

**AGREEMENT**  
**BETWEEN**  
**BOARD OF PUBLIC WORKS & SAFETY**  
**WEST LAFAYETTE, INDIANA**  
**AND**  
**WESSLER ENGINEERING**  
**FOR**  
**AERATION TANK ADDITION**

THIS AGREEMENT, entered into by and between the Board of Public Works & Safety, City of West Lafayette, Indiana (hereinafter named Owner) and Wessler Engineering, Inc. (hereinafter named Engineer):

WITNESSETH THAT

WHEREAS, the Owner desires to proceed with the design of an expansion to its existing wastewater treatment plant; and

WHEREAS, the Engineer proposes to provide Engineering Services to the Owner for the proposed **Aeration Tank Addition**, herein described as the Project; and

WHEREAS, the Project is further described as follows:

**Expansion of the existing 9.0 MGD WWTP to a design average flow to be determined in the design phase of the Project while maintaining the current peak design flow of 18.0 MGD, based on Scope of Work items included in Attachment No. 3 to this Agreement.**

And, WHEREAS, the Engineer has expressed a willingness to provide the Engineering Services and agrees to furnish these services as described in this Agreement for the above-described Project;

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties hereto mutually covenant and agree as follows:

**ARTICLE I**  
**BASIC ENGINEERING SERVICES**

**1. Aeration Tank Addition - Design Phase**

- A. After selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, Engineer shall:
1. Prepare for and conduct a kick-off/project review meeting with the Owner to confirm the Owner's objectives and the Engineer's approach. This meeting will be used to clarify responsibilities and how information exchange will be managed between the Owner and Engineer, and will provide both parties the opportunity to discuss design related issues and agree upon the final design criteria.
  2. Evaluate the addition of a fifth aeration tank to determine the overall design average flow capacity of the WWTP expansion. Evaluate the feasibility of installing VFDs on four existing aeration blowers. Evaluate the feasibility of installing a turbo-blower to replace one or two existing blowers.
  3. Prepare 30% Preliminary Design Phase documents consisting of design criteria, findings and recommendations of aeration tank and blower evaluations, preliminary site plan, schematic flow diagrams, preliminary layouts of improvements, and 30% Design Opinion of Construction Cost.
  4. Prepare for and attend a 30% Design Review Workshop. This workshop will include a presentation and discussion of the materials developed for the 30% Design Phase. The format of the workshop will be to include sufficient presentation materials so that each item can be adequately reviewed and decisions made by the Owner on how to proceed with 90% Design Phase documents. It is anticipated that this workshop will be held within 45 calendar days of authorization to proceed.
  5. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
  6. Advise Owner if additional reports, data, information, or services are necessary and assist Owner in obtaining such reports, data, information, or services.
  7. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: [None]
- B. After acceptance by Owner of the 30% Preliminary Design Phase documents, revised Opinion of Probable Construction Cost, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon authorization from Owner, Engineer shall:
1. Prepare 90% Design Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications shall conform to the 16-division format of the Construction Specifications Institute. The 90% Design documents will include an updated delineation of the design

criteria, hydraulic profiles, detailed layouts, schematic flow diagrams, and a draft of the front end and technical specifications for major pieces of equipment.

2. Prepare and furnish three (3) review copies of the 90% Design Drawings and Specifications and any other deliverables to Owner within 90 calendar days of authorization to proceed, and review them with Owner, its legal counsel, and other advisors at a 90% Design Review Workshop. The workshop will include a review of the 30% Design Review workshop decisions and a discussion of any new issues that have been identified between 30% and 90% Design. The WWTP layout, process and piping schematics, plan and elevations, and P&ID will be presented for review and discussion. The updated Opinion of Probable Construction Cost will also be discussed.
  3. Within 15 days of receipt, Owner shall submit to Engineer any comments and instructions for revisions.
  4. Revise the 90% Design Drawings and Specifications in accordance with comments and instructions from the Owner, as appropriate, and submit three (3) final copies of 100% Design Bid Documents, a revised Opinion of Probable Construction Cost, and any other deliverables to Owner within 30 calendar days after receipt of comments and instructions from Owner.
- C. Engineer's services under the Design Phase will be considered complete on the date when the 100% Design Bid Documents have been delivered to Owner.
- D. 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 90% 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.
- E. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

## **2. Aeration Tank Addition - Bid Phase**

- A. After acceptance by Owner of the Bidding Documents and the most recent Opinion of Probable Construction Cost as determined in the Design Phase, and upon authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, and attend pre-Bid conference, if any.
  2. Respond to Bidder questions and issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.
  4. Perform or provide the following additional Bidding Phase tasks or deliverables:  
*[None]*
  5. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

## **ARTICLE II ADDITIONAL ENGINEERING SERVICES**

### **1. Additional Services Requiring Owner's Written Authorization**

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.
  4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in this Agreement.
  5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
  6. Providing renderings or models for Owner's use.

