

1 **BILL NO. S-22-04-21**

2 SPECIAL ORDINANCE NO. S-59-22

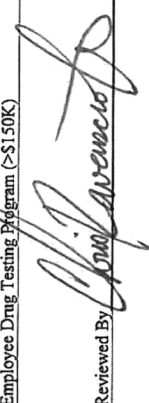
3
4 AN ORDINANCE approving CONSTRUCTION
5 CONTRACT - 76202 WATER POLLUTION
6 CONTROL PLANT WET WEATHER PUMP STATION
7 ADDITION OF PUMPS 5 & 6 - WORK ORDER #76202
8 - \$7,132,236.00 - between THIENEMAN
9 CONSTRUCTION, INC. and the City of Fort Wayne,
10 Indiana, in connection with the Board of Public Works.

11 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON**
12 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

13 **SECTION 1.** That the CONSTRUCTION CONTRACT - 76202
14 WATER POLLUTION CONTROL PLANT WET WEATHER PUMP STATION
15 ADDITION OF PUMPS 5 & 6 - WORK ORDER #76202 - between THIENEMAN
16 CONSTRUCTION, INC. and the City of Fort Wayne, Indiana, in connection with the
17 Board of Public Works, is hereby ratified, and affirmed and approved in all
18 respects, respectfully for:

19 All labor, insurance, material, equipment, tools, power, transportation,
20 miscellaneous equipment, etc., necessary for PROVISION OF TWO
21 NEW VERTICAL MIXED FLOW PUMPS (PUMPS 5 & 6), EACH
22 WITH A RATED CAPACITY OF 211 MGD AND EACH PROVIDED
23 WITH A 2,000-HORSEPOWER INDUCTION MOTOR AND
24 VARIABLE FREQUENCY DRIVE (VFD) EQUIPMENT. PROVISION
25 OF TWO NEW MECHANICALLY CLEANED BAR SCREENS,
26 UPGRADES TO EXISTING HVAC SYSTEM, AND ASSOCIATED
27 APPURTENANCES;

28 involving a total cost of SEVEN MILLION ONE HUNDRED THIRTY-TWO
29 THOUSAND TWO HUNDRED THIRTY-SIX AND 00/100 DOLLARS -
30 (\$7,132,236.00). A copy of said Contract is on file with the Office of the City Clerk
and made available for public inspection, according to law.

