

AMENDMENT NO. 1

TO AGREEMENT

BETWEEN

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

AND

WESSLER ENGINEERING

FOR

AERATION TANK ADDITION

THIS AMENDMENT NO. 1 to existing Agreement, entered into by and between The Board of Public Works & Safety, City of West Lafayette, Indiana (hereinafter named "Owner") and Wessler Engineering (hereinafter named "Engineer") dated March 28, 2011:

WHEREAS, the Engineer has provided Engineering Services to the Owner for Design, Bid, and Permitting Phases of the **Aeration Tank Addition**, herein described as the PROJECT; and

WHEREAS, the Owner wishes to proceed with the Construction Phase of the PROJECT; and

WHEREAS, the Engineer has expressed a willingness to provide the Construction and Post-Construction Phase Engineering Services and agrees to furnish these services as described in this Amendment.

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

**ARTICLE I – BASIC ENGINEERING SERVICES
SHALL BE AMENDED AS FOLLOWS:**

ADD the following Article I.3, Construction Phase:

3. Aeration Tank Addition - Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
 - 1. *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in

the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.

2. *Resident Project Representative (RPR)*. Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Attachment No. 1 to this Amendment. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Attachment No. 1.
3. *Pre-Construction Conference*. Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
4. *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.
5. *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.
6. *Visits to Site and Observation of Construction*. In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to, and representation by the Resident Project Representative at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise,

direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

7. *Defective Work.* Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
8. *Clarifications and Interpretations; Field Transmittal Memorandums.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Transmittal Memo's (FTM's) authorizing minor variations in the Work from the requirements of the Contract Documents.
9. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
10. *Shop Drawings and Samples.* Review and take appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and actions will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
11. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of the Contract Documents.
12. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
13. *Disagreements between Owner and Contractor.* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or

the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

14. *Applications for Payment.* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

15. *Contractor's Completion Documents.* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph 3.A.10, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph 3.A.10.
 16. *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 objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
 17. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables: [None].
 18. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice that the Work is acceptable (subject to the provisions of Article I, Paragraph 3.A.14.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract, Construction Phase services may be rendered at different times in respect to the separate contracts. Engineer shall be entitled to an equitable increase in compensation if Construction Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.
- C. *Limitation of Responsibilities.* Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

ADD the following Article I.4, Post-Construction Phase:

4. Aeration Tank Addition - Post-Construction Phase

- A. Engineer shall provide the following services:
 - 1. Warranty Assistance
 - a. Together with Owner, visit the Project to observe apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
 - b. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Amendment, will terminate at the end of the Construction Contract's correction period.

ARTICLE II - ADDITIONAL ENGINEERING SERVICES SHALL BE AMENDED AS FOLLOWS:

ADD the following to Article II:

- 25. Preparation of Record Drawings involving revisions to the CAD drawings issued for bidding to show significant changes to the Work made during construction based on marked-up prints, drawings, and other data furnished by the Contractor.
- 26. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
- 27. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
- 28. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
- 29. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
- 30. Subject to other provisions of this Agreement, additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire, flood or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by a Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by a Contractor.
- 31. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining

the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.

ARTICLE III – COMPENSATION, SHALL BE AMENDED AS FOLLOWS:

ADD Articles III.3 through III.4 as follows:

3. Compensation for Construction Administration Services and Resident Project Representative Services to be provided as described in Article I.3, and for Warranty Assistance Phase Services as described in Article I.4, of this Agreement 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.

<u>Phase</u>	<u>Estimated Fee</u>
Construction Administration	\$ 80,000.00
Resident Project Representative	\$ 100,000.00
Warranty Assistance	\$ 3,000.00

4. Compensation for Construction Administration Services is based upon a construction contract period of 9 months. Compensation for Resident Project Representative Services is based upon a period of 6 months full-time (120 man-days). If the construction period is extended or additional Resident Project Representative Service time is requested by the Owner, the compensation for the Construction Phase Services may need to be increased, based on the Services required for the extension.

All other terms and conditions contained in the Agreement shall remain unchanged and continue in full force and effect.

This Amendment 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 Amendment. A telecopied, electronic, or facsimile signature shall be equivalent to and as binding as an original signature.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment No. 1 to existing Agreement, this ____ day of _____, 2012.

ENGINEER

OWNER

WESSLER ENGINEERING, INC.

