

RESOLUTION NO. 2013-03

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SPEEDWAY, INDIANA APPROVING A CONTRACT WITH AMERICAN STRUCTUREPOINT FOR DATA AND FLOW ANALYSIS AS PART OF THE FARLEY AREA SEWER STUDY

WHEREAS, the Town of Speedway, Indiana (the "Town") is responsible for the design, maintenance, construction and replacement of its sewer collection system within the Town and its service area; and


WHEREAS, the Town has determined that certain services are needed to assist with the development of capital projects and improvements in certain areas of the sanitary sewer system.

NOW THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SPEEDWAY, INDIANA:

1. The Council approves a contract with American Structurepoint for the scope of work as outlined in Attachment A hereto.
2. The Council approves the contract in an amount not to exceed \$4,500.
3. The Town Manager is authorized to sign the contract and take steps necessary to execute the contract.

PASSED BY the Speedway Town Council this 28th day of January, 2013.

TOWN COUNCIL OF THE TOWN OF
SPEEDWAY, INDIANA



Eileen Fisher, President

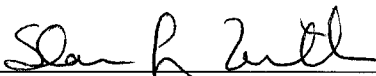


Gary L. Raikes, Vice President

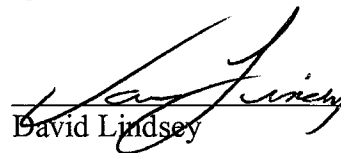


Jeff Hartman

Attest:



Sharon L. Zishka, Clerk-Treasurer



David Lindsey

William Suffel

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of date of latest required signature on page 4 ("Effective Date") between

Town of Speedway, Indiana ("Owner")

and American Structurepoint, Inc. ("Engineer")

Engineer agrees to provide the services described below to Owner for Reconstruction of Norfolk Street and
~~Improvements to Hollister Drive~~ ("Project").

Description of Engineer's Services: Provide periodic construction inspection services for curb and
Sidewalk replacement

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of ~~1.0%~~ **1.5%** per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount

equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a

substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. 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 this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished

by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

~~E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition). Owner shall require Contractor to purchase and maintain general liability and to cause Engineer and Engineer's Consultants to be listed as additional insureds on a primary and non-contributory basis with respect to such liability purchased and maintained by Contractor for the Project.~~

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by

Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.

G. ~~To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.~~ *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, consultants, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.

Indemnification by Owner. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, employees, and Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of

tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

I. In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Owner and the Engineer agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation. The Owner and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.

J. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Engineer.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

9.01 Payment (Lump Sum Plus Hourly Rates)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. For _____ services, a Lump Sum amount of \$ _____.
2. For _____ services, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus Engineer's consultants' charges, if any, not to exceed the amount of \$ _____.
3. Engineer's Standard Hourly Rates are attached as **Appendix 1**.
4. The total compensation for reimbursable expenses is estimated to be \$ _____.

B. ~~The Engineer's compensation is conditioned on the time to complete construction not exceeding _____ months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.~~

See Appendix D, attached hereto and made a part hereof

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

Town of Speedway
By: Barbara A. Lawrence
Title: Town Manager
Date Signed: 1/28/13

Engineer:

American Structurepoint, Inc.
By: [Signature]
Title: Project Manager
Date Signed: 11-16-2012
Engineer License or Certificate No. PE60018834
State of: Indiana

Address for giving notices:

Wendell Walters
1450 N. Lynhurst Dr.
Speedway, Indiana 46224

Address for giving notices:

Willis R. Conner
7260 Shadeland Station
Indianapolis, Indiana 46256

APPENDIX "A"

SERVICES TO BE FURNISHED BY ENGINEER

In fulfillment of this Agreement, the Engineer shall comply with the requirements of the appropriate regulations and requirements of the Town of Speedway.

The Engineer shall be responsible for performing construction inspection services:

- A. Through additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the site, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- B. The Engineer shall provide part-time construction observation and inspection services for construction of the Project in conformance with accepted standards for these services.

1) ENGINEERING PERSONNEL

- a. For the fulfillment of all services outlined in Section 2 below, the Engineer will provide one part-time Resident Project Representative, inspectors, and clerical and secretarial personnel as required for a period of time necessary to complete the construction project.
- b. The qualifications and experiences of personnel provided by the Engineer are subject to approval by the Owner, and no personnel will be assigned to the project until the Owner's approval is obtained.
- c. The part-time Resident Project Representative will report to the Owner on all matters concerning contract compliance and administration.
- d. The part-time Resident Project Representative will coordinate project activities with Owner's project manager.

2) DESCRIPTION OF SERVICES

- a. Review of Work, Inspection, and Tests
 - i. Conduct periodic on-site inspections of the work in progress for the Owner as a basis for determining that the project is proceeding in accordance with the Contract Documents.
 - ii. Accompany visiting inspectors representing local, state, or federal agencies having jurisdiction over the project and report details of such inspections to the Owner.

- iii. Verify that the required quality control sampling and testing has been accomplished and materials certification has been provided by the Contractor

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Appendix "B"

Information and Services to be furnished by Owner

The Owner shall furnish Engineer with the following.

- A. Guarantee of access to enter upon public and private lands, as required for the Engineer to perform services under this Agreement
- B. An Owner representative with decision-making authority for inquiries

Appendix "C"

Schedule

The Engineer shall be prepared to begin the services under this Agreement immediately upon execution of this Agreement.

Appendix "D"

Compensation

A. Amount of Payment

1. The Engineer's total compensation under this Agreement shall not exceed \$5,000 unless approved in writing by the Owner.
2. The Engineer shall be compensated for periodic construction inspection for Norfolk Street and Hollister Drive on an hourly basis in accordance with the following hourly billing rates per classification. The total obligation under this portion of the Agreement shall not exceed \$5,000, unless approved in writing by the Owner.

<u>Labor Classification</u>	<u>Hourly Rate</u>
Project Manager	\$145/hour
Construction Inspector	\$90/hour
Construction Inspector (overtime)	\$103.50/hour

B. Method of Payment

1. The Engineer may submit a maximum of one invoice voucher per calendar month for services covered under this Agreement. The invoice voucher shall be submitted to the Owner. The invoice voucher shall represent the value, to the Owner, of the partially completed services as of the date of the invoice voucher. The Engineer shall attach thereto a summary of each pay item in Section A of this appendix, percentage completed, and prior payments.
2. The Owner, for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay to the Engineer for rendering such services the fees established above in the following manner:
 - a. For completed services, and upon receipt of invoices from the Engineer and the approval thereof by the Owner, payments covering the services performed shall be due and payable to the Engineer.
 - b. From the partial payment thus computed, there shall be deducted all previous partial fee payments made to the Engineer.
3. In the event of a change in the scope, character, or complexity of the services on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with Paragraph 3.01 of the general provisions set out in this Agreement.