

BILL NO. S-22-03-11

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION CONTRACT – 76698 CSO 55 / ANTHONY AND WAYNE RELIEF SEWER - WORK ORDER #76698 - \$1,978,144.00 - between API CONSTRUCTION CORP. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

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

SECTION 1. That the CONSTRUCTION CONTRACT - 76698 CSO 55 / ANTHONY AND WAYNE RELIEF SEWER - WORK ORDER #76698 - between API CONSTRUCTION CORP. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary FOR INSTALLATION OF APPROXIMATELY 1200 LF OF SANITARY SEWER (SIZE 42-INCH) WITH 4 SANITARY MANHOLES, 645 LF OF STORM SEWER (SIZES 12-INCH, 15-INCH, AND 42-INCH) WITH 12 STORM STRUCTURES; ANTHONY REGULATOR MODIFICATION AND CONNECTION TO CONCRETE CHAMBER AT STRUCTURE P06 006; AS WELL AS INSTALLATION OF 1420 LF OF WATER MAIN (SIZES 6-INCH, 12-INCH, AND 16-INCH) WITH APPURTENANCES, AND FINAL SITE RESTORATION;

involving a total cost of ONE MILLION NINE HUNDRED SEVENTY-EIGHT THOUSAND ONE HUNDRED FORTY-FOUR AND 00/100 DOLLARS - (\$1,978,144.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from
and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

	PROJECT:	CSO 55 / Anthony and Wayne Relief Sewer									
	Resolution#:	76698									
	Work Order#:	76698									
	Project Designer	Veronika Meyer									
	Construction Manager	Pat Dooley									
	Manager	Michael Kiester									
	Bid Date:	February 17, 2022									
	Funding:	2021A SRF Sewer Bond									
BID											
Item#	Description	Quantity	Unit	Engineer's Estimate		API Construction		Rothenberger Company, Inc		Fleming Excavating, Inc	
				Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	Mobilization & Demobilization	1	LS	\$100,000.00	\$100,000.00	\$95,000.00	\$95,000.00	\$70,000.00	\$70,000.00	\$145,752.30	\$145,752.30
2	Sanitary Sewer Tap Relocation	1	EA	\$1,800.00	\$1,800.00	\$10,000.00	\$10,000.00	\$9,500.00	\$9,500.00	\$13,629.50	\$13,629.50
3	Temporary Bypass Pumping	1	LS	\$30,000.00	\$30,000.00	\$40,000.00	\$40,000.00	\$45,000.00	\$45,000.00	\$71,100.00	\$71,100.00
4	Maintenance and Protection of Traffic	1	LS	\$90,000.00	\$90,000.00	\$50,000.00	\$50,000.00	\$20,000.00	\$20,000.00	\$61,800.00	\$61,800.00
5	Temporary Erosion and Sedimentation Control	1	LS	\$3,500.00	\$3,500.00	\$1,000.00	\$1,000.00	\$7,500.00	\$7,500.00	\$3,900.00	\$3,900.00
6	Video Documentation of Conditions	1	LS	\$2,000.00	\$2,000.00	\$1,500.00	\$1,500.00	\$2,000.00	\$2,000.00	\$1,782.50	\$1,782.50
7	Soil Transport to Solid Waste Disposal Facility (Undistributed Quantity)	100	TONS	\$20.00	\$2,000.00	\$24.75	\$2,475.00	\$110.00	\$11,000.00	\$267.25	\$26,725.00
8	Flowable Fill as Backfill	1	CY	\$235.00	\$235.00	\$275.00	\$275.00	\$350.00	\$350.00	\$350.00	\$350.00
9	Flowable Fill for Pipe Abandonment	7	CY	\$180.00	\$1,260.00	\$275.00	\$1,925.00	\$400.00	\$2,800.00	\$400.00	\$2,800.00
10	HMA Patching, 3-inch depth	1540	SY	\$50.00	\$77,000.00	\$44.00	\$67,760.00	\$80.00	\$92,400.00	\$40.30	\$62,062.00
11	Asphalt Milling & Surface Overlay, 1-inch depth	4160	SY	\$15.00	\$62,400.00	\$12.00	\$49,920.00	\$25.00	\$104,000.00	\$11.20	\$46,592.00
12	Pavement Markings	1	LS	\$3,000.00	\$3,000.00	\$10,000.00	\$10,000.00	\$3,500.00	\$3,500.00	\$3,243.00	\$3,243.00
13	Concrete Curb, Type III, Remove and Replace	240	LF	\$50.00	\$12,000.00	\$63.75	\$15,300.00	\$53.00	\$12,720.00	\$114.95	\$27,588.00
14	Asphalt Driveway Restoration	90	SY	\$70.00	\$6,300.00	\$79.25	\$7,132.50	\$50.00	\$4,500.00	\$78.25	\$7,042.50
15	Concrete Driveway Restoration	30	SY	\$105.00	\$3,150.00	\$159.00	\$4,770.00	\$90.00	\$2,700.00	\$288.70	\$8,661.00