| | | | | | | | | | | | |
|---|--|---|-------------|----------------------------|-----------------|-------------------------------------|-----------------|--|-----------------|--|--|
| PROJECT: | | WPCP Wet Weather Pump Station Addition of Pumps 5 & 6 | | | | | | | | | |
| Resolution#: | | 76202 | | | | | | | | | |
| Work Order#: | | 76202 | | | | | | | | | |
| Project Designer | | Chris Ravenscroft | | | | | | | | | |
| Construction Manager | | Jacobs Engineering | | | | | | | | | |
| Manager | | Mike Kiester | | | | | | | | | |
| Bid Date: (Quote Date) | | April 7, 2022 | | | | | | | | | |
| Funding: | | Sewer SRF | | | | | | | | | |
| BID | | | | | | | | | | | |
| Item# | Description | Quantity | Unit | Engineer's Estimate | | Thieneman Construction, Inc. | | F.A. Wilhelm Construction Co., Inc. | | | |
| 1 | All Work Except Items 2 through 7 | 1 | LS | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension | | |
| | | | | \$3,295,480.00 | \$ 3,295,480.00 | \$2,633,860.00 | \$ 2,633,860.00 | \$2,694,460.00 | \$ 2,694,460.00 | | |
| 2 | WWPS Residual Sludge Removal and Disposal | 600 | CY | \$200.00 | \$ 120,000.00 | \$506.00 | \$ 183,600.00 | \$500.00 | \$ 300,000.00 | | |
| 3 | Assignment: WWPS Equipment Procurement | 1 | LS | \$3,186,540.00 | \$ 3,186,540.00 | \$3,186,540.00 | \$ 3,186,540.00 | \$3,186,540.00 | \$ 3,186,540.00 | | |
| 4 | Process Control System Integrator | 1 | LS | \$285,000.00 | \$ 285,000.00 | \$285,000.00 | \$ 285,000.00 | \$285,000.00 | \$ 285,000.00 | | |
| 5 | Owner's Work Allowance | 1 | LS | \$80,000.00 | \$ 80,000.00 | \$80,000.00 | \$ 80,000.00 | \$80,000.00 | \$ 80,000.00 | | |
| TOTAL BASE BID | | | | \$ | 6,967,020.00 | \$ | 6,369,000.00 | \$ | 6,346,000.00 | | |
| Bid Alternate #1 | | | | | | | | | | | |
| Item# | Description | Quantity | Unit | Engineer's Estimate | | Thieneman Construction, Inc. | | F.A. Wilhelm Construction Co., Inc. | | | |
| 6 | Alternate 1: Duperon Chain-and-Rate Bar Screen Equipment | 1 | LS | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension | | |
| | | | | \$985,980.00 | \$ 985,980.00 | \$1,045,000.00 | \$ 1,045,000.00 | \$1,015,000.00 | \$ 1,015,000.00 | | |
| Total Bid Alternate #1 | | | | \$ | 985,980.00 | \$ | 1,045,000.00 | \$ | 1,015,000.00 | | |
| Bid Alternate #2 | | | | | | | | | | | |
| Item# | Description | Quantity | Unit | Engineer's Estimate | | Thieneman Construction, Inc. | | F.A. Wilhelm Construction Co., Inc. | | | |
| 7 | Alternate 2: Headworks Chain-and-Rate Bar Screen Equipment | 1 | LS | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension | | |
| | | | | \$985,980.00 | \$ 985,980.00 | \$763,236.00 | \$ 763,236.00 | \$741,000.00 | \$ 741,000.00 | | |
| Total Bid Alternate #2 | | | | \$ | 985,980.00 | \$ | 763,236.00 | \$ | 741,000.00 | | |
| Basis of Award is Base Bid plus Alternate #2 | | | | \$ | | \$ | 7,132,236.00 | \$ | 7,287,000.00 | | |
| Addendum No.1 | | | | | | | | | | | |
| Addendum No.2 | | | | | | | | | | | |
| Bidder's Bond | | | | | | | | | | | |
| Form 96 | | | | | | | | | | | |
| Non-Collusion Affidavit | | | | | | | | | | | |
| Cert In Lieu/Financial Statement | | | | | | | | | | | |
| Employee Drug Testing Program (>\$150K) | | | | | | | | | | | |
| Reviewed By: | |  | | | | | | | | | |
| Date: | | 4/13/2022 | | | | | | | | | |

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **Board of Public Works** (“Owner”) and Thieneman Construction, Inc. (“Contractor”).

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

1. **Provision of two new vertical mixed flow pumps (Pumps 5 & 6), each with a rated capacity of 211 mgd and each provided with a 2,000 horsepower induction motor and variable frequency drive (VFD) equipment. New equipment will be installed into existing facilities.**
2. **Provision of two new mechanically cleaned bar screens each with a rated capacity of 212 mgd. New equipment will be installed into existing facilities.**
3. **Upgrades to the existing HVAC system in the existing Wet Weather Pump Station to improve building ventilation.**
4. **Expansion of the existing HVAC system in the existing WWPS Electrical Building to provide additional cooling capacity. Work includes modifications to an existing air handling unit, provision of a new air handling unit, and associated HVAC Work.**
5. **Instrumentation and Control Work: New pumping and screening equipment shall be integrated with the existing PLC and SCADA system. Instrumentation and control Work includes enhancements to the existing PLC and SCADA system, provision of new field instrumentation, and other instrumentation and control Work.**
6. **Electrical Work associated with provision of the new pump-motor-VFD equipment, new screening equipment, HVAC equipment, and other work.**
7. **General construction work associated with installation of the new equipment into the existing facilities.**
8. **Replacement of the existing bridge crane in the WWPS Screen Facility with a new bridge crane.**
9. **Other mechanical work.**

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **76202 WATER POLLUTION CONTROL PLANT WET WEATHER PUMP STATION ADDITION OF PUMPS 5 & 6**

ARTICLE 3—ENGINEER AND DESIGNER

3.01 The Contract Documents have been prepared by Donohue & Associates, Inc. (Designer) in association with Wessler Engineering. Specific engineering duties and responsibilities will be assumed by Donohue & Associates, Inc. during the completion of the Work under a separate agreement with the Owner.

