



Board of Public Works and Safety

Agenda Item

Cover Sheet

MEETING DATE: July 9, 2024

- Consent Agenda Item
- New Item for Discussion
- Previously Discussed Item
- Miscellaneous

ITEM #: 11

INITIATED BY: Kristyn Parker

- Information Attached
- Bring Paperwork from Previous Meeting
- Verbal
- No Paperwork at Time of Packets



TO: Mayor's office

FROM: Kristyn Parker, Project Coordinator, Utilities Department

SUBJECT: Mayor's office to approve Scoping Agreement with Thieneman Innovative Solutions

DATE: July 9, 2024

Noblesville Utilities is requesting approval for a Scoping Agreement with Thieneman Innovative Solutions for the Utilities Sludge Process Improvements BOT project. This Scoping Agreement will allow the Utilities and Thieneman to develop the concept designs to final construction plans, to set expected milestones, to ensure that all plans/designs are owned by the City, and to further refine the Project so that the City and Thieneman can enter into a Public-Private Agreement and move the project forward. The Scoping Agreement is for a do not exceed amount of \$10,000.

Thank you for your consideration on approving this Scoping Agreement with Thieneman Innovative Solutions.



CITY OF NOBLESVILLE, INDIANA
SLUDGE PROCESS IMPROVEMENTS PROJECT
SCOPING AGREEMENT

This City of Noblesville, Indiana Sludge Process Improvements Project Scoping Agreement (hereinafter referred to as “Agreement”), entered into this 8th day of July, 2024, by and between the City of Noblesville, Indiana, (hereinafter referred to as the “City”), and Thieneman Construction, Inc. (hereinafter referred to as the “Developer”), is executed pursuant to the terms and conditions set forth herein.

RECITALS

WHEREAS, on or about March 12, 2024, the City issued a certain Request for Proposals and Qualifications to design, build, operate, maintain a sludge process improvements project in Noblesville (the “RFPQ”);

WHEREAS, pursuant to the RFPQ, the City sought offers to design, build, furnish, operate, maintain, and transfer to Noblesville improvements to the City’s wastewater treatment plant, North Sludge Building, Sludge Storage Barn and the City’s Headworks all located at 197 Washington Street in the City (the “Project”), all pursuant to a public-private agreement between Noblesville and the selected offeror in accordance with Ind. Code § 5-23 et seq., (the “Act”);

WHEREAS, in response to the RFPQ, the Developer submitted a proposal and statement of qualifications to the City for completing the Project;

WHEREAS, the Developer prepared and provided its proposal and statement of qualifications (“PSOQ”) to design, develop, build, operate, transfer, and/or maintain the Project on April 9, 2024;

WHEREAS, the City determined that the Developer is reasonably susceptible of being selected for a public-private agreement (“Public-Private Agreement”) in accordance with Act;

WHEREAS, the RFPQ Selection Committee recommended to the Board of Works and Public Safety of the City (the “Board”) that the Board accept the Developer as the party selected for continued negotiation, scoping, and eventually completing the Project; and

WHEREAS, the Board accepted that recommendation on May 14, 2024;

WHEREAS, consistent with and pursuant to the RFPQ and the Act, the City and the Developer desire to enter into this Agreement for the Developer to cause to be completed the Scoping Services defined herein;

WHEREAS, the purpose of this Agreement is to enable the Developer to complete the next steps of design so as to take the plans from concept designs to final construction plans, to set the expected milestones for the Project, to ensure that all plans/designs are owned by the City, and to further refine the Project so that the parties can enter into a Public-Private Agreement, and move the Project forward; and

WHEREAS, any capitalized term not specifically defined herein shall have the meaning ascribed to such term in the RFPQ.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer agree as follows:

AGREEMENT

1. **RECITALS**. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.

