

BILL NO. S-11-11-13

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving MARDEGO HILLS STORMWATER IMPROVEMENTS PHASE 1 - RES. #2099-2009,WO.O. #83139 between API CONSTRUCTION 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 MARDEGO HILLS STORMWATER IMPROVEMENTS PHASE 1 - RES. #2099-2009,WO.O. #83139 by and between API CONSTRUCTION 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 MARDEGO HILLS STORMWATER IMPROVEMENTS PHASE I - construction of approximately 5,400 LF of storm sewers (12" - 18") with all appurtenant manholes, inlets and swale regrading, associated with storm sewer extensions in Mardego Hills:

involving a total cost of FOUR HUNDRED SIXTY THOUSAND, FIVE HUNDRED FIFTY-SIX AND 00/100 DOLLARS - (\$460,556.00). A copy 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

[illegible]

Interoffice Memo

Date: November 9, 2011
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering / ESS
RE: **Mardego Hills Stormwater Improvements Phase I**
Res. #2099-2009, W.O. #83139

[Handwritten signature]
11-9-11

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: "Mardego Hills Stormwater Improvements Phase I" as follows: **The construction of approximately 5,400 LF of storm sewers (12" – 18") with all appurtenant manholes, inlets and swale regrading, associated with storm sewer extensions in Mardego Hills.**

Implications of not being approved: If the Mardego Hills Stormwater Improvements Project is not approved, the neighborhood will continue to experience flooding, in many instances, significant enough to require City Maintenance staff to pump stormwater out of the streets to allow residents to access their homes. Property values and quality of life in a neighborhood that floods will be lower than surrounding neighborhoods.

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

This project was advertised to contractors on September 9, 2011 and September 16, 2011 in the Journal Gazette and the News Sentinel and September 7, 2011 in Frost Illustrated, Inc.

The contract for **Resolution # 2099-2009** awarded to **API Construction** for **\$460,556.00** was the lowest most responsive bidder of 8 bidders and 21% below the Engineer's estimate of \$583,576.00. The second lowest bidder was \$50,058.50 above API Construction's bid.

The cost of said project funded by: Storm Revenue.

Council Introduction Date: November 15, 2011

CC: BOW
Matthew Wirtz
Diane Brown
Construction Manager
Chrono
File

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

Resolution 2099-2009

Work Order 83139

THIS AGREEMENT is by and between the Board of Stormwater Management of the City of Fort Wayne, Indiana (hereinafter called OWNER) and **API Construction**, (hereinafter called 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:

Orders the construction of approximately 5,400 LF of storm sewers (12" – 18") with all appurtenant manholes, inlets and swale regrading, associated with storm sewer extensions in Mardego Hills.

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Mardego Hills Stormwater Improvements Ph. 1

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Engineering Technologies, Inc.. Throughout these Contract Documents, the term ENGINEER is used. ENGINEER 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. OWNER will advise CONTRACTOR prior to issuance of Notice to Proceed as to who will serve as ENGINEER.

ARTICLE 4 – CONTRACT TIMES

- 4.01 Time of 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 Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed by **March 15, 2012** regardless of 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 **May 31, 2012** regardless of the date when the Contract Times commence to run.
- B. Definitions of Substantial Completion for this Work shall consist of **Installation of all pipe and appurtenances.**

4.03 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 4.02 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 **\$1,000.00** for each day that expires after the time specified in Paragraph 4.02 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 **\$500.00** for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

- A. Not used.
- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this Paragraph 5.01.B:

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in Paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General conditions.

UNIT PRICE WORK

See Article 5 (itemized Bid Schedule) of the Bid Form

Four Hundred Sixty Thousand, Five Hundred Fifty Six Dollars and Zero Cents
\$460,556.00

- C. Not Used.