16	Lawns and Grasses	1 LS	\$1,000.00	\$1,000.00	\$6,561.75	\$6,561.75	\$7,500.00	\$7,500.00	\$10,021.25	\$10,021.25
17	12-inch RCP Non-Pressure Utility Piping (Storm)	64 LF	\$50.00	\$3,840.00	\$99.75	\$6,384.00	\$250.00	\$16,000.00	\$165.49	\$10,591.36
18	15-inch RCP Non-Pressure Utility Piping (Storm)	63 LF	\$65.00	\$4,095.00	\$125.50	\$7,906.50	\$250.00	\$16,380.00	\$140.54	\$8,854.02
19	42-inch RCP Non-Pressure Utility Piping (Storm)	518 LF	\$240.00	\$124,320.00	\$224.25	\$116,161.50	\$300.00	\$155,400.00	\$1,121.53	\$580,952.54
20	Owner Furnished 6-inch HDPE Pressure Utility Piping	20 LF	\$37.00	\$740.00	\$462.00	\$9,240.00	\$120.00	\$2,400.00	\$338.84	\$6,776.80
21	Owner Furnished 12-inch HDPE Pressure Utility Piping	100 LF	\$85.00	\$8,500.00	\$277.25	\$27,725.00	\$220.00	\$22,000.00	\$184.26	\$18,426.00
22	Owner Furnished 16-inch HDPE Pressure Utility Piping	1300 LF	\$50.00	\$104,000.00	\$183.75	\$238,875.00	\$235.00	\$305,500.00	\$112.11	\$145,743.00
23	12-inch 11.25, 22.5, 45 or 90 Degree Bend HDPE Fittings	2 EA	\$2,000.00	\$4,000.00	\$2,275.00	\$4,550.00	\$3,800.00	\$7,600.00	\$1,826.30	\$3,652.60
24	16-inch 11.25, 22.5, 45 or 90 Degree Bend HDPE Fittings	1 EA	\$2,000.00	\$2,000.00	\$5,400.00	\$5,400.00	\$5,000.00	\$5,000.00	\$3,245.40	\$3,245.40
25	16-inch x 16-inch x 6-inch Tee HDPE Fittings	2 EA	\$3,000.00	\$6,000.00	\$8,450.00	\$12,900.00	\$5,150.00	\$10,300.00	\$3,938.45	\$7,876.90
26	16-inch x 16-inch x 12-inch Tee HDPE Fittings	2 EA	\$3,000.00	\$6,000.00	\$8,550.00	\$13,100.00	\$5,150.00	\$10,300.00	\$4,717.55	\$9,435.10
27	HDPE Reducers All Sizes	2 EA	\$3,000.00	\$6,000.00	\$3,050.00	\$6,100.00	\$3,000.00	\$6,000.00	\$3,231.90	\$6,463.80
28	Water Main Connection (Tapping Sleeve and Valve)	1 EA	\$7,000.00	\$7,000.00	\$5,750.00	\$5,750.00	\$6,200.00	\$8,200.00	\$3,444.00	\$3,444.00
29	Water Main Connection (Connect to existing Water Main)	7 EA	\$7,000.00	\$49,000.00	\$11,600.00	\$81,200.00	\$6,200.00	\$43,400.00	\$14,389.35	\$100,725.45
30	Test Riser (Temporary)	4 EA	\$800.00	\$3,200.00	\$2,050.00	\$8,200.00	\$900.00	\$3,600.00	\$2,780.04	\$11,120.16
31	Removal of Hydrants	1 EA	\$800.00	\$800.00	\$4,400.00	\$4,400.00	\$750.00	\$750.00	\$1,100.00	\$1,100.00
32	Removal of Valve Boxes and Meter Vaults	10 EA	\$350.00	\$3,500.00	\$1,185.00	\$11,850.00	\$1,000.00	\$10,000.00	\$1,770.00	\$17,700.00
33	Temporary Blow-off	3 EA	\$1,200.00	\$3,600.00	\$2,425.00	\$7,275.00	\$1,400.00	\$4,200.00	\$2,219.25	\$6,657.75
34	Cut and Plug Pipe Abandonment	10 EA	\$2,000.00	\$20,000.00	\$5,925.00	\$59,250.00	\$3,100.00	\$31,000.00	\$1,170.00	\$11,700.00
35	Small Water Service Replacement Short Side	3 EA	\$1,900.00	\$5,700.00	\$4,250.00	\$12,750.00	\$2,500.00	\$7,500.00	\$4,337.61	\$13,012.83
36	Small Water Service Replacement Long Side	1 EA	\$2,400.00	\$2,400.00	\$6,500.00	\$6,500.00	\$3,500.00	\$3,500.00	\$9,595.95	\$9,595.95
37	6-inch Water Service Replacement	3 EA	\$6,000.00	\$18,000.00	\$11,300.00	\$33,900.00	\$8,200.00	\$24,600.00	\$10,164.25	\$30,482.75
38	6-inch Water Service Replacement	1 EA	\$8,000.00	\$8,000.00	\$17,500.00	\$17,500.00	\$8,200.00	\$8,200.00	\$6,665.80	\$6,665.80
39	Fire Hydrant Assembly - All Types	3 EA	\$6,000.00	\$18,000.00	\$13,750.00	\$41,250.00	\$9,050.00	\$27,150.00	\$8,677.10	\$26,031.30