2. **MUTUAL ASSISTANCE**. The Parties agree, subject to further proceedings required by the Laws (as defined herein), to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

3. **SCOPING SERVICES**. In consideration and as a material inducement for the City's consideration of the Developer for a Public-Private Agreement and the additional consideration described herein, the Developer shall deliver, complete, and/or cause to be completed all services, work and components thereof described in Section 5 of this Agreement to the City's satisfaction (collectively, the "Scoping Services").

4. **DEFINITIONS**.

- a. **Claims** shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees); provided that in no event shall Claims include consequential or punitive damages.
- b. **Concept Plan** shall mean the concept plan for the Project developed by the Developer after meeting(s) with the City and its review panel, as designed by the City (collectively, the "City Parties") to determine the floor plan, size, scale and program of space to be included in the Project.
- c. **Construction Drawings** shall mean construction drawings with respect to the construction of the Project.
- d. **Construction Schedule** shall mean the portion of the project plans comprised of the construction schedule, which Construction Schedule shall reflect Substantial Completion date to be included as part of the Public-Private Agreement, with separate bid packages to be released to allow for commencement of construction not later than October 1, 2024.
- e. **Design Development Documents** shall mean detailed design development documents for the Project, which documents shall be consistent with the Schematic Design Drawings and the Laws.

- f. **Laws** shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City’s Unified Development Ordinance and any zoning regulations related to the Project.
- g. **Project** shall mean collectively the Project, and related, incidental, and/or necessary infrastructure improvements related thereto.
- h. **Property Inspection** shall mean surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments and geotechnical reviews and assessments.
- i. **Schematic Design Drawings** shall mean the schematic design drawings for the Project that are consistent with the Site Plan and as needed for the City to proceed with the Plan Refinement process and the Laws.
- j. **Site** shall mean property approximately located at 197 Washington Street, Noblesville, IN 46060.
- k. **Site Plan** shall mean a site plan for the Project that is consistent with the Concept Plan and the Laws.

5. PLAN REFINEMENT. The following Plan Refinement Process shall govern development and construction of the Project:

a. **Meetings.** Within ten (10) business days of the Effective Date, Developer shall meet with the City concerning the City’s desired outcome for the design and construction of the Project. As needed and typically at least every ten (10) business days throughout the Plan Refinement Process, the Developer and the City shall continue to meet to complete the Plan Refinement Process, which the goal of the process is to be completed no later than September 12, 2024, subject to the City’s approval and comment requirements set forth in Section 5(c) and any extension of Scoping Services by written amendment. Moreover, upon request by the City or the Developer, the other Party shall make every effort to schedule additional planning meetings to discuss, review, revise or seek comment on documents provided or to be provided as part of the Plan Refinement Process.

b. **Plan Refinement Process.** Throughout the Plan Refinement Process, the Developer shall submit for review and approval the following documents, which documents shall be submitted to Noblesville in the order listed below, with respect to the Project:

- i. Concept Plan – July 13, 2024
- ii. Site Plan – July 20, 2024
- iii. Schematic Design Drawings – August 10, 2024

- iv. Design Development Documents - TBD by written amendment to this Scoping Agreement
- v. Construction Drawings - TBD by written amendment to this Scoping Agreement
- vi. Construction Schedule and Budget – TBD by written amendment to this Scoping Agreement

As part of the Plan Refinement Process, the City and/or the Developer may select subcontractors including subcontractors that are different than those submitted in the PSOQ and may add new or additional subcontractors to the Project including those that may be different than those submitted in the PSOQ.

c. **Approval of Submitted Document.** Within seven (7) days after the City receives each of the Concept Plan, Site Plan, the Schematic Design Drawings, Design Development Documents and Construction Drawings (each a “Submitted Document”) as agreed to in the Scoping Services or any written amendment thereto, the City shall deliver to Developer written notice that it approves or rejects the Submitted Document; provided that, if the City rejects all or any part of a Submitted Document, then such notice shall: (A) specify the part or parts that the City is rejecting; and (B) include the specific basis (which may be any reason, in the City’s sole discretion) for such rejection. Subject to Section 5(e), upon the City’s approval of a Submitted Document, such document shall be deemed final. Each Submitted document shall be generally consistent with the immediately preceding Submitted Document approved by the City. For example, and without limitation, the Design Development Documents shall comply with the Laws and shall be generally consistent with the Schematic Design Drawings. Each Submitted Document approved by the City shall become an “Approved Document.”