PROJECT:		Mardego Hills Stormwater Improvements Phase I					
Resolution#:		2099-2009					
Work Order#:		83139					
Designer		Anne Marie Smrcek					
Manager		Andi Adams					
Construction Manager		Mike Kiester					
Bid Date: (Quote Date)		October 5, 2011				Corrected Number	
Funding:		Storm Revenue					
BID				Engineer's Estimate		API Construction	
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension
1	Mobilization and Demobilization (Not to Exceed 5%)	1	LS	\$30,000.00	\$30,000.00	\$20,230.00	\$20,230.00
2	Work Allowance (City Determined)	1	LS	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
3	12" Metal End Section	12	EA	\$250.00	\$3,000.00	\$100.00	\$1,200.00
4	Riprap	9	SY	\$40.00	\$360.00	\$45.00	\$405.00
5	Geotextile	9	SY	\$4.00	\$36.00	\$1.00	\$9.00
6	Gravel Drive Restoration	287	SY	\$10.00	\$2,870.00	\$5.00	\$1,435.00
7	Remove Exist. Structure	10	EA	\$250.00	\$2,500.00	\$25.00	\$250.00
8	Remove Exist. Pipe	884	LF	\$5.00	\$4,420.00	\$3.00	\$2,652.00
9	Exist. Pipe, Fill With Grout	1	CY	\$210.00	\$210.00	\$250.00	\$250.00
10	Pipe Anchor, Strap	1	EA	\$100.00	\$100.00	\$250.00	\$250.00
11	Mailbox Assembly: Remove & Reset	4	EA	\$80.00	\$320.00	\$100.00	\$400.00
12	Remove & Reset Fence (330 Red Eagle Pass)	1	LS	\$500.00	\$500.00	\$2,000.00	\$2,000.00
13	Landscaping (330 Red Eagle Pass)	1	LS	\$1,000.00	\$1,000.00	\$2,500.00	\$2,500.00
14	Utility Allowance	1	LS	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
15	Maintenance of Traffic	1	LS	\$5,000.00	\$5,000.00	\$2,500.00	\$2,500.00
16	Erosion Control	1	LS	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
17	Video Document of Conditions	1	LS	\$750.00	\$750.00	\$1,400.00	\$1,400.00
18	Special Backfill, #53/#73 Stone	1450	CY	\$26.00	\$37,700.00	\$5.00	\$7,250.00
19	Clearing Easement	1	LS	\$20,000.00	\$20,000.00	\$27,400.00	\$27,400.00
20	Asphalt Drive Restoration	150	SY	\$55.00	\$8,250.00	\$5.00	\$750.00
21	Concrete Pavement Restoration	245	SY	\$60.00	\$14,700.00	\$35.00	\$8,575.00
22	Concrete Curb, Type "I-A" Restoration	185	LF	\$25.00	\$4,625.00	\$15.00	\$2,775.00
23	Concrete Curb, Type "III" Modified	148	LF	\$30.00	\$4,440.00	\$20.00	\$2,960.00
24	Concrete Drive Restoration	450	SY	\$50.00	\$22,500.00	\$25.00	\$11,250.00
25	Concrete Sidewalk, 4"	40	SY	\$30.00	\$1,200.00	\$25.00	\$1,000.00
26	Surface Restoration and Ditch Grading	14000	SY	\$3.00	\$42,000.00	\$1.00	\$14,000.00
27	Sod	600	SY	\$4.00	\$2,400.00	\$6.00	\$3,600.00
28	Crown Vetch Seeding	1100	SY	\$1.00	\$1,100.00	\$1.00	\$1,100.00
29	48" Dia. Precast Concrete Manhole & Casting (All Depths)	26	EA	\$2,200.00	\$57,200.00	\$1,325.00	\$34,450.00
30	60" Dia. Precast Concrete Manhole & Casting (All Depths)	3	EA	\$3,000.00	\$9,000.00	\$2,150.00	\$6,450.00
31	CDS 2015-4 Water Quality Unit	2	EA	\$10,500.00	\$21,000.00	\$11,000.00	\$22,000.00
32	12" Ductile Iron Pipe for Driveway Culverts	120	LF	\$35.00	\$4,200.00	\$40.00	\$4,800.00
33	6" PVC Pipe	40	LF	\$35.00	\$1,400.00	\$20.00	\$800.00
34	6" X 45° Elbow	1	EA	\$50.00	\$50.00	\$25.00	\$25.00
35	6" PVC Cap	2	EA	\$15.00	\$30.00	\$25.00	\$50.00
36	12" HDPE Pipe	2090	LF	\$35.00	\$73,150.00	\$35.00	\$73,150.00
37	15" HDPE Pipe	2014	LF	\$40.00	\$80,560.00	\$40.00	\$80,560.00
38	18" HDPE Pipe	1359	LF	\$45.00	\$61,155.00	\$45.00	\$61,155.00
39	Plug Exist. Pipe (All Sizes)	5	EA	\$150.00	\$750.00	\$25.00	\$125.00
40	30" Precast Concrete Inlet	23	EA	\$1,000.00	\$23,000.00	\$850.00	\$19,550.00
41	30" X 30" Precast Concrete Inlet	3	EA	\$1,100.00	\$3,300.00	\$900.00	\$2,700.00
42	2' X 3' Precast Concrete Inlet	4	EA	\$1,200.00	\$4,800.00	\$1,100.00	\$4,400.00
43	18" Nyloplast Drain Basin	1	EA	\$1,000.00	\$1,000.00	\$1,200.00	\$1,200.00
TOTAL BID				\$583,576.00		\$460,556.00	