40	6-inch Resilient Seat Gate Valve and Box	2 EA	\$2,500.00	\$5,000.00	\$3,750.00	\$7,500.00	\$2,550.00	\$5,100.00	\$3,250.30	\$6,500.60
41	12-inch Resilient Seat Gate Valve and Box	3 EA	\$4,500.00	\$13,500.00	\$7,350.00	\$22,050.00	\$6,050.00	\$18,150.00	\$5,728.40	\$17,185.20
42	18-inch Resilient Seat Gate Valve and Box	4 EA	\$12,000.00	\$48,000.00	\$21,500.00	\$86,000.00	\$13,050.00	\$52,200.00	\$14,856.75	\$59,427.00
43	Pipe Plugs (Storm)	2 EA	\$300.00	\$600.00	\$400.00	\$800.00	\$1,500.00	\$3,000.00	\$925.00	\$1,850.00
44	48-inch Storm Manhole with Storm Casting	2 EA	\$3,000.00	\$6,000.00	\$3,300.00	\$6,600.00	\$4,800.00	\$9,600.00	\$5,312.50	\$10,625.00
45	72-inch Storm Manhole with Storm Casting	7 EA	\$8,500.00	\$59,500.00	\$8,000.00	\$56,000.00	\$9,450.00	\$66,150.00	\$8,989.29	\$62,925.03
46	30-inch Inlet with Storm Casting	3 EA	\$1,650.00	\$4,950.00	\$2,600.00	\$7,800.00	\$4,400.00	\$13,200.00	\$3,400.00	\$10,200.00
47	72-inch Sanitary Manhole with Sanitary Casting	4 EA	\$20,000.00	\$80,000.00	\$10,000.00	\$40,000.00	\$11,450.00	\$45,800.00	\$14,630.00	\$58,520.00
48	Anthony Blvd Regulator (POB 119) Modifications	1 LS	\$150,000.00	\$150,000.00	\$58,175.00	\$58,175.00	\$80,000.00	\$80,000.00	\$82,392.49	\$82,392.49
49	Connection to Existing Structure POB 006	1 EA	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$20,000.00	\$20,000.00	\$14,845.00	\$14,845.00
50	Utility Allowance	1 LS	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
51	Owner's Work Allowance	1 LS	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
TOTAL BASE BID			\$	1,244,890.00	\$	1,462,711.25	\$	1,502,650.00	\$	1,922,782.83
Bid Alternate #1										
Item#	Description	Quantity	Unit	Engineer's Estimate		API Construction		Rothenberger Company, Inc		Fleming Excavating, Inc
				Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price
52	Special Backfill, Compacted Aggregate (Owner Supplied)	3000	CY	\$40.00	\$120,000.00	\$25.00	\$75,000.00	\$25.00	\$75,000.00	\$30.00
53	Gravel Driveway Restoration (Owner Supplied Stone)	40	SY	\$20.00	\$800.00	\$2.50	\$100.00	\$10.00	\$400.00	\$22.50
Total Bid Alternate #1				\$120,800.00		\$75,100.00		\$75,400.00		\$90,900.00
Bid Alternate #2										
Item#	Description	Quantity	Unit	Engineer's Estimate		API Construction		Rothenberger Company, Inc		Fleming Excavating, Inc
				Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price
54	Special Backfill, Compacted Aggregate (Contractor Supplied)	3000	CY	\$40.00	\$120,000.00	\$68.50	\$205,500.00	\$55.00	\$165,000.00	\$45.00
55	Gravel Driveway Restoration (Contractor Supplied Stone)	40	SY	\$20.00	\$800.00	\$55.00	\$2,200.00	\$20.00	\$800.00	\$42.50
Total Bid Alternate #2				\$120,800.00		\$	207,700.00	\$	165,800.00	\$
Bid Alternate #3										
Item#	Description	Quantity	Unit	Engineer's Estimate		API Construction		Rothenberger Company, Inc		Fleming Excavating, Inc
				Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price