7. Providing assistance with Environmental Assessments, archeological reconnaissance, environmental reviews performed by others, and/or in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
8. Conducting or attending meetings called by the Owner with property owners, business leaders and residents to discuss easements and rights-of-way and land to be acquired, or other elements or matters of the Project.
9. Appearances before courts, boards, or commissions on matters of public hearings, permit protests, bid protests or litigation related to the Project.
10. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
11. Preparation of Operation and Maintenance manuals.
12. Furnishing services of Engineer's Consultants for other than Basic Services.
13. Services attributable to more prime construction contracts than specified in Article I, Paragraph 1.E of this Agreement.
14. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
15. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
16. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
17. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
18. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
19. Providing construction surveys and staking to enable Contractor to perform its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
20. Providing Construction Phase services beyond the original date for final completion of the Work.

21. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
22. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
23. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
24. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

**2. Additional Services Not Requiring Owner’s Written Authorization**

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
  1. Prepare and submit permit applications for the following:
    - a. Construction permit and Rule 5 erosion control permit from the Indiana Department of Environmental Management (IDEM).
    - b. Other permits applicable or determined necessary for the Project.
  2. Prepare and submit Anti-Degradation Demonstration to IDEM if required by IDEM.
  3. Coordinating geotechnical engineering, including soil borings and rock soundings, and providing results in a geotechnical evaluation report.

**ARTICLE III  
COMPENSATION**

In accordance with the terms and conditions of the Agreement, the Engineer shall provide the professional services for which the Owner shall compensate the Engineer, as follows:

1. Compensation for Basic Engineering Services to be provided as described in Article I of this Agreement shall be on the basis of a Lump Sum Fee in the amounts as follows:

Design Phase	\$ 135,000.00
Bid Phase	<u>15,000.00</u>
Total:	\$ 150,000.00

2. Compensation for the following Additional Engineering Services, as defined in Articles I and/or II of this Amendment, shall be on the basis of the actual man-hours and expenses incurred in performing the Services, at the Engineer’s current hourly rate and reimbursement schedule in effect at the time the Services are performed.

Fees for anticipated Additional Engineering Services are estimated as follows:

Soil Borings Testing, Analysis & Report	\$ 9,000.00
Permits	14,000.00
Anti-Degradation Demonstration	<u>30,000.00</u>
Estimated Total:	\$ 53,000.00

3. Upon execution of this Agreement, the Engineer is authorized to proceed with the Engineering Services identified in Paragraph 2 above.

#### **ARTICLE IV GENERAL PROVISIONS**

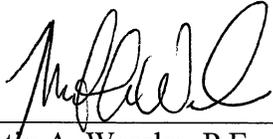
##### **1. Standard Terms and Conditions**

- A. The Standard Terms and Conditions of this Agreement are included as Attachment No. 1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same agreement. A telecopied or facsimile signature shall be equivalent to and as binding as an original signature.

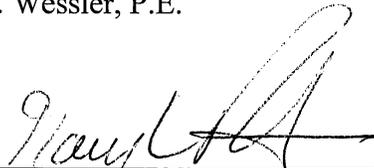
IN WITNESS WHEREOF the parties have made and executed this AGREEMENT this \_\_\_\_ day  
of \_\_\_\_\_, 2011.

**ENGINEER**

**WESSLER ENGINEERING, INC.**



\_\_\_\_\_  
Martin A. Wessler, P.E.  
CEO

Attest:   
\_\_\_\_\_  
Gary L. Ruston, P.E.  
Senior Project Manager

Date: MARCH 21, 2011

**OWNER**

**BOARD OF PUBLIC WORKS & SAFETY  
CITY OF WEST LAFAYETTE, INDIANA**

\_\_\_\_\_  
John R. Dennis, Mayor

\_\_\_\_\_  
Sana G. Booker, Member

\_\_\_\_\_  
Bradley W. Marley, Member

\_\_\_\_\_  
Jonathan C. Speaker, Member

\_\_\_\_\_  
Elizabeth M. Stull, Member

Attest: \_\_\_\_\_  
Judith C. Rhodes IAMC/CMC/CPFA  
Clerk-Treasurer

**ADDRESS FOR GIVING NOTICE:**

Wessler Engineering  
6219 S. East Street  
Indianapolis, IN 46227

**ADDRESS FOR GIVING NOTICE:**

City of West Lafayette  
609 West Navajo Street  
West Lafayette, Indiana 47906

GLR: Y:\Proposals Qualifications and Agreements\Agreements\2011\W Laf Aeration Tank

- Attachments: No. 1 – Standard Terms and Conditions  
No. 2 – Standard Hourly Rate and Reimbursable Expense Schedule  
No. 3 – Scope of Work for Aeration Tank Addition

# ATTACHMENT NO. 1

## STANDARD TERMS AND CONDITIONS

### 1. Basic Agreement

A. Engineer shall provide, or cause to be provided, the Basic Services as described in this Agreement, and Owner shall pay Engineer for such Services.