MARDEGO HILLS DRAINAGE IMPROVEMENT

NAME: API CONSTRUCTION CORP

ARTICLE 5 - BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s)

ITEM #	WORK ITEM #	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	00 95 00-A	Mobilization and Demobilization (Not to Exceed 5%)	1	LS	20230.00	20230.00
2	00 95 00-B	Work Allowance (City Determined)	1	LS	\$25,000.00	\$25,000.00
3	00 95 00-C	12" Metal End Section	12	EA	100.00	1200.00
4	00 95 00-D	18" Metal End Section	1	EA	150.00	150.00
5	00 95 00-E	Riprap	9	SY	45.00	405.00
6	00 95 00-F	Geotextile	9	SY	1.00	9.00
7	00 95 00-G	Chip & Seal Pavement Restoration	1,000	SY	7.00	7000.00
8	00 95 00-H	Gravel Drive Restoration	287	SY	5.00	1435.00
9	00 95 00-I	Remove Exist. Structure	10	EA	25.00	250.00
10	00 95 00-J	Remove Exist. Pipe	884	LF	3.00	2652.00
11	00 95 00-K	Exist. Pipe, Fill With Grout	1	CY	250.00	250.00
12	00 95 00-L	Pipe Anchor, Strap	1	EA	250.00	250.00
13	00 95 00-M	Mailbox Assembly: Remove & Reset	4	EA	100.00	400.00
14	00 95 00-N	Remove & Reset Fence (330 Red Eagle Pass)	1	LS	2000.00	2000.00
15	00 95 00-O	Landscaping (330 Red Eagle Pass)	1	LS	2500.00	2500.00
16	00 95 00-P	Utility Allowance	1	LS	\$5,000.00	\$5,000.00
17	01 55 26-A	Maintenance of Traffic	1	LS	2500.00	2500.00
18	01 57 00-A	Erosion Control	1	LS	3000.00	3000.00
19	01 71 16.13-A	Video Document of Conditions	1	LS	1400.00	1400.00
20	31 00 05-A	Special Backfill, #53/#73 Stone	1,350	CY	5.00	6750.00
21	31 11 00-A	Clearing Easement	1	LS	27400.00	27400.00
22	32 12 16-A	Asphalt Drive Restoration	150	SY	5.00	750.00
23	32 13 00-A	Concrete Pavement Restoration	205	SY	35.00	7175.00
24	32 16 00-A	Concrete Curb, Type "I-A" Restoration	155	LF	15.00	2325.00
25	32 16 00-B	Concrete Curb, Type "III" Modified	148	LF	20.00	2960.00
26	32 16 00-C	Concrete Drive Restoration	450	SY	25.00	11250.00
27	32 16 00-D	Concrete Sidewalk, 4"	40	SY	25.00	1000.00
28	32 92 00-A	Surface Restoration and Ditch Grading	14,000	SY	1.00	14000.00
29	32 92 00-B	Sod	600	SY	6.00	3600.00
30	32 92 00-C	Crown Vetch Seeding	1,100	SY	1.00	1100.00
31	33 05 13.26-A	48" Dia. Precast Concrete Manhole & Casting (All Depths)	25	EA	1325.00	33125.00
32	33 05 13.26-B	60" Dia. Precast Concrete Manhole & Casting (All Depths)	3	EA	2150.00	6450.00
33	33 05 13.26-C	CDS 2015-4 Water Quality Unit	2	EA	11000.00	22000.00
34	33 05 33-A	12" Ductile Iron Pipe for Driveway Culverts	120	LF	40.00	4800.00
35	33 05 37.13-A	6" PVC Pipe	40	LF	20.00	800.00
36	33 05 37.13-B	6" X 45° Elbow	1	EA	25.00	25.00
37	33 05 37.13-C	6" PVC Cap	2	EA	25.00	50.00
38	33 05 38.13-A	12" HDPE Pipe	2,090	LF	35.00	73150.00
39	33 05 38.13-B	15" HDPE Pipe	2,014	LF	40.00	80560.00
40	33 05 38.13-C	18" HDPE Pipe	1,359	LF	45.00	61155.00
41	33 41 00-A	Plug Exist. Pipe (All Sizes)	5	EA	25.00	125.00
42	33 44 13-A	30" Precast Concrete Inlet	23	EA	850.00	19550.00
43	33 44 13-B	30" X 30" Precast Concrete Inlet	3	EA	900.00	2700.00
44	33 44 13-C	2' X 3' Precast Concrete Inlet	4	EA	1100.00	4400.00
45	33 44 13-D	18" Nyloplast Drain Basin	1	EA	1200.00	1200.00
TOTAL BID						464,031.00

