is Engineer responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical conditions, potholing, construction, or other contractors or subcontractors working under a subcontract to this Agreement. Design modifications necessitated by incomplete utility data shall be paid for as additional services.
- Y. Owner and Engineer shall consider: (i) all information provided by the other Party that is marked as 'Confidential Information' or 'Proprietary Information' or identified as confidential pursuant to this Agreement promptly after being disclosed verbally; and (ii) all documents resulting from Engineer's performance of Services to be Confidential Information. Except as legally required, Confidential Information shall not be discussed with or transmitted to any third parties, except on a 'need-to-know basis' with equal or greater confidentiality protection or written consent of the disclosing Party. Confidential Information shall not include, and nothing herein shall limit either Party's right

to disclose any information provided hereunder which: (i) was or becomes generally available to the public, other than as a result of a disclosure by the receiving Party or its Personnel; (ii) was or becomes available to the receiving Party or its representatives on a non-confidential basis, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary duty; (iii) was independently developed by the receiving Party without the use of any Confidential Information of the disclosing Party; or (iv) is required to be disclosed by applicable law or a court order. All confidentiality obligations hereunder shall expire three (3) years after completion of the Services. Nothing herein shall be interpreted as prohibiting Engineer from disclosing general information regarding the Project for future marketing purposes.

- Z. Engineer is and at all times shall be deemed an independent contractor in the performance of the Services under this Agreement.
- AA. In accordance with applicable law, including the applicable Uniform Electronic Transactions Act, Owner and Engineer agree that electronic signatures (such as e-mail or electronically-typed signatures) of the parties' authorized representatives to this Agreement or to later consents or approvals associated herewith shall constitute the valid signature of the party for purposes of obtaining agreements, consents or other matters prescribed by the Agreement.

6.01 *Owner's Responsibilities*

- A. In connection with the Project, Owner's responsibilities shall include the following:
 - 1. Any responsibilities set forth in Scope of Work.
 - 2. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items as further set forth in Scope of Work.
 - 3. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Project site of any Hazardous Materials or any relevant, material defect, or nonconformance in: (i) the Services; (ii) the performance by any contractor providing or otherwise performing construction services related to the Project; or (iii) Owner's performance of its responsibilities under this Agreement.
 - 4. Owner shall include Engineer as an indemnified party under the contractor's indemnity obligations included in the construction contract documents.
 - 5. Owner will not directly or indirectly solicit any of Engineer's Personnel during performance of this Agreement and for a period of one (1) year beyond completion of this Agreement.
 - 6. Owner shall provide additional advisers/professionals as deemed necessary by Owner for any services not specifically outlined and included in this Agreement. Examples include, but are not limited to, legal representation for review of Agreements and Contract Documents, municipal advisers, financial advisers, bond council, insurance professionals for review of insurance and bonding limits and requirements, accountants, auditors and other professionals as deemed

necessary. Engineer has no stated or implied expertise in these matters and Owner should consult with relevant professional for any matters not specific to this Agreement.

7.01 *Entire Agreement; Amendment*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral representations, understandings, or agreements. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument executed by both Owner and Engineer and dated.

Definitions

- B. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner’s work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- C. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that 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. §§5101 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.; or (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.

Attachments: Appendix 1, Engineer's Standard Hourly Rates

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Durant City Utilities Authority

Engineer: Wall Engineering, LLC

By: _____

By: _____



Print name: Martin Tucker

Print name: Brandon Wall, P.E.

Title: Mayor/Chair

Title: President

Date Signed: 07/08/25

Date Signed: 07/08/25

Engineer License or Firm's Certificate No. :
Oklahoma #5413

Address for Owner's receipt of notices:
300 W Evergreen St
Durant, OK 74701

Address for Engineer's receipt of notices:
223 N Washington
Durant, OK 74701