

**RESOLUTION NO. 2014-8**

**A RESOLUTION APPROVING A CONTRACT WITH AMERICAN  
STRUCTUREPOINT ENGINEERING FOR TECHNICAL REVIEW AND  
SERVICES RELATED THERETO**

WHEREAS, the Town of Speedway, Indiana (the "Town") has heretofore established, constructed and financed a municipal sanitary sewer works for the benefit and provision of services to the Town's residents; and

WHEREAS, the Town now requires technical assistance with regard to a sewer separation project within the Town and limited related services.

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

1. The Town Council hereby approves an Engineering Services Contract for technical review services as outlined in "Attachment A" hereto payable from the Sanitation Depreciation Account or the 2012 SRF Loan.

2. The Council authorizes the Town Manager to execute the Contract authorized above and to take the administrative steps necessary to approve the contract.


PASSED BY the Speedway Town Council this 10th day of February 2014.

TOWN COUNCIL OF THE TOWN OF  
SPEEDWAY, INDIANA

  
\_\_\_\_\_  
Gary L. Raikes, President

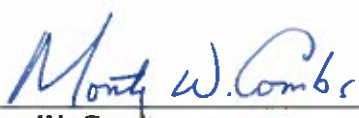
  
\_\_\_\_\_  
David Lindsey, Vice President

  
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Eileen Fisher, Member

  
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Jeff Hartman, Member

  
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William Suffel, Member

ATTEST

  
\_\_\_\_\_  
Monty W. Combs  
Clerk-Treasurer

SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of the date of the latest required signature below ("Effective Date")  
between

Town of Speedway ("Owner")

and

American Structurepoint, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Engineering Evaluation for the Speedway Division B Sewer Separation Project ("Project").

Engineer's Services under this Agreement are generally identified as follows:

as described in Appendix A

Owner and Engineer further agree as follows:

**1.01 Basic Agreement and Period of Service**

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period:  
See Schedule in Appendix C.
- ~~C. If the Project includes construction related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding \_\_\_\_\_ months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.~~

**2.01 Payment Procedures**

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. 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, then the amounts due Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, 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. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

### 3.01 *Termination*

A. The obligation to continue performance 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. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer 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 for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform 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 Engineer's receipt of written notice from Owner.

B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.

C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

### 4.01 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *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. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. 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. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. ~~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 (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.~~ Owner shall require Contractor to purchase and maintain general liability insurance 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 insurance purchased and maintained by Contractor for the Project.

- G. All 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 shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and 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, on any other project, or for any other use or purpose, 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 its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties. 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.~~
- H. ~~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.

- I. 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 as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or 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: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

#### 7.01 *Basis of Payment – See Appendix D*

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer ~~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. Engineer's standard hourly rates are attached as Appendix I a fee to be negotiated at the time such additional services are requested.~~

Attachments:

Appendix A, Engineer's Scope of Services  
Appendix B, Owner Responsibilities  
Appendix C, Schedule  
Appendix D, Compensation

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

OWNER:

By:

Title:

Date Signed:

ENGINEER:

By:

Title:

Date Signed:

Engineer License or Firm's Certificate  
Number:

State of: Indiana

Address for giving notices:

Barbara Lawrence

Town of Speedway

1450 North Lynhurst Drive

Speedway, Indiana 46224

Address for giving notices:

Willis R. Conner

American Structurepoint, Inc.

7260 Shadeland Station

Indianapolis, Indiana 46256

## **Appendix "A"**

### **Services by Engineer**

#### **I. BASIC SERVICES**

- A. The Engineer shall prepare a report for the evaluation of Division B Sewer Separation Project in the Town of Speedway, Indiana. The Engineer shall conduct an independent evaluation based on prior assessments, proposed design plans, standards to be followed, current site conditions and items identified in Appendix B to identify major concerns from a financial, maintenance, and safety stance for the Town of Speedway.
- B. Upon completion and final approval of the services by the Owner, the Engineer shall deliver to the Owner the following.
  - 1. Five bound copies of the Engineering Evaluation report will be provided to the Owner.
  - 2. One electronic copy (PDF format) will be provided to the Owner.
  - 3. Additional general data will be issued at the mutual agreement of the Engineer and the Owner.

#### **II. ADDITIONAL SERVICES**

- A. Additional Services beyond the scope of this agreement may be identified by the Owner and added by an amendment to this Agreement.



## **Appendix "B"**

### **Information and Services to be furnished by Owner**

The Owner shall furnish Engineer with the following.

- A. Criteria for design and details
- B. Specifications and standard drawings applicable to the project
- C. Available data from the transportation planning process
- D. Plans of existing storm sewer systems within the project limits, if available
- E. Any stormwater analysis performed for systems existing in or around the project limits
- F. Utility plans available to the Owner covering utility facilities and underground conduits within or adjacent to the project limits
- G. Guarantee of access to enter upon public and private lands as required for the Engineer to perform services under this Agreement.
- H. All legal services as may be required for development of the project
- I. An Owner representative with decision-making authority for inquiries
- J. Prior studies, evaluations and site assessments
- K. Proposed design plans for the project area
- L. Construction dailies and field notes
- M. Construction as-builts

## **Appendix "C"**

### **Schedule**

All services by the Engineer under this Agreement will be completed and delivered to the Owner for review and approval within the following approximate time periods, exclusive of Owner's review time.

#### **A. Engineering Evaluation**

1. A draft of the Engineering Evaluation will be complete within 21 calendar days after NTP and all documents (plans, standards for design, prior studies/assessments, and items identified in Appendix B) have been provided to Engineer.
2. The Final Engineering Evaluation Report will be complete 7 calendar days after Owner review and approval of the Engineering Evaluation Report.

## Appendix "D"

### Compensation

#### A. Amount of Payment

1. The Engineer shall be compensated for the services to be performed under this Agreement a 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. The total obligation under the Agreement shall not exceed \$8,000 unless approved in writing by the Owner.
  - a. Hourly Rate Schedule

Project Manager	\$180.00
Senior Project Engineer	\$150.00
Project Engineer	\$120.00
Staff Engineer	\$90.00
Senior Technician	\$120.00
  - b. The hourly rates may be adjusted after July 1, 2014, on an annual basis after approval of the Town of Speedway.
2. The Engineer shall not be paid for any service performed by the Owner or not required to develop this project.

#### 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:
  - c. 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.
  - d. From the partial payment thus computed, there shall be deducted all previous partial fee payments made to the Engineer.