Unit prices have been computed in accordance with Paragraph 11.03B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all Unit Prices Bid Items will be based on actual quantities provided, determined as provided in the Contract Documents.

BID FORM
00 41 00-3

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. ENGINEER will process Applications for Payment as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment within 30 days of receipt during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the Schedule of Values established in Paragraph 2.07.A of 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 in the General Requirements.
 - 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, in accordance with Paragraph 14.02 of the General Conditions:
 - a. 95 % of Work completed (with the balance being retainage); and
 - b. 95 % 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% 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% 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.
- C. E.B.E. Good Faith Deposit.
 - 1. The Board will retain 5% of the total owing to insure CONTRACTOR'S compliance with the E.B.E. Rider attached to this contract. Payments to the CONTRACTOR are not to exceed 95% of the total contract amount until the OWNER has verified the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.
- D. Escrow Agreement.
 - 1. If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Stormwater Management 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 Stormwater Management, 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 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 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate at the maximum rate allowed by law at the place of the Project.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 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 exploration and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General conditions and (2) reports and drawings of Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.
 - E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
 - F. CONTRACTOR does not consider that any 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 correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. CONTRACTOR has given DESIGN MANAGER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof provided by DESIGN MANAGER is acceptable to CONTRACTOR.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. 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.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

- 1. This Agreement (pages 00 52 00-1 to 00 52 00-8, inclusive);
- 2. E.B.E. Rider (pages 00 54 33-1 to 00 54 33-3, inclusively);
- 3. Escrow Account Agreement (pages 00 54 43-1 to 00 54 43-3, inclusive);
- 4. Performance Bond (pages 00 61 13.13-1 to 00 61 13.13-2, inclusive);
- 5. Payment Bond (pages 00 61 13.16-1 to 00 61 13.16-2, inclusive);
- 6. Guaranty Bond (pages 00 61 31-1 to 00 61 31-2, inclusive);
- 7. General Conditions (pages 00 72 00-1 to 00 72 00-41, inclusive);
- 8. Supplementary Conditions (pages 00 73 00-1 to 00 73 00-9, inclusive);
- 9. Standard Specifications (page 00 95 00-1 To 00 95 00-12);
- 10. Drawings consisting of SY-20389, 1-21, inclusive, with each sheet bearing the following general title: Mardego Hills Stormwater Improvements Ph. 1);
- 11. Addenda (numbers 1 to 3, inclusive);
- 12. Attachments to this Agreement (enumerated as follows);
 - a. CONTRACTOR's Bid Schedule (page 00 41 00-3);
 - b. Documentation submitted by CONTRACTOR prior to Notice of Award (pages ____ to ____, inclusive);

AGREEMENT
00 52 00-5

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. Written Amendments;
 - c. Work Change Directives;
 - d. Change Order(s)
- 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 Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 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.

10.03 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.

