

---

**NOTICE TO PROCEED**

---

Owner: City of Auburn Owner's Contract No.:  
Contractor: API Construction Corp. Contractor's Project No.:  
Engineer: Commonwealth Engineers, Inc. Engineer's Project No.: S21022  
Project: CR56-CR11A Sanitary Sewer Extension

Effective Date of Contract: November 24, 2021

---

**TO CONTRACTOR:**

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on November 24, 2021. On or before that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, the number of days to achieve Substantial Completion is 156 (April 29, 2022), and the number of days to achieve readiness for final payment is 28 (May 27, 2022).

Before starting any Work at the Site, Contractor must comply with the following:

- Paragraph 2.01 of the General Conditions provides that Contractor and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.
- Complete Pre-Construction Audio-Video Survey

---

Owner: City of Auburn

  
Authorized Signature

By: Michael D. Ley

Title: Mayor

Date Issued: 11-24-2021

Copy: Engineer





**COMMONWEALTH™  
ENGINEERS, INC.**

A wealth of resources to master a common goal.

November 4, 2021

City of Auburn  
Board of Public Works & Safety  
210 E. 9<sup>th</sup> Street  
Auburn, IN 46706

Attn: Michael Ley, Mayor

Re: CR56-CR11A Sanitary Sewer Extension  
Bid Analysis & Recommendation

Dear Mike,

With regard to the referenced project, we have verified and tabulated each of the bids received by the City on November 2, 2021 in response to the 'Advertisement For Bids' published in accordance with IC 5-3-1-2. A total of four (4) bids were received ranging from \$699,955.00 to \$1,299,791.46. Enclosed herewith please find one copy of the Bid Tabulation for each Board Member, the City Engineer, Clerk-Treasurer and the City Attorney.

The lowest, responsible, responsive bid for this project was submitted by API Construction Corp., 11808 State Road 205 E., LaOtto, IN 46763 in the unit price bid amount of \$699,955.00. The Engineer's Estimate for the project was \$592,000.00; therefore, the low bid was \$107,955.00 above the estimated project budget. This bid was in accordance with the parameters established in the bidding documents and the low bidder appears to be responsible in their abilities to complete this type and size of project.

In conclusion, we would recommend that the City accept the bid from API Construction Corp. and issue a Notice of Award contingent on available funding for the project.

If you or the Board should have any questions or concerns with respect to the attached documentation, please do not hesitate to contact our office.

Respectfully yours,  
**COMMONWEALTH ENGINEERS, INC.**

Benjamin Adams, P.E.  
Project Manager

encl.

9604 Coldwater Road, Suite 203  
Fort Wayne, Indiana 46825  
(260) 494-3223  
FAX (260) 494-3224

[www.commonwealthengineers.com](http://www.commonwealthengineers.com)

## NOTICE OF AWARD

Date of Issuance: November 11, 2021

Owner: City of Auburn

Owner's Contract No.:

Engineer: Commonwealth Engineers, Inc.

Engineer's Project No.: S21075

Project: CR56-CR11A Sanitary Sewer Extension

Bidder: API Construction Corp.

Bidder's Address: P.O. Box 191, LaOtto, IN 46763

### TO BIDDER:

You are notified that Owner has accepted your Bid dated November 2, 2021 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

CR56-CR11A Sanitary Sewer Extension

The Contract Price of the awarded Contract is: \$Six Hundred Ninety-Nine Thousand Nine Hundred Fifty-Five Dollars (\$699,955.00).

Three (3) unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☒ a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner three (3) counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security [*e.g., performance and payment bonds*] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):  
Owner & Engineer to be named as Additional Insured on the Certificate of Insurance Policy.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: City of Auburn

  
Authorized Signature

By: Michael D. Ley

Title: Mayor

Copy: Commonwealth Engineers, Inc.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

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

Prepared by



Issued and Published Jointly by



Copyright © 2013:

National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

The copyright for this EJCDC document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

NOTE: EJCDC publications may be purchased at [www.ejcdc.org](http://www.ejcdc.org), or from any of the sponsoring organizations above.