- 3.02 The Owner will retain a qualified firm to serve as the Construction Management Professional, the firm will be named at a later date. Specific construction inspection and management duties and responsibilities will be assumed by the Construction Management Professional during the completion of the Work under a separate agreement with the Owner.
- 3.03 Both the Designer and the Construction Management Professional shall both separately and together be considered the Engineer assuming all the duties and responsibilities as assigned to each party by the Owner, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES

4.01 Time is of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 ::NOT USED::

4.03 Contract Times: Days

- A. The Work will be substantially complete on or before October 30, 2023.
- B. Work shall be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before January 31, 2024.
- C. Definition of Substantial Completion for this Work shall consist of **satisfactory completion of the Work, in the opinion of the Engineer, including systems demonstrations and delivery of all guarantees, operation and maintenance data, certificates of installation services, certificates of instructional services, record documents as specified in Division 1, General Requirements, and other documents and each of these has been approved by the Engineer. Engineer will not prepare a tentative certificate of Substantial Completion until (a) operation and maintenance data has been submitted and approved in accordance with Section 01 78 23, Operations and Maintenance Data, (b) instructional services have been provided and approved in accordance with Section 01 75 11, Instruction of Operations and Maintenance Personnel, and (c) systems demonstrations have been satisfactorily completed in accordance with Section 01 79 13, System and Facility Performance Testing Procedures.**

4.04 Milestones

- A. Parts of the Work must be completed on or before the following Milestone(s):
1. Milestone 1 – Networking: December 31, 2022.
 2. Milestone 2 – Executed Assignment of Contract Purchase Order: 30 days from Notice to Proceed.

4.05 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time.

Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$1,500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Milestones: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of said Milestone, until said Milestone is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
 4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

C. ::NOT USED::

4.06 Special Damages

- A. Contractor shall reimburse Owner for any fines and penalties actually incurred by Owner, originating from the City of Fort Wayne United States and U.S. Environmental Protection Agency Consent Decree, dated 12/20/2007, as a direct result of the Contractor's failure to attain Substantial Completion per the U.S. Environmental Protection Agency Consent Decree Critical Milestone date. Special Damages may be assessed started on January 1, 2024.

| <u>Item</u> | <u>Special Damages</u> |
|---|---|
| CSO Control Measure 11 | Up to \$20,000/day for first 30 days, Up to \$25,000/day for days 31 – 90, Up to \$30,000/day after 90 days |
| B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred after the time specified in Paragraph 4.03 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment. | |
| C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement. | |

- D. Special damages for failing to timely attain Substantial Completion are not to be considered Cost of the Work.
- E. Liquidated Damages and Special Damages solely attributable to delays in delivery of the Goods furnished under the Equipment Procurement Contract, vertical mixed flow pumps (Pumps 5 and 6) by the assigned Equipment Procurement Contract, Xylem Water Solutions USA Inc. ("Supplier") shall be assessed at the rates provided herein, subject to a maximum amount of \$354,060.00 (the "Cap"). Liquidated Damages and Special Damages not solely attributable to delays in the delivery of the Goods by Supplier shall not be subject to the Cap. For purposes of calculating the total amount of Liquidated Damages and Special Damages that may be owed in the event of delays in the delivery of the pumps, the following assumptions will apply: (i) The Good will be available for delivery based on the times set forth within the Equipment Procurement Agreement; and (ii) Contractor will achieve Substantial Completion within ninety (90) days after delivery of all of the Goods; and (iii) Contractor and Supplier have an executed Purchase Order/Agreement by Milestone 2 per Article 4.04.

For purposes of illustration:

Example 1:

Contractor and Supplier negotiate a delivery date of August 15, 2023 for the convenience of Contractor. Due to delays by the Supplier, the pumps are not actually delivered until December 1, 2023. As a result, the Contractor does not obtain Substantial Completion until February 29, 2024. In this example, Contractor will be assessed liquidated damages from November 1, 2023 until February 29, 2024 for a total of 121 days and special damages from January 1, 2024 until February 29, 2024 for a total of 60 days. The total liquidated damages and special damages for this period would equal \$1,531,500.00. In this example, however, 107 days of the 121 days are attributable solely to delays in the delivery of the pumps by the Supplier. Accordingly, the total liquidated and special damages for that 107 day period are subject to the Cap and will be limited to \$354,060.00. Liquidated damages and special damages for the remaining 14 days will be assessed at the full rates provided in this Agreement. Thus, in this example, Contractor would be assessed an additional \$12,000.00 in liquidated damages and \$420,000.00 in special damages, for total liquidated and special damages of \$786,060.00.