d. **Resubmitted Documents.** If, at any stage of the Plan Refinement Process, the City, rather than approving any Submitted Document, instead notifies the Developer that it rejects a Submitted Document then, within fourteen (14) days after the Developer receives written notice from the City that it has rejected the Submitted Document (each, a “Rejected Document”), the Developer shall promptly: (i) revise the Rejected Document; and (ii) resubmit the foregoing to the City. The City shall follow the review procedure described in the foregoing subsection 5(c) of this Agreement, and the Developer shall revise and resubmit any Rejected Submitted Document in accordance with the preceding sentence until such Rejected Document is approved. Upon approval of any Resubmitted Document, the Resubmitted Document shall become an Approved Document. Notwithstanding the involvement of the City in the Plan Refinement Process, the Developer shall be fully responsible for properly completing each of the documents including in the Plan Refinement Process and ensuring that Resubmitted Documents approved by the City in writing are implemented as an Approved Document; the failure of which shall be a default hereunder by the Developer.

e. **Permitting, Zoning & Planning Processes.** The Developer expressly acknowledges and agrees that each step of the Plan Refinement Process is in addition and supplemental to applicable zoning, planning and permitting processes (for example, and without limitation, approvals of the Plan Commission or other bodies with approval authority for projects similar to the Project). The City’s approval of any document presented to it as part of the Plan

Refinement Process shall not negate or impact the Developer's obligation to complete applicable review processes, obtain all applicable permits, complete all applicable reviews and inspections and otherwise continuously maintain compliance with the City ordinances, including, without limitation, its Unified Development Ordinance ("UDO"), as amended. The parties acknowledge and agree that the scope of the services provided under this Agreement shall include the design work specified herein and shall not include permitting or any other work (other than the site planning set forth herein) which will be provided for and described in the Public-Private Agreement.

6. PROPERTY INSPECTIONS. During Plan Refinement or as otherwise determined by the Developer based on its industry expertise, the Developer shall cause to be completed all Property Inspections necessary to complete the Project, including, without limitation, all studies and investigations necessary to obtain any required permits. For the avoidance of doubt, Property Inspections are the sole responsibility of the Developer, and all necessary Property Inspections shall be completed to determine the suitability of the Site for the Project. The Developer shall have the right to enter upon the Site at reasonable times to perform the Scoping Services upon the express written consent of the City.

7. RIGHT OF ENTRY. The Developer shall have the right to enter upon the Site at reasonable times to perform the Scoping Services, including, without limitation, the Property Inspections.

8. CONSIDERATION & SCOPING COSTS. The Parties expressly acknowledge and agree that the Developer shall complete Scoping Services described herein in consideration and as a material inducement for the City considering Developer for a Public-Private Agreement. The cost of performing the Scoping Services described in this Agreement shall not exceed the amount of \$ 10,000.00 Ten Thousand Dollars (the "Scoping Costs"). The Developer shall provide the City a summary of costs incurred during the preceding month for Scoping Services as they are performed. The Scoping Costs shall be paid within thirty (30) days. If the Developer is selected for a Public Private Agreement with the City, all Scoping Costs and any and all costs of additional Scoping Services that the parties may agree to by written amendment to this Agreement, shall be included in and applied toward the total cost to construct the Project and financed or other wise paid for consistent with the funding requirements included the Public-Private Agreement; unless the City determines, in its sole discretion, to separately pay such costs. If, however, Developer is not awarded a Public-Private Agreement, the City shall, within thirty (30) days of completion of the Scoping Services or earlier termination of this Agreement, compensate the Developer for the Scoping Services or any portion thereof completed which were not previously paid for; provided, however, if the Scoping Services are not completed, the City shall be liable for a prorated amount of the Scoping Costs relative to the value of the Scoping Services completed.

