AGREEMENT

BETWEEN

BOARD OF PUBLIC WORKS & SAFETY
WEST LAFAYETTE, INDIANA

AND

WESSLER ENGINEERING

FOR

CHEMICAL FEED FACILITES FOR PHOSPHORUS REMOVAL

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 received an NPDES Permit modification effective March 1, 2013 that included new effluent limits for Phosphorus for the wastewater treatment plant; and

WHEREAS, the Owner desires to proceed with phosphorus removal facilities at its wastewater treatment plant; and

WHEREAS, the Engineer proposes to provide Engineering Services to the Owner for the proposed **Chemical Feed Facilities for Phosphorus Removal**, herein described as the PROJECT; and

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

WHEREAS, the Engineer has expressed a willingness to provide the Design Phase Engineering Services and agrees to furnish these services as described in this Agreement.

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. Preliminary Design Phase

A. Prepare for and conduct a kick-off 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, exchange and discuss ideas and concepts, and will provide both parties the opportunity to discuss design related issues.

B. Provide necessary field surveys and topographic mapping for design purposes.

C. Evaluate options and potential improvements for new chemical feed facilities, including the following:

1. Alum (aluminum sulfate) versus ferric chloride.
2. Inside versus outside storage tanks.
3. Sizing of storage tanks and feed system.
4. Locations of proposed facilities.
5. Locations of feed points.
6. Develop plan view of proposed facilities.

D. Review of applicable previous reports, operations data, engineering record drawings, shop drawings, specifications, and design summaries related to the new chemical feed facilities.

E. Summarize the results of the evaluation in a Technical Memo to include the following:

1. Description of the need and purpose for the Project.
2. Description of the current situation and alternatives evaluated.
3. Description of the improvements needed, including preliminary site plan.
4. Conclusion and recommendations, including Final Design criteria.
5. Anticipated project schedule.
6. Preliminary opinion of budgetary project costs.

F. Attend one (1) Preliminary Design Review meeting with the Owner to review the Technical Memo.

G. Following Owner's review of the draft Technical Memo, incorporate the comments into a Final Memo and submit five (5) copies to the Owner.

2. Final Design Phase

A. Based on the recommendations determined in the Preliminary Design Phase, and after indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, Engineer shall:

1. Prepare 50% Design Phase documents incorporating the final design criteria and preliminary plan drawings. Prepare for and attend a 50% Design Review meeting. This meeting will include a presentation and discussion of the 50% Design documents. The format of the meeting 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% Final Design documents.

2. Advise Owner if additional reports, data, information, or services are necessary and assist Owner in obtaining such reports, data, information, or services.

3. 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.

4. Advise Owner of any adjustments to the Opinion of Probable Construction Cost known to Engineer.

5. Prepare and furnish review copies of the 90% Design Drawings and Specifications and any other deliverables to Owner, and review them with Owner, its legal counsel, and other advisors. Within 15 days of receipt, Owner shall submit to Engineer any comments and instructions for revisions.

6. Revise the 90% Design Drawings and Specifications in accordance with comments and instructions from the Owner, as appropriate, and submit final copies of 100% Design Bid Documents, a revised Opinion of Probable Construction Cost, and any other deliverables to Owner within 15 calendar days after receipt of 90% review comments and instructions from Owner.

B. 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.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the 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.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

ARTICLE II
ADDITIONAL ENGINEERING SERVICES

1. Additional Services Requiring Owner's Written Authorization

If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

A. 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.

B. Furnishing services of Engineer's Consultants for other than Basic Services.

C. Owner requested revisions to the Engineer's work following previous approval, acceptance, or concurrence of that work by the Owner.

D. The evaluation of alternatives, means, or methods to determine options or ways to reduce costs after prior Owner approval of the Project, or beyond those described in Basic Engineering Services.

E. 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.

F. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

G. Engineering services related to "green" design, sustainable design, or to achieve any level of USGBC LEED certification.

H. 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.

I. Providing renderings or models for Owner's use.

J. Special project insurance requirements and associated premiums beyond that provided in the aforementioned Basic Services fee or in excess of that currently maintained by Engineer.

K. 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.

L. 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.

M. Coordinating geotechnical engineering, including soil borings and rock soundings, and providing results in a soils investigation report.

N. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in the approved Engineering Report or prior Studies.

O. Preparation of Land Title Survey and specific site surveys for obtaining easements and rights-of-way, preparing drawings and exhibits, and providing assistance to the Owner in the obtaining of easements, rights-of-way and land for the Project.

P. Destructive or invasive structural investigation to uncover suspected hidden structural deficiencies.

Q. Preparation of Operation and Maintenance Manuals for the Project and providing training to the Owner's personnel for the new or existing facilities.

R. 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.

S. Preparation of drawings, exhibits and applications for obtaining permits from Indiana Department of Environmental Management, Indiana Dept. of Natural Resources, County Soil and Water Conservation District, County Drainage and Highway, Army Corps of Engineers, Indiana Department of Homeland Security, Local Building Department, and others as applicable for this Project.

T. Services attributable to more prime construction contracts than specified in Article I.2.D, of this Agreement.

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 **$ 76, 000.00**

2. Compensation for Additional Engineering Services as defined in Article 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 Reimbursable Expense Schedule in effect at the time the Services are performed.

