

BILL NO. S-12-03-20

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PROFESSIONAL SERVICES AGREEMENT: ST. JOSEPH/BECKETT RUN EQUALIZATION FACILITY RES. #2308-2010, W.O. #75589 between AMERICAN STRUCTUREPOINT, INC. 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 PROFESSIONAL SERVICES AGREEMENT: ST. JOSEPH/BECKETT RUN EQUALIZATION FACILITY RES. #2308-2010, W.O. #75589 by and between AMERICAN STRUCTUREPOINT, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for Construction Management and Resident Project Representative services during construction that include coordination with plant activities and staff, daily inspections, construction schedule management and coordination, construction progress meetings, administrative duties, coordination of training services, record drawing review, and other general construction management tasks. In addition, the Utility requires project record documentation as well as compliance with project deadlines;

involving a total cost of FIVE HUNDRED SEVEN THOUSAND, FIVE HUNDRED THIRTY-ONE AND 02/100 DOLLARS - (\$507,531.02). 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

1 public inspection, according to law.

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

5
6
7 _____
8 Council Member

9 APPROVED AS TO FORM AND LEGALITY

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11
12 _____
13 Carol Helton, City Attorney

PROFESSIONAL SERVICES AGREEMENT

**RESIDENT PROJECT REPRESENTATIVE AND
CONSTRUCTION MANAGEMENT SERVICES**

For

ST. JOSEPH/BECKETT RUN EQUALIZATION FACILITY ("PROJECT")

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

Board of Public Works
City of Fort Wayne
200 E. Berry St.
Suite 240
Fort Wayne, IN 46802

and

AMERICAN STRUCTUREPOINT ("ENGINEER")

116 East Berry Street, Suite 1515
Fort Wayne, IN 46802

Who agree as follows:

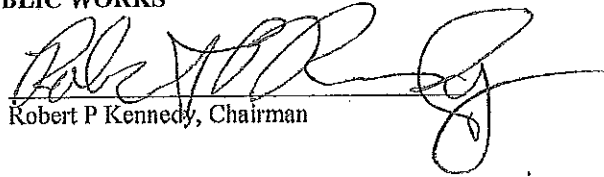
CITY hereby engages ENGINEER to perform the services set forth in Part I - Services ("Services") and ENGINEER agrees to perform the Services for the compensation set forth in Part III - Compensation ("Compensation"). ENGINEER shall be authorized to commence the Services upon execution of this Agreement and written authorization to proceed from CITY. CITY and ENGINEER agree that these signature pages, together with Parts I-IV and attachments referred to therein, constitute the entire Agreement ("Agreement") between them relating to the Project.

APPROVALS

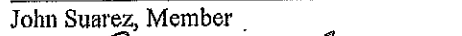
APPROVED FOR CITY

BOARD OF PUBLIC WORKS

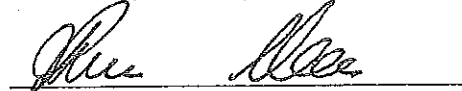
BY:


Robert P Kennedy, Chairman

BY:


John Suarez, Member

BY:


Kumar Menon, Member

ATTEST:

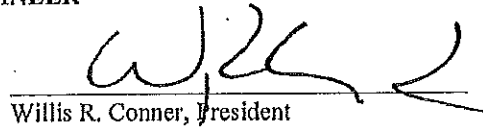

Victoria Edwards, Clerk

DATE:

March 14, 2012

APPROVED FOR ENGINEER

BY:


Willis R. Conner, President

DATE:

3-9-2012

PART I

SCOPE OF BASIC RESIDENT PROJECT REPRESENTATIVE AND CONSTRUCTION MANAGEMENT SERVICES

A. PROJECT DESCRIPTION

The purpose of this project is to provide Construction Management (CM) and Resident Project Representative (RPR) services for the St. Joseph/Beckett Run Equalization Facility Project.

B. SCOPE OF WORK

ENGINEER shall provide Resident Project Representative (RPR) and Construction Management services, set forth in Attachment 1 - Scope of Services, Exhibits A through D of this Agreement.