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

THIS AGREEMENT is by and between City of Auburn ("Owner") and  
API Construction Corp. ("Contractor").

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:

Project involves the installation of approximately 580 LF of 8-inch gravity sewer, 460 LF of 12-inch gravity sewer, 100 LF of jack and bore 12-inch gravity sewer with casing, 4,788 LF of 6-inch force main, manholes, submersible lift station, electrical and all other miscellaneous work required for the completion of the project.

**ARTICLE 2 – THE PROJECT**

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

CR56-CR11A Sanitary Sewer Extension

**ARTICLE 3 – ENGINEER**

- 3.01 The Project has been designed by Commonwealth Engineers, Inc.
- 3.02 The Owner has retained Commonwealth Engineers, Inc. ("Engineer") 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 4 – CONTRACT TIMES**

- 4.01 *Time 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 *Contract Times: Days*

A. The Work will be substantially completed within   \*   days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within   \*   days after the date when the Contract Times commence to run.

\* Substantially complete and provide all items into operation (service) within 156 consecutive calendar days from the date in the Notice to Proceed and fully complete and provide all items

into operation (service) within 28 consecutive calendar days from the date of substantial completion.

4.03 *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 times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. 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 \$1,000.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A 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 Time (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. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.04 [Deleted]

**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. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item): Six Hundred Ninety-Nine Thousand Nine Hundred Fifty-Five and 00/100 Dollars, \$699,955.00

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
<b><u>SEE ATTACHED BID SCHEDULE</u></b>					
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.



- B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## **ARTICLE 6 – PAYMENT PROCEDURES**

### **6.01 *Timing of First Pay Application***

- A. The Contractor shall not submit the first Application for Payment until after January 1, 2022.

### **6.02 *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.

### **6.03 *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 or about the   \*   day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner 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.

#### **\* As funds become available**

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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
    - a. 95 percent of Work completed (with the balance being retainage); ~~if the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~
    - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
  - B. Upon Substantial Completion of the entire construction to be provided under the Contract Documents, 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.
- 6.04 ***Final Payment***
- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

## **ARTICLE 7 – INTEREST**

- 7.01 All amounts not paid when due shall bear interest at the rate of maximum legal rate percent per annum.

## **ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. 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 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; and (3) Contractor’s safety precautions and programs.
  - E. 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.
  - F. 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.
  - G. 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.
  - H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - I. 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.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 *Contents***

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages C1 to C7, inclusive).
  - 2. Performance bond (pages C10 to C12, inclusive). – Part 3

3. Payment bond (pages C13 to C15, inclusive). – Part 4
4. Other bonds.
5. Standard General Conditions (pages 1 to 65, inclusive).
6. Supplementary Conditions (pages 1 to 17, inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Drawings (not attached but incorporated by reference) consisting of 25 sheets with each sheet bearing the following general title: CR56-CR11A Sanitary Sewer Extension.
9. Addenda (numbers 1 to 2, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid (pages 1 to 81, inclusive).
  - b. N/A
11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

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

### **10.02 Assignment of Contract**

- A. Unless expressly agreed to elsewhere in the Contract, 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, money that may become due and money that is 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.

### **10.03 Successors and Assigns**

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

#### 10.04 *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.

#### 10.05 *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 10.05:
  - 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.

#### 10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, 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.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on 11/24/11 (which is the Effective Date of the Contract)

OWNER:

CONTRACTOR:

City of Auburn

API Construction Corp.

By: [Signature]

By: [Signature]

Title: Mayor

Title: President

Attest: [Signature]

Attest: [Signature]

Title: Clerk-Treasurer

Title: Unbroken Treasurer

Address for giving notices:

Address for giving notices:

210 S. Cedar Street, P.O. Box 506

P.O. Box 191, 11808 SR 205 E

Auburn, IN 46706

LaOtto, IN 46763

License No.: \_\_\_\_\_

(where applicable)

*(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

**NOTE TO USER:** Use in those states or other jurisdictions where applicable or required.