   Anticipated Additional Engineering Services and estimated fees include the following:

IDEM Construction Permit **$ 4,000.00**

ARTICLE IV
SCHEDULE

1. Design Phase

The Preliminary Design submittal and meeting shall occur within 60 days, 50% Design Review submittal and meeting shall occur within 100 calendar days, and 90% Design Review Drawings and Specifications and other deliverables to Owner within 150 calendar days of authorization to proceed. The Final Design Documents shall be completed and submitted to Owner within 15 days after Owner's review of the 90% submittal. Permits shall be submitted within 7 days following the 90% Design Review meeting.

ARTICLE V
GENERAL PROVISIONS

1. Standard Terms and Conditions

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 _____, 2013.

ENGINEER

WESSLER ENGINEERING, INC.

Martin A. Wessler, P.E.
CEO

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

Date: June 12, 2013

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

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: \\WESSLER-FS\DFSShares\Business Development\Proposals Qualifications and Agreements\Proposals\2013\P2381 West Lafayette Phosphorus Study\P2381 W Laf Phos Chem Feed Facilities - Design.doc

Attachments: No. 1 – Standard Terms and Conditions
No. 2 – Standard Hourly Rate and Reimbursable Expense Schedule
No. 3 – E-Verify Affidavit
No. 4 – Indiana Iran Investment Certification

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.

10. Sub-consultants

A. Subconsultants to the Engineer are listed in the Agreement.

B. Engineer may add, remove, or replace Subconsultants listed in the Agreement for reasonable cause with prior written approval of the Owner.

C. In the event Owner does not approve the addition of a Subconsultant, or the replacement of a Subconsultant listed in the Agreement, and the Engineer cannot reasonably perform the Services intended for said Subconsultant, Owner agrees to contract directly with an entity qualified and capable of performing said Services. Owner further releases Engineer from all liability associated with the performance of said entity's Services.

11. Non-Discrimination

Engineer agrees:

A. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;

B. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;

C. That the Owner may deduct from the amount payable to the Engineer a penalty of five dollars ($5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

D. If there is a second or any subsequent violation of the terms or conditions of this section, then this contract may be cancelled or terminated by Owner and all money due or to become due hereunder will be forfeited.

WESSLER ENGINEERING

More than a Project™

ATTACHMENT NO. 2
2013 HOURLY RATE and REIMBURSABLE EXPENSE SCHEDULE

Position	Hourly Rate*
Principal Engineer	$175.00
Senior Project Manager/Senior Project Engineer	$165.00
Project Manager/Project Engineer III	$135.00
Survey Manager	$125.00
Assistant Project Manager/Project Engineer II	$115.00
Project Engineer I	$105.00
Field Services Manager	$95.00
Designer	$100.00
Engineer	$90.00
Operations Specialist	$90.00
Environmental Scientist II	$85.00
Environmental Scientist	$75.00
Technician IV/Senior Resident Project Representative	$90.00
Technician III/Resident Project Representative III	$80.00
Technician II/Resident Project Representative II	$70.00
Technician I/Resident Project Representative I	$60.00
Survey Crew Manager	$85.00
Survey Crew Chief	$70.00
Project Secretary	$55.00

Reimbursable Expenses shall be charged as follows.

Item and Unit		Unit Cost
Mileage (per mile)		At current IRS published rate at time of expense
Copies:(each) Black & White	8.5"x11" or 11"x17"	$0.12
	24"x36"	$1.00
Color	8.5"x11"	$0.20
	11"x17"	$0.40
Plots: (each)	24"x36" (Mylar)	$5.50
	24"x36" (Bond)	$1.00
	12"x18" (Bond)	$0.50
GPS Survey Equipment/Robotic Total Station/Pole Camera		$15.00 per hour
Postage/shipping/freight, Long distance telephone and fax, Lodging and Per Diems		At Cost
Subcontractor/Subconsultant fees		Cost + 10%

*Expert Witness Services (Court Hearings or Testimony, Depositions, Arbitration or Mediation Hearings) shall be charged at 150% of the Hourly Rate listed in this Schedule

This Schedule is subject to change

January 1, 2013

ATTACHMENT NO. 3

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): _____

(Printed Name) Brent A. Siebenthal

(Title): President

Important – Notary Signature and Seal Required in the Space Below

STATE OF INDIANA

SS:

COUNTY OF MARION

GEORGENE V. BEIRIGER Marion County NOTARY PUBLIC Comm # 600453 NOTARY SEAL My Commission Expires 02-01-2017 STATE OF INDIANA

Subscribed and sworn to before me this 28TH day of NOVEMBER, 20 11.

My commission expires: February 1, 2017 (Signed) _____

Residing in Marion County, State of Indiana

ATTACHMENT NO. 4

INDIANA IRAN INVESTMENT CERTIFICATION

I, Brent A. Siebenthal, the duly authorized representative of Wessler Engineering, Inc., certify under penalty of perjury that Wessler Engineering, Inc. does not engage in investment activities in Iran as defined by I.C. 5-22-16.5.

Wessler Engineering, Inc.

By: _____

Brent A. Siebenthal, P.E.
President