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

Martin A. Wessler, P.E.
CEO

John R. Dennis, Mayor

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

Sana G. Booker, Member

Date: _____, 2012

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\141511 - W Laf Aeration Tank\141511 W Laf Aeration Tank Amendment 1 CA-RPR.doc

Attachments: No. 1 – Duties, Responsibilities, and Limitations of Authority of Resident Project Representative
No. 2 – E-Verify Affidavit

ATTACHMENT NO. 1

**DUTIES, RESPONSIBILITIES AND
LIMITATIONS OF AUTHORITY OF RESIDENT
PROJECT REPRESENTATIVE**

Prepared by

ENGINEERS' JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
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and by

AMERICAN CONSULTING ENGINEERS COUNCIL

and by

AMERICAN SOCIETY OF CIVIL ENGINEERS

A LISTING OF THE DUTIES, RESPONSIBILITIES AND
LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE**

**unless otherwise noted

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the Work of the CONTRACTOR.

Through more extensive on-site observations of the 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; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR will be ENGINEER's employee or agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with ENGINEER and CONTRACTOR. RPR's dealings with Subcontractors shall be through or with the full knowledge and approval of CONTRACTOR.

B. Duties and Responsibilities of RPR

1. *Schedules* – Review the Progress Schedule, Schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
2. *Conferences and Meetings* – Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project related meetings and prepare and circulate copies of minutes thereof.
3. *Liaison* –
 - a. Serve as ENGINEER's liaison with CONTRACTOR; working principally through CONTRACTOR's authorized representative and assist in providing information regarding the intent of the Contract Documents.
 - b. Assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-Site operations.
 - c. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
4. *Interpretation of Contract Documents* –
 - a. Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.

5. *Shop Drawings and Samples –*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive samples, which are furnished at the Site by CONTRACTOR, and notify ENGINEER of availability of Samples for examination.

6. *Modifications –*

Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to ENGINEER. Transmit to CONTRACTOR in writing decisions as issued by ENGINEER.

7. *Review of Work, Rejection of Defective Work –*
 - a. Conduct on-site observations of CONTRACTOR's Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any part of CONTRACTOR's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

8. *Inspections, Tests, and System Startups-*
 - a. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that CONTRACTOR maintains adequate records thereof.
 - b. Observe, record and report to ENGINEER appropriate details relative to the test procedures and systems startups.

9. *Records –*
 - a. 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.
 - b. Maintain records for use in preparing Project documentation.

10. *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 Drawings and Sample submittals.
 - b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from CONTRACTOR.
 - c. Immediately notify ENGINEER of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.

11. *Payment Requests –*
 - a. Review Applications for Payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

12. *Certificates, Maintenance and Operation Manuals –*
 - a. During the course of the Work, verify that certificates, maintenance and operation manuals and other data required by the Specifications to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.

13. *Completion –*
 - a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Participate in a final inspection in the company of ENGINEER, OWNER, and CONTRACTOR and prepare a final list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. Limitations of Authority

Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of ENGINEER's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of CONTRACTOR, Subcontractors, Suppliers, or CONTRACTOR's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of CONTRACTOR's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of OWNER or CONTRACTOR.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
7. Accept Shop Drawing or Sample submittals from anyone other than CONTRACTOR.
8. Authorize OWNER to occupy the Project in whole or in part.

ATTACHMENT NO. 2

E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Engineer entering into a contract with the Owner is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Engineer is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Engineer, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the Owner, the undersigned Engineer will enroll in and agrees to verify the work eligibility status of all its new hired employees through the E-Verify program

(Engineer): Wessler Engineering, Inc.

By (Written Signature): *Brent A. Siebenthal*

(Printed Name) Brent A. Siebenthal

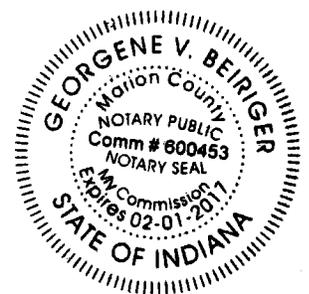
(Title): President

Important – Notary Signature and Seal Required in the Space Below

STATE OF INDIANA

SS:

COUNTY OF MARION



Subscribed and sworn to before me this 28th day of NOVEMBER, 2011.

My commission expires: February 1, 2017 (Signed) *Georgene V. Beiriger*

Residing in Marion County, State of Indiana