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

This Agreement is by and between **Board of Public Works ("Owner")** and API Construction Corp. ("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: **Installation of approximately 1200 LF of sanitary sewer (size 42-inch) with 4 sanitary manholes, 645 LF of storm sewer (sizes 12-inch, 15-inch, and 42-inch) with 12 storm structures; Anthony regulator modification and connection to concrete chamber at structure P06 006; as well as installation of 1420 LF of water main (sizes 6-inch, 12-inch, and 16-inch) with appurtenances, and final site restoration.**

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **76698 CSO 55 / Anthony and Wayne Relief Sewer**

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained **Kristen Buell ("Engineer")** to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by **City Utilities Engineering and DLZ Corp.**

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 within **210** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions.
- B. Work shall be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **240** days after the date when the Contract Times commence to run.
- C. Definition of Substantial Completion for this Work shall consist of **All sewer and structures installed, tested, and in operation; regulator modifications and connections to existing structures completed; water main and appurtenances installed, tested disinfected and in operation.**

4.04 Milestones

A. Parts of the Work must be completed on or before the following Milestone(s):

1. Milestone 1: Regulator Modifications and Water Main work resulting in Anthony Blvd and E Wayne Street Full Intersection Closure must be completed within 90 days from Barricade Permit approval.
 - a. Barricade Permit shall be submitted by Contractor. Contractor is to submit a separate Barricade Permit solely for the intersection closure.