As RPR Firm, ENGINEER shall provide construction observation services of the Contractor's work as provided in the General Conditions of the Construction Contract Documents. The extent and limitations of duties, responsibilities and authority of the RPR are as set forth in the EJCDC General Conditions for the Construction Contract as may be amended through City and Construction Manager's agreement in writing.

ENGINEER shall provide construction management services, including acting as the City's representative as provided in the General Conditions of the Construction Contract Documents. The extent and limitations of the duties, responsibilities, and authority of ENGINEER as assigned in the General Conditions shall not be modified, except as City and ENGINEER may otherwise agree in writing. All of the City's instructions to Contractor will be issued through ENGINEER's Construction Manager (CM), which shall have authority to act on behalf of City in dealings with the Contractor to the extent provided in this Agreement and General Conditions except as otherwise provided in writing.

ENGINEER shall issue a sub-contract to ARCADIS-US for the Construction Management services of this Project. ARCADIS-US shall serve as the CM and provide services, set forth in Attachment 1 - Scope of Services, Exhibits A through D of this Agreement.

C. TERM FOR RENDERING SERVICES AND PROJECT STAFFING

PROJECT TIMING

ENGINEER shall be authorized to commence services set forth herein upon notice to proceed issued by the City and for the duration as generally noted below. The intent of this Agreement is for the Engineer to provide services through Final Completion of the Project's Construction Phase.

<u>Task</u>	<u>Duration</u>	<u>Estimated Completion</u>
Construction Management and RPR Services	16 Months	September 30, 2013

PROJECT STAFFING

The City upon notification may reduce the level of CM or RPR staffing services within the above noted construction durations based on the Contractor's level of construction activities.

The ENGINEER shall not provide CM or RPR services during periods of construction shut down by the Contractor.

D. OPTIONAL ADDITIONAL SERVICES

Upon separate written authorization by the CITY and negotiated fees, ENGINEER may provide additional services of the types listed below:

- Preparing to serve or serving as a consultant or witness for City in any litigation, arbitration, or other dispute resolution process related to construction project.
- Providing Construction Phase services beyond the original date for completion of the Work.
- Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

PART II
CITY'S RESPONSIBILITIES

In addition to other responsibilities set forth in this Agreement, City shall, at its expense, do the following in a timely manner so as not to delay the services:

A. CITY'S REPRESENTATIVE

Designate a representative for the project who shall have the authority to act as the City's representative to respond to questions, transmit instructions, receive information, interpret and define City's requirements, serve as liaison with the ENGINEER and make decisions with respect to the Services. The City representative for this Agreement will be Bill Maxwell.

B. DATA

Provide all available information, including previous reports, environmental assessments, investigations and other studies in the possession of City relevant to the design or construction of the Project.

C. DECISIONS

Provide all criteria and full information as to City's requirements for the Services and make timely decisions on matters relating to the Services.

D. MEETINGS

Attend the pre-bid conference; bid opening, pre-construction conference, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

E. DOCUMENT REVIEWS

Examine documents submitted by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as City deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

F. ACCESS

Provide access to Project premises for ENGINEER and the ENGINEER's representatives and/or subcontractors to provide services as defined under this Agreement.

G. OTHER CONSULTANTS

Advise ENGINEER of the scope of services of any independent consultants employed by City to perform or furnish services in regard to the Project.

H. PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)

Provide access and support for the City's Project Management Information System (PMIS) for duration of Project.

I. PROJECT DEVELOPMENTS

Give prompt written notice to ENGINEER whenever the CITY becomes aware of any event, occurrence, condition or circumstance which may affect the ENGINEER'S performance of services, or any defect or nonconformance in ENGINEER'S services, the Work, or in the performance of any Contractor.

PART III
COMPENSATION

A. COMPENSATION

Compensation for services performed in accordance with Part I -- Scope of Basic Engineering Services and referenced Exhibits of this Agreement will be based on hours actually spent and expenses actually incurred with a not-to-exceed engineering fee of \$507,531.02 as summarized in attached *Attachment 2 – Scope of Services Fee Proposal*.

ENGINEER's costs will be based on the hours incurred to complete the project times the hourly rates of the various personnel, per *Attachment 3 – Hourly Rate Schedule*. All Reimbursable costs incurred for the project will be invoiced at cost.