Example 2:

Contractor and Supplier negotiate a delivery date of August 1, 2023 but, due to delays by the Supplier, the pumps are not delivered until December 1, 2023. Thereafter, the Contractor obtains Substantial Compliance on March 5, 2024. In this case, Contractor will be assessed liquidated damages from November 1, 2023 until March 5, 2024 for a total of 126 days and special damages from January 1, 2024 until March 5, 2024 for a total of 65 days. The total liquidated damages and special damages for this period would equal \$1,664,000.00. Of the total 126 day delay, 121 days are solely attributable to delivery delays by Supplier. The liquidated damages and special damages for this 121 day period would be subject to the Cap and limited to \$354,060.00. Because the Contractor took longer than 90 days following delivery of the pumps to obtain Substantial Completion, Contractor would still have 5 additional days of liquidated damages in the amount of \$7,500.00 and 5 additional days of special damages in the amount of \$150,000.00. Total liquidated damages and special damages in this example would equal \$511,560.00.

ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. :: NOT USED ::
 - B. :: NOT USED ::
 - C. :: NOT USED ::
 - D. For all Work, at the prices stated in Contractor’s Bid on the QuestCDN online bid submittal, attached hereto as an exhibit for the Base Bid and Alternate 2.

TOTAL OF ALL UNIT PRICES: Seven Million, One Hundred Thirty-Two Thousand, Two Hundred
Thirty-Six Dollars and Zero Cents
\$ 7,132,236.00
Basis of Award is Base bid plus Alternate 2

ARTICLE 6—PAYMENT PROCEDURES

- 6.01 Submittal and Processing of Payments
- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- 6.02 Progress Payments; Retainage
- A. Owner shall make progress payments during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted within 45-days of the portions complete, and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Final Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. 95 percent of the value of the Work completed (with the balance being retainage).
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer’s estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment. However, payments to the Contractor are not to exceed 95% of the total Contract Price until the Owner has

verified that the Contractor has made good faith efforts to attain the Indiana Finance Authority (IFA) State Revolving Fund (SRF) goals stipulated in Paragraph 9.03.E. Payment of the final 5% of the total Contract Price will be dependent upon acceptance of the Work, in accordance with Paragraph 15.06 of the General Conditions, and good faith efforts to comply with the IFA/SRF participation requirements; subject to reduction in the event of non-compliance as provided in Paragraph 9.03.E.

C. Escrow Agreement.

1. If the Contract is in excess of \$200,000, the contract will be subject to the standard Board of Public Works escrow agreement; unless written notice is received from Contractor prior to execution of the Agreement stating that an Escrow Account is not desired. If an Escrow Account is not desired, then the Board of Public Works , in accordance with IC 36-1-12-14, shall hold the retainage and will not pay interest on the amounts of retainage that it holds.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 Consent of Surety

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 Contents

- A. The Contract Documents consist of the following:
 1. This Agreement (00 52 00, inclusive);
 2. Escrow Account Agreement (00 54 43, inclusive);
 3. Drug Policy Acknowledgement Form (00 54 52, inclusive);
 4. E-Verify Affidavit (00 54 53, inclusive);
 5. SRF Loan Program DBE Packet (00 54 61, inclusive);
 6. SRF Attachment B – Davis-Bacon Act Contract Provisions (00 54 65, inclusive);
 7. SRF Attachment C – Wage Fringe Benefit Certification Contract Provisions (00 54 66);
 8. SRF Attachment E – Suspension and Debarment Contract Provisions (00 54 68);
 9. SRF Attachment I – AIS Contract Provisions
 10. SRF Attachment J – AIS Contractor Certification
 11. SRF EPA Form OEE-1 (00 54 72);
 12. SRF EPA Form OEE-2 (00 54 73);
 13. Performance Bond Form (00 61 13.13, inclusive);
 14. Payment Bond Form (00 61 13.16, inclusive);

15. Federal Wage Rate Requirements (see Appendix);
 16. General Conditions (00 72 00, inclusive);
 17. Supplementary Conditions (00 73 00, inclusive);
 18. Specifications as listed in the table of contents of the project manual
 19. Drawings consisting of Drawings, inclusive, with each sheet bearing the following general title: Water Pollution Control Plant Wet Weather Pump Station Addition of Pumps 5 & 6;
 20. Addenda (numbers 1 to 2, inclusive);
 21. Attachments to this Agreement (enumerated as follows);
 - a. Contractor's Bid Worksheet;
 - b. Documentation submitted by Contractor prior to Notice of Award.
 22. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed;
 - b. Written Amendments;
 - c. Work Change Directives;
 - d. Change Orders;
- B. ::NOT USED::
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
12. In connection with the performance of Work under this Contract, Contractor agrees to comply with Anti-Discrimination Under Indiana Code Chapter 5-16-6-1 and be bound by Chapter 93.036, of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. Contractor shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of the construction or upon request of the Office of Compliance.

