

BILL NO. S-17-07-14

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PROFESSIONAL SERVICES AGREEMENT - CONSTRUCTION MANAGEMENT AND RESIDENT PROJECT REPRESENTATIVE SERVICES AGREEMENT FOR WPCP POND 2 & 3 SWEETWATER PUMP STATION CM/RPR - W.O. #76242 - \$147,540.00 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 - CONSTRUCTION MANAGEMENT AND RESIDENT PROJECT REPRESENTATIVE SERVICES AGREEMENT FOR WPCP POND 2 & 3 SWEETWATER PUMP STATION CM/RPR - W.O. #76242 - 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 (CM) and Resident Project Representative (RPR) services during the construction of the Pond 2 & 3 Sweetwater Pump Station that include oversight on Contractor activities, inspection services for all work, change management, schedule management, coordination with plants activities, and document controls. Engineer will coordinate startup, training, and project commissioning services;

1 involving a total cost NOT TO EXCEED ONE HUNDRED FORTY-SEVEN
2 THOUSAND FIVE HUNDRED FORTY AND 00/100 DOLLARS -
3 (\$147,540.00). A copy of said Contract is on file with the Office of the City
4 Clerk and made available for public inspection, according to law.

5
6 **SECTION 2.** That this Ordinance shall be in full force and effect
7 from and after its passage and any and all necessary approval by the Mayor.

8
9
10 _____
11 Council Member

12 APPROVED AS TO FORM AND LEGALITY

13
14
15 _____
16 Carol Helton, City Attorney

PROFESSIONAL SERVICES AGREEMENT
CONSTRUCTION MANAGEMENT AND
RESIDENT PROJECT REPRESENTATIVE SERVICES AGREEMENT
For
WPCP PONDS NO. 2 & NO. 3 SWEETWATER PUMPSTATION

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 Street
Fort Wayne, IN 46802

and

AMERICAN STRUCTUREPOINT, INC. ("ENGINEER")

116 E. Berry Street
Suite 1515
Fort Wayne, Indiana 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: Absent
Robert P. Kennedy, Chair

BY: Mike Avila
Mike Avila, Member

BY: Kumar Menon
Kumar Menon, Member

ATTEST: Lyndsey Richards
Lyndsey Richards, Clerk

DATE: 7/19/17

APPROVED FOR ENGINEER

BY: [Signature]

DATE: July 13, 2017

PART I

SCOPE OF BASIC ENGINEERING SERVICES

A. PROJECT DESCRIPTION

The purpose of this project is to provide Construction Management (CM) and Resident Project Representative (RPR) services for the following Water Pollution Control Plant Project:

- Ponds No. 2 & No. 3 Sweetwater Pumpstation
 - This work is general described as the construction of subsurface structures including a duplex pumps station and valve vault, process mechanical piping, associated valves, force mains, instrumentation, electrical, controls, and site work.

B. SCOPE OF WORK

ENGINEER shall serve as the "Construction Manager (CM), and Resident Project Representative, set forth in Attachment 1 - Scope of Services, Exhibits A through E of this Agreement.

As the CM Firm, ENGINEER shall act 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, 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.

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.

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.

<u>Task</u>	<u>Duration</u>	<u>Estimated Completion</u>
Construction Management	8 months	May, 2018
RPR Services	8 months	May, 2018
Document Controls	8 months	May, 2018

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 Chris Ravenscroft, P.E.

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 \$ 147,540.00 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
1 E Main Street, Rm B-91
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.

**ATTACHMENT 1
EXHIBIT A
SCOPE OF SERVICES**

**CONSTRUCTION MANAGEMENT AND
RESIDENT PROJECT REPRESENTATIVE SERVICES AGREEMENT
For
WPCP PONDS NO. 2 & NO. 3 SWEETWATER PUMPSTATION**

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 in support of the City's treatment plant processes. 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.

Construction Management Team (CMT) shall provide construction management services as described in this Attachment.