Payment for outside consulting and/or professional services or legal services performed by a Subconsultant will be billed at actual cost to ENGINEER. An invoice supporting subconsultant services and charges will be provided as backup. The ENGINEER will obtain written City approval before authorizing these services.

B. BILLING AND PAYMENT

1. Timing/Format

- a. ENGINEER shall invoice City monthly for Services completed at the time of billing. Such invoices shall be prepared in a form and supported by documentation as City may reasonably require.
- b. City shall pay ENGINEER within 30 days of receipt of approved invoice.

PART IV STANDARD TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the services are performed. No warranty or guarantee, express or implied, are provided, including warranties or guarantees contained in any uniform commercial code.

2. **CHANGE OF SCOPE.** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by ENGINEER and CITY. ENGINEER will promptly notify CITY of any perceived changes of scope in writing and the parties shall negotiate modifications to this Agreement.

3. **SAFETY.** ENGINEER shall establish and maintain programs and procedures for the safety of its employees. ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.

4. **DELAYS.** If events beyond the control of ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be extended for a period equal to the delay. In the event such delay exceeds 90 days, ENGINEER will be entitled to an equitable adjustment in compensation.

5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party in the event of substantial failure by the other party to perform in accordance with its obligations under this Agreement through no fault of the terminating party. CITY shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

ENGINEER or CITY, for purposes of convenience, may at any time by written notice terminate the services under this Agreement. In the event of such termination, ENGINEER shall be paid for all authorized services rendered prior to termination including reasonable profit and expenses relating thereto.

6. **REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purpose intended, shall be at CITY's sole risk.

7. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CITY only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.

8. **RELATIONSHIP WITH CONTRACTORS.** ENGINEER shall serve as CITY's professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY's contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY's contractors.

9. **MODIFICATION.** This Agreement, upon execution by both parties hereto, can be modified only by a written instrument signed by both parties.

10. **PROPRIETARY INFORMATION.** Information relating to the Project, unless in the public domain, shall be kept confidential by ENGINEER and shall not be made available to third parties without written consent of CITY.

11. **INSURANCE.** ENGINEER shall maintain in full force and effect during the performance of the Services the following insurance coverage; provided, however, that if a High Risk Insurance Attachment is attached hereto, the requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements:

- a) Worker's Compensation per statutory requirements
- b) General Liability \$1,000,000 minimum per occurrence/ \$1,000,000 aggregate (if the value of the projects exceeds \$10,000,000 then this shall be \$5,000,000 aggregate).
- c) Automobile Liability \$1,000,000 per occurrence

- d) Products Liability \$1,000,000 per occurrence
- e) Completed Operations Liability \$1,000,000 minimum per occurrence

The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal. All Certificates of Insurance should be sent to the following address:
City of Fort Wayne Purchasing Department
200 East Berry St., Suite #480
Fort Wayne, IN 46802

12. **INDEMNITIES.** To the fullest extent permitted by law, ENGINEER shall indemnify and save harmless the City from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property to the extent caused directly by the negligent errors or omissions of ENGINEER, its agents or employees.

13. **LIMITATIONS OF LIABILITY.** Each party's liability to the other for any loss, cost, claim, liability, damage, or expense (including attorneys' fees) relating to or arising out of any negligent act or omission in its performance of obligations arising out of this Agreement, shall be limited to the amount of direct damage actually incurred. Absent gross negligence or knowing and willful misconduct which causes a loss, neither party shall be liable to the other for any indirect, special or consequential damage of any kind whatsoever.

14. **ASSIGNMENT.** The rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and insure to the benefit of any permitted assigns.

15. **ACCESS.** CITY shall provide ENGINEER safe access to any premises necessary for ENGINEER to provide the Services.

16. **PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

17. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate another section of this Agreement or operate as a waiver of any future default, whether like or different in character.

18. **SEVERABILITY.** The various term, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

19. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the part for whom they are signing.

20. **STATUTE OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims regarding ENGINEER's performance under this Agreement shall expire one year after Project Completion.