8.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 Standard General Conditions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 9—MISCELLANEOUS

9.01 Terms

Terms used in this Agreement will have the meanings stated in the General Conditions

9.02 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.03 M.B.E./W.B.E. Participation

- A. **Indiana State Revolving Fund Loan Program** – This project is being financed in whole or in part by the Indiana State Revolving Fund Loan Programs. The Contractor is required to comply with all federal and state laws, rules, regulations, and contract provisions included in Indiana Finance Authority (IFA) State Revolving Fund (SRF) documents per Article 7 of this agreement

(IFA SRF requirements and forms are available on the IFA SRF website.)

- B. **Request for Waiver** – If, at the time final payment application is made, Contractor has not attained the IFA/SRF goal, Contractor shall file with the final payment application a “Request for Waiver.” Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the goal.
- C. **Determination of Waiver Requests** – The Vendor Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor’s efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

- D. **Waiver Approved** – In the event the Board of Public Works determines that a good faith effort to comply with the IFA/SRF participation requirements has been made, the Contract Price shall not be reduced, and the balance owing to the Contractor shall be paid in full.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number 76202). One counterpart has been delivered to Owner, and one counterpart delivered to Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

CONTRACTOR:

Thieneman Construction, Inc.

OWNER:

CITY OF FORT WAYNE

BY: _____
(Name)

TITLE: _____

DATE: _____
(Date signed by Contractor)

BY: _____
THOMAS C. HENRY, MAYOR

Address for giving notices:

BOARD OF PUBLIC WORKS

BY: _____
SHAN GUNAWARDENA, CHAIR

BY: _____
KUMAR MENON, MEMBER

BY: _____
CHRIS GUERRERO, MEMBER

ATTEST: _____
MICHELLE FULK-VONDRAN, CLERK

DATE: _____
(Date signed by Board)

ACKNOWLEDGMENT (CONTRACTOR)

STATE OF _____)

SS:)

COUNTY OF _____)

BEFORE ME, a Notary Public, in and for said County and State, this ____ day of _____, _____, personally appeared the within named _____ who under penalty of perjury says that he is the _____ of _____ and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of _____ for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Notary Public

Printed Name of Notary

My Commission Expires:

Resident of _____ **County**

ACKNOWLEDGMENT (OWNER)

STATE OF INDIANA)

SS:)

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this ____ day of _____, _____, personally appeared the within named Thomas C. Henry, Shan Gunawardena, Kumar Menon, Chris Guerrero and Michelle Fulk-Vondran , by me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, and Chairman, Members, and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Notary Public

Printed Name of Notary

My Commission Expires:

Resident of _____ **County**

CITY OF FORT WAYNE, INDIANA

Thieneman Construction, Inc.
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

- 1. FINANCIAL INTERESTS;**
- 2. POTENTIAL CONFLICTS OF INTEREST;**
- 3. CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1: Disclosure of Financial Interest in Vendor

a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(1) Equity ownership exceeding 5% (Y)

(2) Distributable income share exceeding 5% (Y)

(3) Not Applicable (If N/A, go to Section 2) (Y)

Name: Kenneth D. Thieneman Name: Shannon Thieneman

Address: 17219 Foundation Parkway, Westfield, IN 46074 Address: 17219 Foundation Parkway, Westfield, IN 46074

b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship stock
partnership interest units (LLC)
other (explain) _____

c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent):
ownership interest:

Name: Kenneth D. Thieneman 87.5 %

Name: Shannon Thieneman 10 %

Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a. check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:
Yes _____ No X

- b. City employment of "Member of Immediate Family" (defined herein as: Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild)
Including contractual employment for services in the previous 3 years:

Yes _____ No X

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes _____ No X

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes _____ No X

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No X

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes ___ No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

Name / Position / Payment Terms:

Name / Position / Payment Terms:

d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: NA

Company / Name / Payment Terms: _____

Section 4: CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

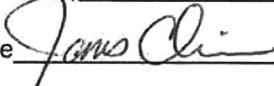
- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating

- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

| | |
|-------------------------------------|--|
| <u>Thieneman Construction, Inc.</u> | <u>17219 Foundation Parkway, Westfield, In 46074</u> |
| (Name of Vendor) | Address |
| | <u>(317) 867-3462</u> |
| | Telephone |
| | <u>estimating@t-c-i.net</u> |
| | E-Mail Address |


The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

| | |
|---|-----------------------------|
| Name (Printed) <u>James Chinn</u> | Title <u>Vice President</u> |
| Signature <u></u> | Date <u>April 13, 2022</u> |

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

Interoffice Memo

Date: April 19 2022
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering
RE: Water Pollution Control Plant Wet Weather Pump Station Addition of Pumps 5 & 6
WO#76202



Council District # N/A

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: Provision of two new vertical mixed flow pumps (Pumps 5 & 6), each with a rated capacity of 211 MGD and each provided with a 2,000-horsepower induction motor and variable frequency drive (VFD) equipment. Provision of two new mechanically cleaned bar screens, upgrades to existing HVAC system, and associated appurtenances.

Implications of not being approved: The Wet Weather Pump Station conveys flow from the collections system during a wet weather event that exceed the capacity of the Water Pollution Control Plant. The additional pumps are part of system capacity requirements in order meet several Consent Decree objectives.

If Suspension of the Rules is being Requested, Justify: Due to market volatility and to prevent increase of price due to extended time to executed a Contract and provide Notice to Proceed.

This project was advertised to contractors on 3/03/2022 and 3/10/2022 in the Journal Gazette.

The contract for Resolution #76202 awarded to Thieneman Construction, Inc. for \$7,132,236.00 was the lowest most responsive bidder and 11% below the Engineer's estimate of \$7,953,000.00. The next bidder was \$154,765.00 above Thieneman Construction, Inc.'s bid.

The cost of said project funded by Sewer State Revolving Fund.

Council Introduction Date: 4/26/2022

CC: Matthew Wirtz
Jill Helfrich
File

BILL NO. S-22-04-21

REPORT OF COMMITTEE ON CITY UTILITIES

April 26, 2022

Glynn Hines Chair

Thomas Didier Co-Chair









All Council Members

An Ordinance approving Construction Contract – 76202 Water Pollution Control Plant Wet Weather Pump Station Addition of Pumps 5 & 6 - Work Order #76202 - between Thieneman Construction, Inc. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works


Involving a total cost of \$7,132,236.00

This will require a Suspension of the Rules with seven votes in favor of suspending, then a unanimous vote of all present in order to be Introduced, Discussed and placed for Passage in the same evening.

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

| <u>COUNCIL MEMBER</u> | <u>DO PASS</u> | <u>DO NOT PASS</u> | <u>ABSTAIN</u> |
|-----------------------|---|--------------------|----------------|
| ARP |  | | |
| CHAMBERS | | | |
| DIDIER |  | | |
| ENSLEY |  | | |
| FREISTROFFER |  | | |
| HINES |  | | |
| JEHL |  | | |
| PADDOCK |  | | |
| TUCKER |  | | |

**STACY A. REED
DEPUTY CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Hines.

Read the second time by title and referred to the City Utilities Committee.

Read the third time in full and on motion by Councilperson Hines, placed on passage by the following vote:

| <u>TOTAL VOTES</u> | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAINED</u> | <u>ABSENT</u> |
|--------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| ARP | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| CHAMBERS | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| DIDIER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ENSLEY | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| FREISTROFFER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| HINES | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| JEHL | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PADDOCK | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| TUCKER | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

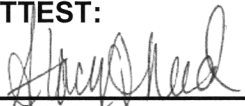
DATED: April 26, 2022



 STACY A. REED, DEPUTY CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as Special Ordinance No. S-22-04-21 on the 26th day of April, 2022

ATTEST:



 STACY A. REED
 DEPUTY CITY CLERK



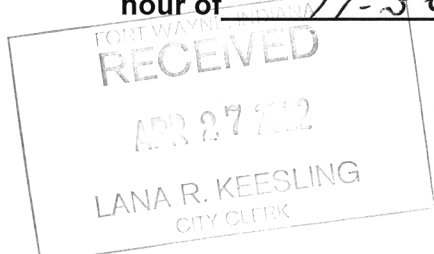
 PRESIDING OFFICER


Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th of April 2022, at the hour of 8:55 o'clock A.M. E.S.T.



 STACY A. REED, DEPUTY CITY CLERK

Approved and signed by me this 27TH day of APRIL 2022, at the hour of 11:30 o'clock AM E.S.T.





 THOMAS C. HENRY, MAYOR