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 Other Provisions

- A. None.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement (Contract/Resolution Number 2099-2009) in triplicate. Two counterparts have been delivered to OWNER, and one counterpart delivered to CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

This Agreement will be effective on Nov. 2, 2011 (which is the Effective Date of the Agreement).

CONTRACTOR:

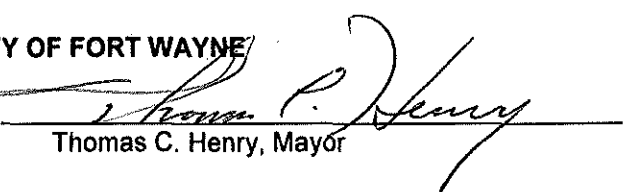
API CONSTRUCTION

BY: 

KIRK BRAUN, PRESIDENT

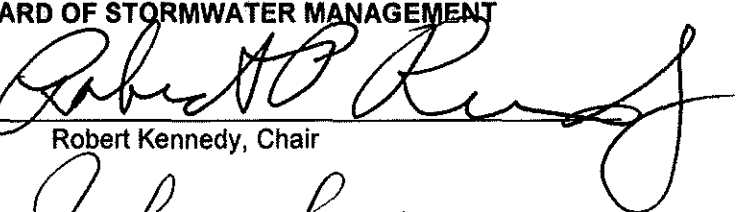
OWNER:

CITY OF FORT WAYNE

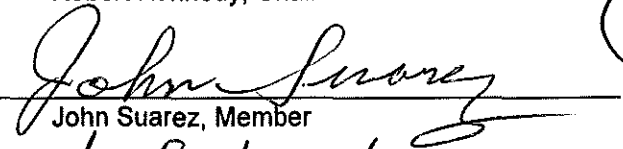
BY: 

Thomas C. Henry, Mayor

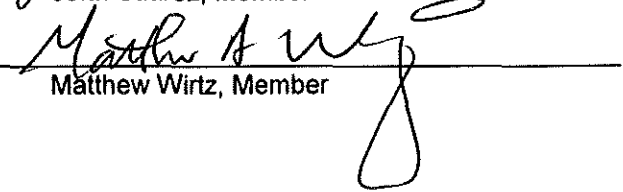
BOARD OF STORMWATER MANAGEMENT

BY: 

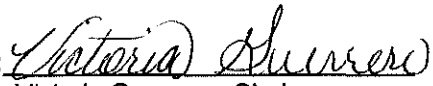
Robert Kennedy, Chair

BY: 

John Suarez, Member

BY: 

Matthew Wirtz, Member

ATTEST: 

Victoria Guerrero, Clerk

ACKNOWLEDGMENT (CONTRACTOR)

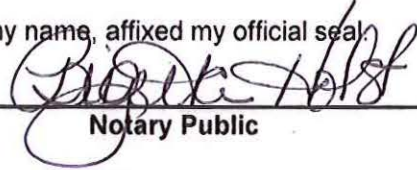
STATE OF INDIANA)

SS:)

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 21 day of OCTOBER, 2011, personally appeared the within named KIRK BRAUN who under penalty of perjury says that he is the PRESIDENT of API CONSTRUCTION CORP as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of API CONSTRUCTION CORP for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.



Notary Public

BRIGETTA HOLST

Printed Name of Notary

My Commission Expires:

Resident of ALLEN County

ACKNOWLEDGMENT (OWNER)

STATE OF INDIANA)

SS:)

COUNTY OF ALLEN)

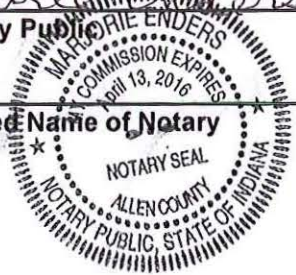
BEFORE ME, a Notary Public, in and for said County and State, this 2nd day of November 2011, personally appeared the within named Thomas C. Henry, Robert Kennedy, John Suarez, Matthew Wirtz and Victoria Guerrero, by me personally known, who being by me duly sworn said that they are respectively the **Mayor** of the **City of Fort Wayne**, and **Chairman, Members, and Clerk** of the Board of Stormwater Management 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.