21. **DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, ENGINEER agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within ENGINEER's possession or control and which relate, in any manner, to the performance of the work undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, ENGINEER shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the ENGINEER. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the ENGINEER attesting that it has provided the City with complete copies of all documents, records and other information which relates to the work contemplated by the Agreement.

**ATTACHMENT 1
EXHIBIT A
SCOPE OF SERVICES**

**RESIDENT PROJECT REPRESENTATIVE SERVICES AND
CONSTRUCTION MANAGEMENT AGREEMENT**

For

ST. JOSEPH/BECKETT RUN EQUALIZATION FACILITY ("PROJECT")

CONSTRUCTION TEAM DEVELOPMENT AND PROJECT MANAGEMENT

General:

The basic services to be provided to the City of Fort Wayne ("CITY") under this scope are Construction Management (CM) and Resident Project Representative (RPR) services. These services supplement City's staff resources and support construction phase services provided by the Design Consultant(s) for their respective projects for the duration of the construction.

The Construction Management Team (CMT) shall be defined as the Construction Manager and Resident Project Representatives(s), as provided by the ENGINEER. The CMT shall provide construction management services as described in this Attachment.

- A. Construction Field Offices. The CMT shall be located at the project construction site in a field office provided by the Contractor. The Construction Field Office shall be furnished rent-free, and shall include ancillary facilities including furniture, copiers, and other equipment as specified in the Construction Documents.
- B. Project Scheduling. CMT shall review the Contractor's Construction Progress Schedule, including key milestones, interface events, schedule of submittals, and schedule of values and prepare comments accordingly for Design Consultant's review and determination of acceptability. If required by contract documents review cost loaded Project Schedule for acceptability.
- C. PMIS Implementation During Construction. CMT shall utilize the City's Project Management Information System (PMIS), an internet based construction control system for construction document control. Procedures as established in the Contract Documents shall be managed and implemented by the CMT throughout the Project(s) duration.

**ATTACHMENT 1
EXHIBIT B
SCOPE OF SERVICES**

**RESIDENT PROJECT REPRESENTATIVE SERVICES AND
CONSTRUCTION MANAGEMENT AGREEMENT
For
ST. JOSEPH/BECKETT RUN EQUALIZATION FACILITY ("PROJECT")**

RESIDENT PROJECT REPRESENTATIVE SERVICES

General:

ENGINEER shall provide a Resident Project Representative (RPR) to assist Construction Manager (CM) in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree as directed by CM and CITY.

The duties and responsibilities of the RPR are as follows:

- A. Duties, responsibilities, and authority of the RPR are as set forth in the EJCDC General Conditions for the Construction Contract as may be amended through CITY and Construction Manager's agreement in writing.
- B. RPR is Construction Manager's (CM) agent at the site, will act as directed by and under supervision of CM, and will confer with CM regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with CM and Contractor, keeping CITY advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with CITY and Design Consultant with the knowledge of and under the direction of CM.
- C. RPR shall assist and support CM in duties and responsibilities as outlined in Exhibit C in this Agreement.
- D. Conduct on-Site observations of Contractor's work in progress to assist CM in determining if the Work is in general proceeding in accordance with the Contract Documents.
- E. Report to CM whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise CM of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- F. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- G. Observe, record, and report to CM appropriate details relative to the test procedures and systems start-ups.
- H. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to CM.

- I. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- J. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to CM.
- K. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- L. Maintain records for use in preparing Project documentation.
- M. Upon completion of the Work, furnish original set of all RPR Project documentation to CM.
- N. Furnish to CM periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- O. Furnish to CM and Owner copies of all inspection, test, and system start-up reports.
- P. Immediately notify CM of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- Q. During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to CM for review and forwarding to Owner prior to payment for that part of the Work.
- R. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- S. Participate in a final inspection in the company of Engineer, Owner, CM, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- T. Observe whether all items on the final list have been completed or corrected and make recommendations to CM concerning acceptance and issuance of the Notice of Acceptability of the Work.
- U. Resident Project Representative shall not:
 - 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
 - 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are

specifically required by the Contract Documents.

