

AGREEMENT

THIS AGREEMENT is dated this _____ day of _____, 2012, by and between the Board of Public Works and Safety, City of West Lafayette, Indiana ("Owner") and Thieneman Construction, Inc. ("Contractor").

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, 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:

AERATION TANK ADDITION

ARTICLE 2 – ENGINEER

- 2.01 The Project has been designed by Wessler Engineering, Inc. (Engineer), which is to act as Owner's representative, assume all duties and responsibilities, 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 3 – CONTRACT TIMES

- 3.01 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.
- 3.02 The Work will be substantially completed within 240 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 270 days after the date when the Contract Times commence to run.
- 3.03 Liquidated Damages
- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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), Contractor shall pay Owner \$1,400.00 per calendar day that expires after the time specified in Paragraph 3.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$1,400.00 per

calendar day that expires after the time specified in Paragraph 3.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 4 – CONTRACT PRICE

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds as follows: **One Million Two Hundred Fifty-Seven Thousand and 00/100 dollars (\$1,257,000.00).**

For all Work, at the prices stated in Contractor's Bid.

ARTICLE 5 – PAYMENT PROCEDURES

5.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on a monthly basis during performance of the Work as provided in Paragraph 5.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions and in the case of Unit Price Work based on the number of units completed.

1. Prior to Substantial 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 Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

2. The Owner shall retain ten percent (10%) of the amount of each payment until final completion and acceptance of all work covered by the Contract Documents. The Owner at any time, however, after fifty percent (50%) of the Work has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five percent (5%) on the current and remaining estimates. When the Work is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five percent (5%) to only that amount necessary to assure completion. On completion and acceptance on a part of the Work on which the price is stated separately in the Contract Documents, payment may be made in full, including retained percentages, less authorized deductions.

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 as Engineer shall determine in accordance with Paragraph 14.02.B.5 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 tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

5.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 6 – CONTRACTOR'S REPRESENTATIONS

6.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; 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 Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Contractor does not consider that 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 Documents.
- G. 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.

- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 Contents

- A. The Contract Documents consist of the following:
 - 1. Advertisement for Bidders
 - 2. Instructions to Bidders
 - 3. Contractor's Bid
 - 4. Bid Bond
 - 5. Agreement (with E-Verify Affidavit)
 - 6. Performance Bond
 - 7. Payment Bond
 - 8. General Conditions
 - 9. Supplementary Conditions
 - 10. Specifications as contained in Project Manual dated January 2012
 - 11. Drawings consisting of 25 sheets dated January 2012
 - 12. Addenda
 - a. No. 1 dated January 27, 2012
 - b. No. 2 dated January 30, 2012
 - c. No. 3 dated February 9, 2012
 - 13. 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. Change Order(s)
 - c. Substantial Completion

- B. There are no Contract Documents other than those listed above in this Article 7.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 8 – MISCELLANEOUS

8.01 Terms

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

8.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

8.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.04 Severability

- A. 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.

(This area intentionally left blank)

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate (3 copies). Counterparts have been delivered to Owner and 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 the date as indicated on Page 1.

OWNER:

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

Signature:

John R. Dennis, Mayor

Sana G. Booker, Member

Bradley W. Marley, Member

Jonathan C. Speaker, Member

Elizabeth M. Stull, Member

Attest:

Judith C. Rhodes IAMC/CMC/CPFA
Clerk-Treasurer

Address for giving notices:

609 West Navajo Street
West Lafayette, Indiana 47906

CONTRACTOR:

THIENEMAN CONSTRUCTION, INC.

Signature:

Joshua D. Morris

Printed:

Joshua D. Morris

Title:

Project Manager

Attest:

V. Lynette McNew

Title:

Project Coordinator

Address for giving notices:

17241 Foundation Parkway, Suite 100
Westfield, Indiana 46074

E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Contractor 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 Contractor 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 Contractor, 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 Contractor will enroll in and agrees to verify the work eligibility status of all its new hired employees through the E-Verify program

(Contractor): Thieneman Construction, Inc.

By (Written Signature): *Joshua D. Morris*

(Printed Name) Joshua D. Morris

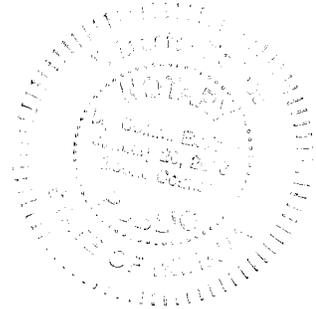
(Title): Project Manager

Important – Notary Signature and Seal Required in the Space Below

STATE OF Indiana

SS:

COUNTY OF Hamilton



Subscribed and sworn to before me this 11th day of April,
2012.

My commission expires: 1/20/2016 (Signed) *V. Lynette McNeel*

Residing in Boone County, State of Indiana

E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Contractor entering into or renewing a contract with the City is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Contractor 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 Contractor, 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 City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

(Contractor): Thieneman Construction, Inc.