9. OVERSIGHT AND MANAGEMENT. For purposes of delivering the Scoping Services, the Developer shall serve as the Project Manager and oversee, direct and coordinate the work of all individuals and entities providing the Scoping Services, including, without limitation, causing the completion of all necessary inspections and obtaining the any required permits.

10. CHANGES IN SCOPE. The City may, without invalidating this Agreement, request in writing changes in the scope of the Scoping Services consisting of additions, deletions or other revisions. In such event, the Developer shall provide to the City suggested methods and adjustments to the Budget and Construction Schedule on the basis of reasonable expenditures and

savings of those performing the work attributable to the changes (whether concerning the Budget or Construction Schedule, the “Proposed Change(s)”). The City shall review any Proposed Change and determine whether to accept it. If any such Proposed Change is accepted, the Proposed Change shall be automatically incorporated into and become a part of Approved Documents deemed final for the stage of the preconstruction services to which the Proposed Change applies.

11. RECOMMENDATION FOR PUBLIC-PRIVATE AGREEMENT. Within thirty (30) days of the Developer completing the Scoping Services, the City shall determine whether to recommend the Developer for a Public-Private Agreement; provided, however, the City and the Developer acknowledge and agree that the City may make such determination at an earlier time to the extent authorized by Indiana § 5-23 *et. seq.*

12. INSURANCE. The Developer shall procure and maintain throughout completion of the Scoping Services, the policies of insurance described on **Exhibit A**. Each such policy shall: (a) be written by a company reasonably acceptable to the City; and (b) provide that it shall not be modified or canceled without written notice to the City at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by the Developer shall name the City as an additional insured. The Developer shall deliver to the City certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies prior to execution of this Agreement and, in no event, less than five (5) days after Effective Date.

13. GENERAL PROVISIONS.

a. **Independent Contractor.** The parties agree that the Developer is an independent contractor as that term is commonly used and is not an employee of the City. As such, the Developer is solely responsible for all taxes and none shall be withheld from the sums paid to the Developer. The Developer acknowledges that it is not insured in any manner by the City for any loss of any kind whatsoever. The Developer has no authority, express or implied, to bind or obligate the City in any way.

b. **Subcontracting.** The parties agree that the Developer shall not subcontract, assign or delegate any responsibility to perform services to be performed pursuant to this Agreement without prior written approval of the Director of the Utilities Department of the City or his designee. In the event that the City approves of any such subcontracting, assignment or delegation, the Developer shall remain responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. The City shall have no obligation whatsoever toward such persons. The Developer shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve the Developer of any responsibility for performing under this Agreement. The Developer shall be responsible for a background, criminal history, and e-verify check on any additional person involved in performing services pursuant to this Agreement, and the Developer and any additional persons shall have the duty to report an arrest or the filing of criminal charges against them in writing to the Director of Utilities of the City.

c. **Necessary Qualifications.** The Developer certifies that it will furnish to the City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of the City, other units of local government, the State of Indiana, and the United States. The Developer further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain all licenses, permits, registrations, authorizations, or certifications, as applicable to the services in force during the term of this Agreement.

d. **Confidentiality of City Information.** The Developer understands that the information provided to it or obtained from the City during the performance of its services may be confidential and may not, without prior written consent of the City, be disclosed to a person not in the City's employ except to employees or agents of the Developer who have a need to know in order to provide the services. Further, the Developer's Work Product generated during the performance of this Agreement is confidential to the City. The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information, that is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena, or court order whereupon Developer shall provide notice to the City prior to such disclosure. The Developer shall not, under any circumstances, release information provided to it by, or on behalf of, the City that is required to be kept confidential by the City pursuant to Indiana law, except as contemplated by this section.

e. **Records; Audit.** The Developer shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. The Developer shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from termination or the date of final payment under this Agreement for inspection by the City or any other authorized representative of the City. Copies thereof, if requested, shall be furnished at no cost to the City.