### 2. Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish Additional Services in addition to those set forth above.

B. Owner shall pay Engineer for such Additional Services on the basis of the Engineer's current Standard Hourly Rate and Reimbursable Expense Schedule.

### 3. Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. Unpaid invoices more than thirty days past due shall bear interest rate of 8% per annum, unless the claim is a disputed claim.

### 4. Design without Construction Phase Services

A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer directly resulting therefrom.

### 5. Termination

A. This Agreement may be terminated by either party by thirty days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

B. Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to

Owner, and Owner shall pay Engineer for all the Services performed plus termination or suspension expenses. Upon restart of suspended Services, an equitable adjustment shall be made to Engineer's compensation and the Project schedule.

### 6. Owner's Responsibilities

A. Provide Engineer with reasonable criteria and information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and specify any design and construction standards that Owner requires be included in the Drawings and Specifications.

B. Designate in writing a person authorized to act as the Owner's representative. The Owner or his representative shall receive and examine documents submitted by the Engineer, interpret and define the Owner's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the Engineer's services.

C. Furnish to the Engineer all available existing information for service and utilities locations, easements, right-of-way, encroachments, and zoning and deed restrictions, except as provided otherwise in the description of services.

D. Provide for full and free access for the Engineer to enter upon all property required for the performance of the Engineer's services under this Agreement.

E. Provide legal, accounting and insurance counseling services as necessary for the Project.

F. Pay for placement and payment for advertisement for Bids in appropriate publications, and all permit fees for agency approval of the Project.

G. Furnish above services at the Owner's expense and in such manner that the Engineer may rely upon them in the performance of his services under this Agreement.

H. Give prompt notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the Project or other event, which may substantially affect the Engineer's performance of services under this Agreement.

### 7. Dispute Resolution

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Mediation or exercising their rights under law.

B. If Mediation is invoked, the Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by a mutually agreed upon party. If such mediation is unsuccessful in resolving the Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

## **8. 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 8.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.

## **9. 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 and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers, to the extent reasonable and customary.

B. This Agreement is to be governed by the laws of the State of Indiana.

C. All design documents prepared or furnished by Engineer are instruments of service, and are the Property of the Owner. The Owner shall have the right to use, reuse or modify the instruments of service at the Owner’s discretion. The Engineer shall retain an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

D. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and

hold harmless Owner, and Owner’s officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to 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.

E. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer’s officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to 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 Project.

F. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or by the other's employees and agents.

G. The Engineer agrees to maintain records of payroll costs, including fringe benefit costs, and actual out-of-pocket costs on a generally recognized accounting basis and shall be available to the Owner during the life of this Agreement at mutually convenient times.

H. In the event any provisions of this Agreement shall be held to be invalid and non-enforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

I. In the event litigation is commenced to enforce any term or condition of this agreement the prevailing party in such litigation shall be entitled to costs of litigation including a reasonable attorney fee.



# **ATTACHMENT NO. 3**

## **Scope of Work for Proposed Aeration Tank Addition**

### **1. AERATION TANK ADDITION**

- A. Evaluate past operational data to determine loading rates to the aeration tanks and estimate future loading rates to determine the overall design average flow capacity of the WWTP expansion based on adding a fifth (5<sup>th</sup>) Aeration Tank.
- B. Addition of a fifth (5<sup>th</sup>) Aeration Tank on the east side of the existing aeration tanks, similar in layout, configuration, piping, and process control to the existing tanks.
- C. Evaluate options for replacing the existing RAS flow meters with new flow meters. The scope includes designing the selected type of new flow meters to replace the existing and for the new tank.
- D. Electrical/I&C associated with above items
- E. No improvements to the four (4) existing aeration tanks, other than those listed above, are included in the scope.

### **2. EXISTING AERATION BLOWERS**

- A. Evaluate the feasibility of installing VFDs on four existing Aeration Blowers.
- B. Evaluate the feasibility of installing a turbo-blower to replace one or two existing blowers
- C. The scope is limited to the evaluation phase to determine if blower improvements are feasible – if determined feasible and the Owner wishes to proceed with the improvements, design of the improvements will be addressed under separate amendment.

### **3. EXISTING SECONDARY CLARIFIERS**

- A. Add a sloped grout fillet to the effluent channels and coat channels – typical three tanks
- B. Add a chlorine tablet tube assembly on skimmer arms to help reduce algae growth on weirs and effluent channel

### **4. WASTE SLUDGE HOLDING TANKS**

- A. Replace existing valves on air lines with new valves – typical two tanks

### **5. MISCELLANEOUS – Directly associated with the above items**

- A. Bypass Pumping requirements
- B. Misc Demolition
- C. Yard Piping
- D. Sitework (paving, sidewalks, grading)
- E. Misc Coatings, labeling, signage
- F. Final restoration/cleanup

**END**

Prepared by  
Wessler Engineering  
March 3, 2011