By (Written Signature): *Ray Kramp*

(Printed Name): Ray Kramp

(Title): General Operating Manager

Important - Notary Signature and Seal Required in the Space Below

STATE OF Indiana

SS:

COUNTY OF Hamilton

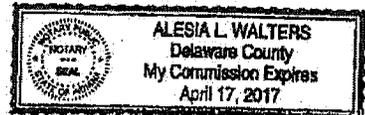
Subscribed and sworn to before me this 22nd day of July,
20 11.

My commission expires: April 17, 2017

(Signed) *Alesia L. Walters*

Residing in Delaware

County, State of Indiana



PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Thieneman Construction, Inc.
17241 Foundation Parkway, Suite 100
Westfield, IN 46074

SURETY (Name, and Address of Principal Place of Business):

Western Surety Company
P. O. Box 5077
Sioux Falls, SD 57117-5077

OWNER (Name and Address):

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

CONTRACT

Effective Date of Agreement:

Amount: \$1,257,000.00 One Million Two Hundred Fifty Seven Thousand Dollars and 00/100

Description (Name and Location): West Lafayette Aeration Tank Addition

BOND

Bond Number: 929547687

Date (Not earlier than Effective Date of Agreement):

Amount: \$1,257,000.00 One Million Two Hundred Fifty Seven Thousand Dollars and 00/100

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Thieneman Construction, Inc. (Seal)

Western Surety Company (Seal)

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By:

Kudo [Signature]
Signature

[Signature]
Signature (Attach Power of Attorney)

Kenneth D. Thieneman
Print Name

Timothy J. Taylor
Print Name

President
Title

Attorney-in-Fact
Title

Attest:

V. Lynette McNew
Signature

Attest:

[Signature]
Signature

Project Coordinator
Title

Robert Sherfick Secretary
Title



Note: Provide execution by additional parties, such as joint venturers, if necessary.

Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
 - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract; or
 2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
 - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefor.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
- 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
- 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

7. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.

8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

11. Definitions.

- 11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
- 11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – <i>(Name, Address and Telephone)</i> Tobias Insurance Group, Inc. Surety Agency or Broker: 9247 N. Meridian Street, Suite 300, Indianapolis, IN 46260 317-844-7759 Owner's Representative <i>(Engineer or other party)</i> :
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Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Timothy J. Taylor

of Indianapolis, IN, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

Surety Bond Number: 929547687
Principal: Thieneman Construction, Inc.
Obligee: City of West Lafayette, Indiana
Amount of Bond: See Bond Form

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 19th day of September 2006

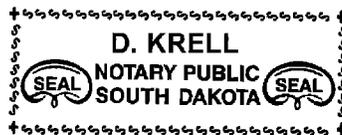


WESTERN SURETY COMPANY
Paul T. Bruflat
Paul T. Bruflat, Senior Vice President

State of South Dakota }
County of Minnehaha } ss

On this 19th day of September, 2006, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
November 30, 2012



D. Krell
D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this _____ day of _____,



WESTERN SURETY COMPANY
L. Nelson
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
Thieneman Construction, Inc.
17241 Foundation Parkway, Suite 100
Westfield, IN 46074

OWNER (Name and Address):
City of West Lafayette, Indiana
609 West Navajo Street
West Lafayette, IN 47906
CONTRACT

SURETY (Name, and Address of Principal Place of Business):
Western Surety Company
P. O. Box 5077
Sioux Falls, SD 57117-5077

Effective Date of Agreement:

Amount: \$1,257,000.00 One Million Two Hundred Fifty Seven Thousand Dollars and 00/100

Description (Name and Location): West Lafayette Aeration Tank Addition

BOND

Bond Number: 929547687

Date (Not earlier than Effective Date of Agreement):

Amount: \$1,257,000.00 One Million Two Hundred Fifty Seven Thousand Dollars and 00/100

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Thieneman Construction, Inc. (Seal)
Contractor's Name and Corporate Seal

Western Surety Company (Seal)
Surety's Name and Corporate Seal

By: *Kenneth D. Thieneman*
Signature

By: *[Signature]*
Signature (Attach Power of Attorney)

Kenneth D. Thieneman
Print Name

Timothy J. Taylor
Print Name

President
Title

Attorney-in-Fact
Title

Attest: *V. Lynette McNew*
Signature

Attest: *[Signature]*
Signature

Project Coordinator
Title

Robert Sherfick Secretary
Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions

15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – <i>(Name, Address, and Telephone)</i> Tobias Insurance Group, Inc. Surety Agency or Broker: 9247 N. Meridian Street, Suite 300, Indianapolis, IN 46260 317-844-7759 Owner's Representative <i>(Engineer or other)</i> :
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Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Timothy J. Taylor

of Indianapolis, IN, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

Surety Bond Number: 929547687
Principal: Thieneman Construction, Inc.
Obligee: City of West Lafayette, Indiana
Amount of Bond: See Bond Form

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 19th day of September 2006



WESTERN SURETY COMPANY

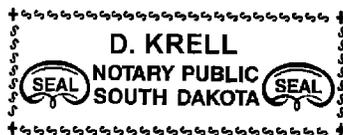
Paul T. Bruflat

Paul T. Bruflat, Senior Vice President

State of South Dakota }
County of Minnehaha } ss

On this 19th day of September, 2006, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
November 30, 2012



D. Krell

D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this _____ day of _____,



WESTERN SURETY COMPANY

L. Nelson

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.