5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by CM.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

**ATTACHMENT 1
EXHIBIT C
SCOPE OF SERVICES**

**RESIDENT PROJECT REPRESENTATIVE SERVICES AND
CONSTRUCTION MANAGEMENT AGREEMENT
For
ST. JOSEPH/BECKETT RUN EQUALIZATION FACILITY ("PROJECT")**

CONSTRUCTION MANAGEMENT SERVICES

General:

CMT shall provide construction management services as described in this Exhibit and shall have duties, responsibilities and authority as defined in Part I.B of this Agreement.

Generally, CMT will assist the CITY in the management of construction and construction management aspects of this work, but not limited to:

- A. Construction Phase Services. CM / CMT shall provide oversight of construction management and inspection during the construction phase of each project and provide general consultation on technical issues during construction. The CM / CMT shall:
1. Pre-Construction Conference. Prepare for and conduct the Pre-Construction Conference for each construction package. Construction Manager shall prepare meeting agenda and notes.
 2. Visits to Site and Observation of Construction. In connection with observations, in addition to the RPR duties, of the Work while it is in progress:
 - a. The Construction Manager shall make visits to the site at intervals appropriate to the various stages of construction, as Construction Manager deems necessary, in order to observe the progress and quality of the Work. Such visits and observations by Construction Manager, if any, are not intended to be exhaustive or to extend to every aspect of the Contractor's Work in progress. Such visits will not involve detailed inspections of the Contractor's Work in progress beyond the responsibilities specifically assigned to the Construction Manager in this Agreement and the Contract Documents. Rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Construction Manager's exercise of professional judgment. Based on information obtained during such visits and such observations, the Construction Manager will determine in general if the Contractor's Work is proceeding in accordance with the Contract Documents, and the Construction Manager shall keep the CITY informed of the progress of the Work.
 - b. Make suggestions to CITY staff, when Design Consultant(s) visits may be required, in order to assist the Construction Manager in observing the progress and quality of the Work specifically identified by the RPR. Obtain report of Design Consultant's findings if, in general, the identified Work is proceeding in accordance with the Contract Documents.
 - c. The purpose of Construction Manager's, Design Consultant's visits, and representation by the RPR at the Site, will be to enable the Construction Manager to better carry out the duties and responsibilities assigned to and undertaken by Construction Manager during the Construction Phase, and, in addition, by exercise of Construction Manager's and Design Consultant's efforts, to provide the CITY a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the

design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by the Contractor. Construction Manager and Design Consultant(s) shall not, during such visits or as result of such observations of the Work in progress, supervise, direct, or have control over the Contractor's Work, nor shall Construction Manager and Design Consultant(s) have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's Work or for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Construction Manager and Design Consultant(s) neither guarantee the performance of any Contractor nor assume responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

3. *Defective Work.* Recommend to the CITY that the Contractor's Work be disapproved and rejected while it is in progress if, on the basis of such observations, the Construction Manager believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
4. *Clarification and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Contractor's Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Obtain necessary clarifications and interpretations of the Contract Documents from Design Consultant(s). Construction Manager may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
5. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to the CITY, as appropriate, and prepare Change Orders and Work Change Directives as required. Obtain support documentation prepared by Design Consultant(s) for preparing Change Orders and Work Change Directives.
6. *Shop Drawings and Samples.* Utilizing PMIS to process shop drawings, forward samples, and other data to Design Consultant(s) for review and approval. Forward Design Consultant(s) review comments, approvals, or other action to Contractor. It is the CITY's goal to process delegation of submittals within PMIS system in 48 hours or less.
7. *Substitutes.* Forward Contractor's substitution requests to Design Consultant(s) for evaluation to determine acceptability. Forward Design Consultant's evaluation of acceptability to CITY for action. Forward CITY's determination of acceptability to Contractor.
8. *Inspections and Tests.* Require such special inspections or tests of Contractor's Work as deemed reasonably necessary. Construction Manager shall review certificates of inspections, tests, and approvals of general construction work as required by laws and regulations and the Contract Documents. Review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Construction Manager shall be entitled to rely on the results of such tests. Forward certificates of inspections, tests, and approvals of mechanical, electrical, and instrumentation work as required by laws and regulations and the Contract Documents to Design Consultant(s) for review. Forward results of Design Consultant's review to Contractor.
9. *Disagreements between CITY and Contractor.* Render formal written decisions on claims of the CITY and the Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work. In rendering such decisions, Construction Manager shall be fair and not show partiality to the

CITY or Contractor and shall not be liable in connection with any decision rendered in good faith. Obtain Design Consultant's assistance in rendering such decisions.