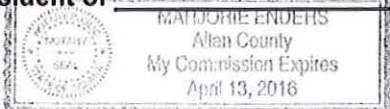
Notary Public

Printed Name of Notary



My Commission Expires:

Resident of _____ County



AGREEMENT
00 52 00-8

E.B.E. RIDER

THIS AGREEMENT made and entered into by and between the **CITY OF FORT WAYNE**, hereinafter referred to as **OWNER** and **API Construction**, hereinafter referred to as **CONTRACTOR**,

WITNESSETH:

WHEREAS, the **CONTRACTOR** is the apparent low bidder on construction project commonly referred to as the **Mardego Hills Stormwater Improvements Phase**, which project was bid under Resolution Number **2099-2009**; and

WHEREAS, **CONTRACTOR** agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as **E.B.E.'s**, as subcontractors on this specific project is ten percent (10%) of the Contract Price; and

WHEREAS, **OWNER** has, pursuant to Executive Order 90-01 (as amended 5-8-06), adopted a goal of at least 10% of the Contract Price to Emerging Business Enterprises as defined under said Executive Order (as amended 5-8-06); and

WHEREAS, said Executive Order (as amended 5-8-06) states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. **Conditional Award** - Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction Contract to which this Rider is attached, **OWNER** awards the construction Contract to the **CONTRACTOR**.
2. **E.B.E. Retainage requirements** - If the **CONTRACTOR** is in compliance with the provisions of the construction Contract to which this Rider is attached, the **OWNER** will make payments for such work performed and completed. However, in any such case, the **OWNER** will retain five percent (5%) of the total amount owing to insure compliance with this **E.B.E. Rider**. Upon final inspection and acceptance of the work, and determination by the Fort Wayne «BOARD» that the **CONTRACTOR** has made a good faith effort to subcontract ten percent (10%) of the Contract

Price to emerging business enterprises, the CONTRACTOR will be paid in full.

In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the Contract Price is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. 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 10% E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 5% of the total Contract Price will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver - If, at the time final payment application is made, CONTRACTOR has not attained the ten percent (10%) E.B.E. 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 ten percent (10%) E.B.E. goal.
4. Determination of Waiver Requests - The Contract 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.
5. Good Faith Per Se. - In any case, a CONTRACTOR shall be deemed to have made good faith efforts at compliance, where E.B.E.'s have subcontracted for every sub-contract for which there are qualified E.B.E.'s available.
6. Consequence of noncompliance - In the event the Board of Public Works approves a recommendation that CONTRACTOR failed to make good faith efforts at compliance, the Contract Price shall be reduced by the amount calculated as the difference between five percent (5%) and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and CONTRACTOR agrees to accept the reduced amount as full payment under the terms of his/her Contract.
7. Waiver approved - In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider 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, the parties have executed the E.B.E. Rider this 2nd day of November.

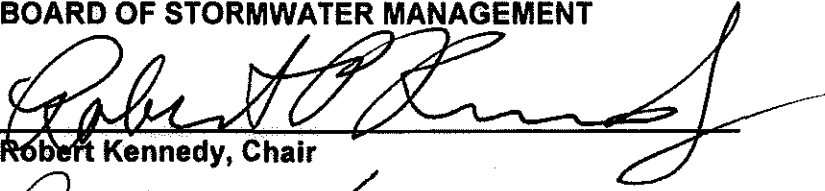
CONTRACTOR

API CONSTRUCTION

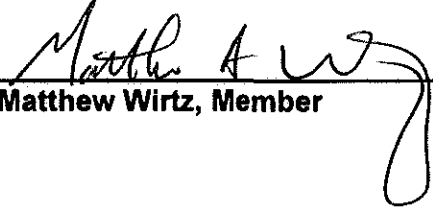
BY: 

KIRK BRAUN, PRESIDENT

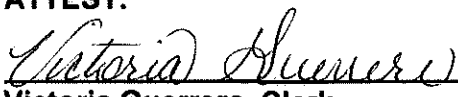
BOARD OF STORMWATER MANAGEMENT


Robert Kennedy, Chair


John Suarez, Member


Matthew Wirtz, Member

ATTEST:


Victoria Guerrero, Clerk

RE: Mardego Hills Stormwater Improvements Phase I
Resolution No. 2099-2009
Work Order No. 83139