

TOWN OF GREENVILLE
ORDINANCE NO. 2011-WR-059

**RESOLUTION CONCERNING THE ACCEPTANCE BY THE
GREENVILLE WATER UTILITY COUNCIL OF THE
CONFIDENTIALITY AGREEMENT BETWEEN THIENEMAN
ENVIRONMENTAL L.L.C. AND THE GREENVILLE WATER UTILITY
OF THE TOWN OF GREENVILLE, INDIANA**

WHEREAS, the Water Utility Council for the Town of Greenville, Indiana, in accordance with I.C. 36-5-2-9 and I.C. 8-1.5-3-4 is the entity authorized by state law to enter into contracts and agreements on behalf of the Greenville Water Utility of Greenville, Indiana and;

WHEREAS, the Greenville Water Utility is currently researching the possibility of acquiring the Heritage Springs Waste Treatment Plant currently owned and operated by Thieneman Environmental L.L.C. and:

WHEREAS, the consultants hired by the Greenville Water Utility Council require information of a private and sensitive nature from Thieneman Environmental L.L.C. it is necessary for the Greenville Water Utility Council to enter into a Confidentiality Agreement with Thieneman Environmental L.L.C.;

NOW, THEREFORE, BE IT ORDAINED BY THE WATER COUNCIL OF THE TOWN OF GREENVILLE, INDIANA, AS FOLLOWS:

1. After passage of this Resolution by the majority of the Greenville Water Utility Council the Greenville Water Utility Council President Talbotte Richardson is authorized to sign on behalf of the complete Water Utility Council the Confidentiality Agreement dated August 29th, 2011 proposed by Thieneman Environmental L.L.C.
2. All provisions of the Confidentiality Agreement dated August 29th, 2011 shall be binding on all Water Utility Council Members, Clerks / Treasurers, Attorneys, Consultants and Water Utility Supervisory Personnel.
3. All information requested from Thieneman Environmental L.L.C. concerning the acquisition of the Heritage Springs Sewage Treatment Plant shall be requested through Greenville Water Utility and Town Attorney Richard Fox
4. See agreement attached.

TOWN OF GREENVILLE
ORDINANCE NO. 2011-WR-059

ADOPTED BY THE WATER UTILITY COUNCIL FOR THE TOWN OF GREENVILLE,
INDIANA, ON THE 12th DAY OF SEPTEMBER, 2011.

PRESIDENT OF THE WATER UTILITY
COUNCIL FOR THE TOWN OF GREENVILLE,
INDIANA


TALBOTTE RICHARDSON,
JACK TRAVILLIAN, CLERK/TREASURER

PREPARED BY: RANDAL JOHNES

THIENEMAN ENVIRONMENTAL, LLC
5031 Old Vincennes Road
Floyds Knobs, Indiana 47119-0505
(812) 923-0771

August 29, 2011

TOWN OF GREENVILLE, INDIANA
c/o Greenville Town Council
9706 Clark Street
Greenville, IN 47124

Re: Confidentiality and non-disclosure agreement regarding the interest of the Town of Greenville (the "Town") in purchasing the wastewater collection and treatment system in Heritage Springs subdivision from Thieneman Environmental, LLC (the "Company").

Dear Town Council Members:

In connection with your analysis of the possible acquisition of the Company's wastewater collection and treatment system in Heritage Springs subdivision by the Town, you have requested certain information concerning the Company, which may be in oral, written or electronic form (collectively, the "Evaluation Material"), from its managers, members, employees and/or agents. In consideration of furnishing you with the Evaluation Material, we request your agreement to the following (it being understood that you are also agreeing to cause your affiliates to comply with the provisions hereof):

1. The Evaluation Material will be provided by the Company to your counsel, Richard R. Fox, and shall be used solely for the purpose of evaluating a possible relationship between the Company and the Town, and not in any way directly or indirectly detrimental to the Company or its affiliates. Unless and until you have formalized such a relationship pursuant to a definitive agreement (the "Definitive Agreement"), such information shall not become a public record as defined by Ind. Code § 5-14-3, et seq., and will be kept confidential by the Town, except that the Town may disclose the Evaluation Material or portions thereof to its Town Council members, officers, employees, and advisors (the persons to whom such disclosure is permissible being collectively called "Representatives") who need to know such information for the purpose of evaluating the Town's possible relationship with the Company (it being understood that those Representatives will be informed of the confidential nature of the Evaluation Material and will agree to be bound by this agreement and not to disclose the information to any other individual). The Town agrees to be responsible for any breach of this agreement by its Representatives.