10. *Application for Payment.* Based on Construction Manager's observations and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amount that Construction Manager recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Construction Manager's representation to CITY, based on such observations and review, that, to the best of Construction Manager's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Construction Manager's responsibility to observe Contractor's Work. In the case of unit price work, Construction Manager's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Construction Manager contained in the paragraph titled *Visits to Site and Observation of Construction* are expressly subject to the limitations set forth in said paragraph and other express or general limitations in this Agreement and elsewhere.
- b. By recommending any payment, Construction Manager shall not thereby be deemed to have represented that observations made by Construction Manager to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Construction Manager in this Agreement and the Contract Documents. Neither Construction Manager's review of Contractor's Work for the purposes of recommending payments nor Construction Manager's recommendation of any payment including final payment will impose on Construction Manager responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws and regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Construction Manager to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the contract price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to the CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between the CITY and the Contractor that might affect the amount that should be paid.

11. *Contractor's Completion Documents.*

- a. Receive maintenance and operating instructions and forward said material to Design Consultant(s) for review and approval. Forward Design Consultant's review comments, approvals, or other action to Contractor.
- b. Receive and review guarantees.
- c. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, shop drawings, samples and other data approved as provided under paragraph titled *Shop Drawings and Samples*, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.

- d. CM shall review status of records documents on a monthly basis to ensure documents are being adequately maintained during construction.
 - e. Forward annotated record documents to Design Consultant(s) at completion of construction. Forward other documents to the CITY.
12. *Startup & Training Services.* Review the Startup and Training Plans prepared by Design Consultant(s). Work with the CITY, Design Consultant(s) and the Contractor to resolve review comments. Coordinate the Startup and Training Plans with the CITY, Contractor and Design Consultant(s) in support of Paragraphs B and C below.
13. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire work ready for its intended use, in company with the CITY, Design Consultant(s) and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of the CITY and Design Consultant(s), the Construction Manager considers the Work Substantially Complete; Construction Manager shall deliver a certificate of Substantial Completion to the CITY and the Contractor.
14. *Final Notice of acceptability of the Work.* Conduct a final inspection to determine if the completed Work of the Contractor is acceptable so that Construction Manager may recommend, in writing, that final payment be made to Contractor. Obtain the assistance of Design Consultant(s) to conduct the final inspection. Accompanying the recommendation for final payment, Construction Manager shall also provide a notice that the Work is acceptable to the best of Construction Manager's knowledge, information, and belief and based on the extent of the services provided by Construction Manager under this Agreement. Such notice shall be subject to the provisions of the Contract Documents paragraphs relating to *Final Completion* and *Final Payment*.
15. *Limitation of Responsibilities.* Construction Manager shall not be responsible for the acts or omissions of any Contractor or of any of their subcontractors, suppliers, or any other individual or entity performing or furnishing any of the work. Construction Manager shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.
- B. *Commissioning and Start-Up Plan.* CMT shall coordinate and assist Commissioning and Start-Up Activities, as defined in the Contract Documents. CMT will utilize procedures developed by Design Consultant for each new facility that includes start-up phase procedures, testing schedule and checklists, including coordination of final O&M manual review and acceptance, and coordination of CITY operational and maintenance training for each new facility following construction.
- C. *Start-Up Phase Services.* CMT shall coordinate the start-up phase of new facilities, as needed, following construction. CMT and Design Consultant(s) shall monitor the start-up of new facilities including testing newly constructed equipment and processes to verify that they meet or exceed their design intent.
- D. Duration of *Construction Phase* services will commence with the Notice to Proceed and will terminate upon written recommendation by CM for final payment to Contractor(s), as provided for in the General Conditions of the Construction Contract.