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 **\$1,500.00** 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 **\$1,000.00** for each day that expires after such time until the Work is completed and ready for final payment.
3. Milestones: Contractor shall pay Owner **\$1,000.00** for each day that expires after the number of days (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 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 ::NOT USED::

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.

TOTAL OF ALL UNIT PRICES One Million, Nine Hundred Seventy-Eight Thousand, One Hundred Forty-Four Dollars and Zero Cents

\$1,978,144.00

Basis of Award is Base Bid Plus Alternates #1 and #3

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 Drawing SY-21161, pages 1 through 21, inclusive, with each sheet bearing the following general title: CSO 55 / Anthony and Wayne Relief Sewer;
 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 76998). 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:
API Construction Corp

OWNER:
CITY OF FORT WAYNE

BY: _____
(Name)

BY: _____
Thomas C. Henry, MAYOR

TITLE: _____

DATE: _____
(Date signed by Contractor)

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

API CONSTRUCTION CORP

(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):

(i) Equity ownership exceeding 5% ☐

(ii) Distributable income share exceeding 5% ☐

(iii) Not Applicable (If N/A, go to Section 2) ☐

Name: _____

Name: _____

Address: _____

Address: _____

- 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: _____ %

Name: _____ %

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 X No _____

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).

FISHING LINE TRAIL- LUDWIG RD TO COOK RD- 0501R- 11/16/2021- DAWN RITCHIE
HESSEN CASSEL STORM & SIDEWALKS IMPROVEMENT- WO 83571 DATED 2/2/21- RETAINAGE ONLY REMAINING
COLWIN LANE CULVERT REPLACEMENT- EMERGENCY REPAIR- DEC. 2021 - ERIC STEINMAN

- 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: _____

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.

SECTION 004586
CONFLICT OF INTEREST

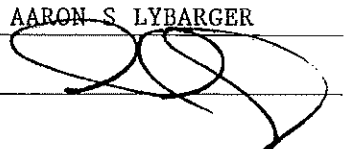
The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

API CONSTRUCTION CORP
(Name of Vendor)

PO BOX 191, LAOTTO IN 46763
Address
260) 897-2743
Telephone
A.LYBARGER@APILAND.NET
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) AARON S LYBARGER Title PRESIDENT

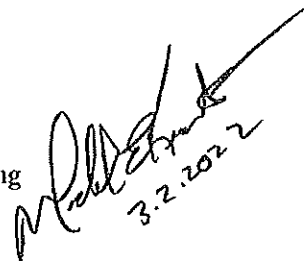
Signature  Date 1/27/2022

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

END OF SECTION 004586

Interoffice Memo

Date: March 2, 2022
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering
RE: CSO 55 / Anthony and Wayne Relief Sewer
76698


3.2.2022

Council District #5

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: Installation of approximately 1200 LF of sanitary sewer (size 42-inch) with 4 sanitary manholes, 645 LF of storm sewer (sizes 12-inch, 15-inch, and 42-inch) with 12 storm structures; Anthony regulator modification and connection to concrete chamber at structure P06 006; as well as installation of 1420 LF of water main (sizes 6-inch, 12-inch, and 16-inch) with appurtenances, and final site restoration.

Implications of not being approved: This project is one part of compliance with the Consent Decree to reduce combined sewer overflow to the Maumee River. If not constructed, Combined Sewer Overflows will continue to discharge to the Maumee River, thus violating our Consent Decree and commitment to reducing overflows to the rivers.

If Prior Approval is being Requested, Justify: N/A

This project was advertised to contractors on 1/20/2022 and 1/27/2022 in the Journal Gazette.

The contract for Resolution #76698 awarded to API Construction Corp. for \$1,978,144.00 was the lowest most responsive bidder of three bidders and 5% below the Engineer's estimate of \$2,085,090.00. The next bidder was \$103,486.00 above API Construction Corp.'s bid.

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

Council Introduction Date: 3/8/2022

CC: Matthew Wirtz
Jill Helfrich
File