2. If the Town or any of its Representatives become legally compelled to disclose any of the Evaluation Material, you shall provide the Company with prompt prior written notice of such requirement so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this agreement. If such protective order or other remedy is not obtained, or if the Company waives compliance with the provisions hereof, you agree to furnish only that portion of the Evaluation Material which is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded such Evaluation Material.
3. The term "Evaluation Material" does not include any information which (a) at the time of disclosure or thereafter is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by the Town or its Representatives) or (b) was available to the Town on a non-confidential basis from a source other than the Company or its advisors, provided that such source is not and was not bound by a confidentiality agreement with the Company.
4. If a Definitive Agreement is not executed or if the Company so requests, you promptly will return to the Company all copies of the Evaluation Material in your possession or in the possession of all Town Representatives, and you will destroy all copies of any analyses, compilations, studies or other documents prepared by the Town for its use containing or reflecting any Evaluation Material, and delete all such information from their computers, computer discs, tapes and any other information storage devices. The Town will provide the Company with written confirmation of compliance with this paragraph.
5. The Town understands and acknowledges that the Company is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Evaluation Material, and none of the Company, or any of its managers, members, employees, affiliates or agents will have any liability to the Town or any other person resulting from the Town's use of the Evaluation Material. Only those representations or warranties that are made to a party in a Definitive Agreement when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such Definitive Agreement, will have any binding legal effect.
6. The Town also understands and agrees that no contract or agreement providing for the existence of a relationship with the Company shall be deemed to exist unless and until the Definitive Agreement has been executed and delivered, and the Town hereby waives, in advance, any claims (including, without limitation, breach of contract) in connection with the relationship with the Company unless and until the Town shall have entered into a Definitive Agreement. The Town also agrees that unless and until a Definitive Agreement with respect to the relationship with the Company has been executed and delivered, the Company has no legal obligation of any kind whatsoever with respect to

any such relationship by virtue of this agreement or any other written or oral expression with respect to such transaction except, in the case of this agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term "Definitive Agreement" does not include an executed letter of intent or any other preliminary written agreement, nor does it include any written or verbal acceptance of an offer or bid on the Town's part.

7. The Town agrees that the Company shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach of the provisions of this agreement, in addition to all other remedies available to the Company at law or in equity. In the event that the Evaluation Material is or becomes the subject of a patent, trademark, or copyright application, or of a patent, trademark, or copyright registration, the Town agrees and understands that the Company will have all the rights and remedies available to the Company under the applicable law arising from any resulting patents, trademarks, or copyrights. This agreement will be governed by and construed in accordance with the laws of the State of Indiana. The Town also hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Indiana and of the United States of America located in Clark or Floyd County, Indiana for any actions, suits or proceedings arising out of or relating to this agreement and the transactions contemplated hereby (and the Town agrees not to commence any action, suit or proceeding relating thereto except in such courts). The Town hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement or the transactions contemplated hereby, in the courts of the State of Indiana or the United States of America located in Clark or Floyd County, Indiana.
8. It is further understood and agreed that no failure or delay by the Company in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

[The remainder of this page intentionally left blank. Signature page follows.]

TOWN OF GREENVILLE, INDIANA
August 29, 2011
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If you agree with the foregoing, please sign and return an original of this letter, which will constitute our agreement with respect to the subject matter of this letter.

Very truly yours,

**THIENEMAN ENVIRONMENTAL, LLC,
an Indiana limited liability company**

By: _____
Donald J. Thieneman, Member

CONFIRMED AND AGREED:

TOWN OF GREENVILLE, INDIANA

By: _____

Printed: _____

Title: _____

Dated: September _____, 2011

Cc: Richard R. Fox, 409 Bank Street, New Albany, IN 47150 *Counsel for the Town*
C. Gregory Fifer, 428 Meigs Avenue, Jeffersonville, IN 47130 *Counsel for the Company*