**ATTACHMENT 1
EXHIBIT D
SCOPE OF SERVICES**

**RESIDENT PROJECT REPRESENTATIVE SERVICES AND
CONSTRUCTION MANAGEMENT AGREEMENT
For
ST. JOSEPH/BECKETT RUN EQUALIZATION FACILITY ("PROJECT")**

POST-CONSTRUCTION PHASE SERVICES

General:

- A. Post-Construction Phase Thning: Services may commence during the Construction Phase and will terminate at the end of the Construction Contract's correction period, or earlier as directed by the CITY.

ATTACHMENT 2

SCOPE OF SERVICES FEE PROPOSAL

**RESIDENT PROJECT REPRESENTATIVE SERVICES AND
CONSTRUCTION MANAGEMENT AGREEMENT**

For

ST. JOSEPH/BECKETT RUN EQUALIZATION FACILITY ("PROJECT")

RPR Construction Phase Services

For RPR services outlined in Exhibits A thru D, a fee of: \$361,531.02

CM Construction Phase Services

For CM services outlined in Exhibits A thru D, a fee of: \$146,000.00

Total Not to Exceed Fee \$507,531.02

ATTACHMENT 3

HOURLY RATE SCHEDULE

RESIDENT PROJECT REPRESENTATIVE SERVICES AND CONSTRUCTION MANAGEMENT AGREEMENT

For

ST. JOSEPH/BECKETT RUN EQUALIZATION FACILITY ("PROJECT")

1. Payment of actual hourly rates for services rendered by ENGINEER'S employees in each billing class working directly on the Project. The rates shall include the cost of customary and statutory benefits, general and administrative overhead and profit. Hourly rates will be in accordance with the following schedule:

<u>EMPLOYEE CLASSIFICATIONS</u>	<u>RATE</u>
American Structurepoint, Inc./MSKTD Rates	
Engineer Grade 3-Joe Dubyel (RPR)	\$90/hr
Engineer Grade 3 – Joe Dubyel (RPR-Overtime)	\$105/hr
Engineer Grade 4 – John Tucker (Field Manager)	\$95/hr
Technician Grade 8 – TBD as needed (Construction Inspector)	\$80/hr
ARCADIS-US Rates	
Officer	\$246/hr
Sr. Associate	\$195/hr
Associate	\$185/hr
Sr. Project Engineer – Grade 6	\$178/hr
Project Engineer - Grade 5	\$120/hr
Project Engineer - Grade 4	\$129/hr
Engineer – Grade 3	\$120/hr
Engineer – Grade 2	\$108/hr
Engineer – Grade 1	\$ 97/hr
Technician – Grade 8	\$158/hr
Technician – Grade 7	\$135/hr
Technician – Grade 6	\$122/hr
Technician – Grade 5	\$105/hr
Technician – Grade 4	\$ 99/hr
Technician – Grade 3	\$ 76/hr
Technician – Grade 2	\$ 64/hr
Technician – Grade 1	\$ 56/hr
Engineering Student Tech Grade 1	\$ 30/hr
Principal Consultant II	\$225/hr
Sr. Consultant	\$189/hr
Consultant	\$153/hr
Analyst I	\$133/hr

2. Payment for reimbursable costs, as authorized by the CITY will be invoiced at cost. These items may include, but not limited to: shipping charges; printing services; special supplies not furnished by the CITY; or traveling and lodging expenses, as required, to perform management duties. Mileage for travel will be billed at the IRS business rate per mile for automobile.

CITY OF FORT WAYNE, INDIANA

American Structurepoint, Inc.
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

- 1. FINANCIAL INTERESTS;**
- 2. POTENTIAL CONFLICTS OF INTERESTS;**
- 3. CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$25,000 or more. Vendors shall disclose the financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration of an award of contract by the City. This Disclosure Statement must be completed and submitted together with Vendor's contract, bid, proposal, or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1. Disclosure of Financial Interest in Vendor

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5% ☒

(ii) Distributable Income share exceeding 5% ☐

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

Name: Willis R. Conner, President, Owner

Name: Gregory L. Henneke, Executive Vice President, Owner, Secretary/Treasurer

Same address for both: 7260 Shadeland Station, Indianapolis, IN 46256

- b. For each individual listed in Section 1a., show his/her type of equity ownership: sole proprietorship ☐
stock ☒ partnership interest ☐ units (LLC) ☐ other (explain) _____