f. **Ownership of Documents and Materials.** All documents, including records, programs, data, film, tape, articles, memos, and other materials, created or developed under this Agreement, shall be considered "work for hire" and the Developer transfers any ownership claim to the City and all such matters will be the property of the City. Use of these materials, other than related to contract performance by the Developer, without the prior written consent of the City, is prohibited. During the performance of the services specified herein, the Developer shall be responsible for any loss or damage to these materials developed for or supplied by the City and used to develop or assist in the services provided herein while the materials are in the possession of the Developer. Any loss or damage thereto shall be restored at the Developer's expense. Full, immediate, and unrestricted access to the work product of the Developer during the term of this Agreement shall be available to the City. Notwithstanding the foregoing, the Developer shall be entitled to retain a set of its work papers in accordance with professional standards. In the event the City subsequently uses the documents or materials without retaining the services of Developer, the City releases the Developer only from claims and causes of action arising from such subsequent use, but not under the services of this Agreement. The City, to the extent permitted by law, further agrees to indemnify and hold harmless the Developer from claims and causes of action asserted by any third person or entity to the extent such arises from the City's subsequent use of the documents or materials under this Section. Notwithstanding the foregoing, it is understood and

agreed that Developer shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by Developer prior to, or acquired by Developer during the performance of this Agreement and the same shall not be deemed to be Work Product or Work For Hire and Developer shall not be restricted in anyway with respect thereto.

g. Term and Termination for Cause or Convenience.

i. This Agreement shall be in effect until the Scoping Services described in this Agreement are fully and satisfactorily performed and the City has paid the Developer for applicable services, unless earlier terminated in accordance with this Agreement. If this Agreement is not otherwise terminated by the City, this Agreement shall automatically terminate if and when the City and the Developer enter into a Public-Private Agreement for the Project.

ii. If the Developer becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then the City may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing. In determining the amount of final payment to be made to the Developer upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by the City to be incurred by reason of the Developer's default.

iii. This Agreement may be terminated in whole or in part in writing by the City for the City's convenience. If the City effects termination for convenience, the Developer's compensation shall be equitably adjusted.

iv. Upon receipt of a termination action for default or for the City's convenience, the Developer shall (a) promptly discontinue all services affected, unless the termination notice directs otherwise, and (b) deliver or otherwise make available to the City all data, drawings, specifications, reports, estimates, summaries, and such other information, materials or documents as may have been accumulated by the Developer in performing this Agreement, whether completed or in process.

v. If, after termination for the Developer's default, it is determined that the Developer was not in default, the termination shall be deemed to have been effected for the convenience of the City. In such event, adjustment of the price provided for in this Agreement shall be made as provided in this Agreement and the recovery of such price adjustment shall be the Developer's sole remedy and recovery.

h. **Termination for Failure of Funding.** Notwithstanding any other provision of this Agreement and pursuant to Indiana law, if funds for the continued fulfillment of this Agreement by the City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void.

i. **Remedies.** Following the occurrence of any default, breach, or other failure to perform requisite services, or an act of negligence or misconduct causing damage to the City, by the Developer or any of its employees, agents, or subcontractors, the City shall have every remedy now or hereafter existing at law or in equity or by statute or otherwise which may be available to the City. This provision shall survive any termination of this Agreement.

j. **Indemnification.** The Developer agrees to indemnify, defend (except in the case of a professional liability claim to the extent prohibited by I.C. § 26-2-5-4), and hold harmless the City and its officers, agents, officials, and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent act or omission, error or omission of, or by any recklessness or misconduct by, the Developer or any of its officers, agents, employees or subcontractors. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage. The City will not provide such indemnification to the Developer. This provision shall survive any termination of this Agreement.

k. **Notice.** Any notice or other correspondence required to be sent under this Agreement shall be sent to:

To Developer:

Thieneman Construction
17219 Foundation Parkway
Westfield, Indiana 46074
Attn: Jeff Chinn, Vice-President

To Noblesville:

City of Noblesville
197 Washington Street
Noblesville, Indiana 46060
Attn: Jonathan Mirgeaux, PE,
Director of Utilities Department

l. **Disputes.** The Developer shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with the City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as the Developer and the City may otherwise agree in writing. Should the Developer fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by the City or the Developer as a result of such failure to proceed shall be borne by the Developer, and the Developer shall make no claim against the City for such costs. The City may withhold payments on disputed items pending resolution of the dispute.

m. **Non-discrimination.** The Developer and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion,

color, sex, sexual orientation, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

n. **Conflict of Interest.** The Developer certifies and warrants to the City that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with the City.

o. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds one hundred eighty (180) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

p. **Applicable Laws; Forum.** The Developer agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the City and the Developer to determine whether the provisions of the Agreement require formal modification. This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinances, Resolutions, Rules, Regulations, or Codes of the City. Suit, if any, shall be brought in the State of Indiana, County of Hamilton.

q. **Waiver.** The City's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of the City's rights or remedies.

r. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

s. **Attorneys' Fees.** The Developer shall be liable to the City for reasonable attorneys' fees incurred by the City in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of the Developer from the Developer's breach of any provision of this Agreement, from the Developer's indemnity obligation, or from the Developer's failure to fulfill any provisions or responsibility provided herein. This provision shall survive any termination of this Agreement.

t. **City Officials.** No official, director, officer, employee, or agent of the City shall be charged personally by the Developer, its employees, or agents with any liabilities or expenses, or be held personally liable to the Developer under any term or provision or because of the

execution of any agreement, or because of any default by the City. This provision shall survive any termination of this Agreement.

u. **Successors and Assigns.** The City and the Developer each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, the Developer shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

v. **Authority to Bind Developer.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Developer represents that he/she has been duly authorized to execute agreements on behalf of the Developer designated above, and has obtained all necessary or applicable approval from the offices of the Developer to make this Agreement fully binding upon the Developer when his/her signature is affixed and accepted by Noblesville.

w. **E-Verify.** The Developer shall enroll in and verify the eligibility status of all newly hired employees of the Developer through the E-Verify program as outlined in I.C. § 22-5-1.7; however, the Developer shall not be required to verify the work eligibility status of all newly hired employees of Developer through the E-Verify program if the E-Verify program no longer exists. THE DEVELOPER AFFIRMS, UNDER THE PENALTIES OF PERJURY, THAT THE DEVELOPER DOES NOT KNOWINGLY EMPLOYEE AN UNAUTHORIZED ALIEN.

x. **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though the City or the Developer are not signatories to the original or the same counterpart.

14. INTERPRETATION AND INTENT.

a. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between the City and the Developer. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by the City or the Developer which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both the City and the Developer, and following approval of such amended or modified terms by the Board.

b. In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by the Developer or other rights or obligations of the City or the Developer, the document or provision thereof imposing the greater obligation upon the Developer and affording the greater right or remedy to the City, shall govern. Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against the City solely by virtue of the City or City's representatives having drafted all or any portion of this Agreement.

c. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

[Signature Pages and Exhibit A to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

City of Noblesville, Indiana (“City”)

By: 
Chris Jensen, Mayor

Thieneman Construction, Inc. (“Developer”)

By:  James J. Chinn
James J. Chinn, Vice President

4777285v1

EXHIBIT A

Required Insurance

A. Commercial General Liability

Limits of Liability: \$2,000,000 General Aggregate
\$2,000,000 Products & Completed Ops.
\$1,000,000 Bodily Injury / Prop. Damage
\$1,000,000 Personal / Advertising Injury
\$1,000,000 Each Occurrence

B. Auto Liability

Limits of Liability: \$500,000 Per Accident
Coverage Details All owned, non-owned, & hired vehicles

C. Workers Compensation and Employer's Liability

As required by Indiana law.

D. Professional/Errors & Omissions Liability

Limits of Liability \$1,000,000 Each Occurrence
\$2,000,000 Aggregate