- c. For each individual listed in Section 1a., show the percentage of ownership interest in Vendor (or its parent):
ownership interest: see below%

Willis R. Conner: 87.7%

Gregory L. Henneke: 8.1%

Section 2. Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a., check "Yes" or "No" to indicate which, if any, of the following potential

VENDOR DISCLOSURE STATEMENT FORM

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conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

a. City employment, currently or in the previous 3 years, including contractual employment for services. Yes _____ No. X

b. City employment of "Member of Immediate Family" (defined herein as: spouse, parent, child or sibling) including contractual employment for services in the previous 3 years. Yes _____ No. X

c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years. Yes _____ No. X

d. Relationship to Member of Immediate Family holding appointive City office currently or in the previous 3 years. Yes _____ No. X

Section 3. DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

a. Does Vendor have current contracts (including leases) with the City? Yes X No _____

b. If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact using space below (attach additional pages as necessary).

Project	Contract Date	Contract No.	City Contact
Adams Center Road Sewer and Water Main E	11/2/11	Work Order No. 75685	Kumar Menon
Fairfield Avenue and Ewing Street	1/11/12	UNKNOWN	Shan Gunawardena
Combined Sewage Pump Station	9/7/11	Work Order No. 75449	Kumar Menon
State Boulevard	9/2/09	Work Order No. 12090	Shan Gunawardena

c. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No. X

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

Section 4. CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of

government;

- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating.

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

American Structurepoint, Inc.

(Name of Vendor):

7260 Shadeland Station, Indianapolis, IN 46256

Address

(317) 547-5580

Telephone

sscoville@structurepoint.com

E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) Scott Scoville

Title CFO

Signature SSC

Date 3/13/12

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

Interoffice Memo

Date: **March 22, 2012**
To: Common Council Members
From: Bill Maxwell, Program Manager, City Utilities Engineering
RE: **Contract Title: St. Joseph/Beckett Run Equalization Facility
Res. #2308-2010, W.O. #75589**

Consultant Selected: American Structurepoint, Inc.

Contract Value: \$507,531.02

The consultant shall provide: Construction Management (CM) and Resident Project Representative (RPR) services during construction that include coordination with plant activities and staff, daily inspections, construction schedule management and coordination, construction progress meetings, administrative duties, coordination of training services, record drawing review, and other general construction management tasks. In addition, the Utility requires project record documentation as well as compliance with project deadlines.

Project Description: This is a project to build a sanitary sewage equalization facility to relieve the St. Joseph Interceptor during heavy rain events, located upstream of the Beckett's Run Creek/ St. Joseph River confluence. The facility will include a diversion structure, a large lift station, two 3.4 MG storage tanks, an emergency generator, and bleed-back piping and valves. The construction cost for the facility is about \$10 million.

Implications of not being approved: These projects must be monitored and closely coordinated by a multi-disciplined construction engineering team to ensure that the project is constructed according to the plans and specifications and meet schedule deadlines set forth in the Agreement. City Utilities Engineering does not have the resources available to monitor these construction activities to the detail required.

If Prior Approval is being Requested, Justify: Prior approval NOT requested

Selection and Approval Process: The consultants were selected through the RFQ process (Request for Qualifications) based on their prior experiences, qualifications and the specific needs demanded by projects of this size and complexity. The RFQ announcement was sent to over 120 firms and 3 firms submitted statements of qualification. City Utilities Engineering reviewed the qualifications, conducted interviews with qualified individuals, developed the team of individuals within the firms for areas of expertise needed to deliver the projects, and negotiated final pricing with the selected firms. City Utilities Engineering finds the not-to-exceed fee to be appropriate for this work.

The Board of Public Works approved this contract in the amount of \$507,531.02 on Wednesday March 14, 2012.

Funding: The Professional Service Agreement (PSA) will be funded by the Sewer Utility 2011 Bond.

CC: BOW
Matthew Wirtz
Diane Brown
Chrono
File