- A. **Construction Field Offices.** The CMT can elect to be located at the project construction site in a field office provided by the ENGINEER. If provided the Construction Field Office shall be furnished rent-free, and shall include ancillary facilities including furniture, copiers, and other equipment required to support the project.
- B. **Construction Management Core Team.** The Construction Management Core Team shall be defined as the Construction Manager, Resident Project Representative(s), Project Controls Support Services and Scheduling QA/QC Advisor Services. The CM Core Team for the duration of this contract is listed below.

Position	Team Member(s)/ Affiliation *	Primary Project(s) Responsibilities
Construction Manager	Joe Dubyel, PE / American Structurepoint, Inc.	Construction Management oversight
RPR	Dwayne Backus / American Structurepoint, Inc.	RPR and CM scope
Document Controls Project Controls	Mark Herald / VS Engineering, Inc.	PMIS implementation, schedule review, and other documentation

*Any proposed changes in Team Members by the ENGINEER must be approved by the CITY.

- C. **Construction Management Plan.** CM Team shall develop and implement a Construction Management Plan (CMP) defining policies, procedures and methods that will be used for managing assigned construction projects.
- D. **Project Scheduling.** CM Team 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.

- E. Construction Schedule QA/QC Reviews. CM Team shall provide an independent Construction Schedule Advisor to conduct monthly construction schedule reviews to verify proper interrelationships and dependencies among project work elements and identify potential critical path and overall schedule completion issues. Construction Schedule Advisor shall, as required, work with the Contractor to resolve project scheduling issues.
- F. Monthly Construction Status Documentation. CM Team shall provide a monthly construction status documentation, incorporating available PMIS construction reports, of the current status of the Project's budget, expenditures, estimate to complete, change orders, schedule status (including critical path discussions), project issues list, resolution reporting for key project issues and other information required to inform the City of status and progress.
- G. Consultation with Project Designer(s) During Construction. CM Team shall consult with and obtain advice and assistance of Design Consultant(s) in the general administration of the Contract Documents. Design Consultant's communications with the City and Contractor shall be through, or with the knowledge of the CM.
- H. PMIS Implementation During Construction. CM Team 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 CM Team throughout the Project(s) duration. CM Team shall provide training to the Contractor and subcontractors, as required, on the use of PMIS system.

**ATTACHMENT 1
EXHIBIT B
SCOPE OF SERVICES**

**CONSTRUCTION MANAGEMENT AND
RESIDENT PROJECT REPRESENTATIVE SERVICES AGREEMENT
For
WPCP PONDS NO. 2 & NO. 3 SWEETWATER PUMPSTATION**

CONSTRUCTION MANAGEMENT SERVICES

General:

CM Team 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, CM Team will assist the City in the management of construction and construction management aspects of this work, but not limited to:

- A. *Construction Management Plan Implementation.* CM Team shall implement and update the Construction Management Plan ("CMP") throughout Project duration. The CMP implementation shall include, but not be limited to, the following:
1. Develop Cost and Schedule Control Report Methods.
 2. Deliver Monthly Construction Status documents.
 3. PMIS implementation coordination and training procedures for staff and Contractor.
 4. General CM responsibility matrix and CM Core Team responsibility matrix.
 5. Develop payment application review checklist.
 6. Photo documentation practices.
 7. Commissioning and start-up implementation procedures, including pre-planning agenda/checklist, manpower schedule and forms of documentation required during commissioning process.
 8. Coordination procedures for Contractor provided City operational and maintenance training.
 9. Standardize documentation procedures.
- B. *Construction Phase Services.* CM / CM Team shall provide oversight of construction management, inspection, and Design Consultant staff during the construction phase of each project and provide general consultation on technical issues during construction. The CM / CM Team shall:
- a. *Baselines and Benchmarks.* As appropriate, notify Design Consultant(s) of required baselines and benchmarks for locating the Work, which in Construction Manager's judgment is necessary to enable Contractor to proceed.
 - b. *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:
 - 1) The Construction Manager shall observe the progress and quality of the Work. Such 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 observations 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 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.

- 2) Request that Design Consultant(s) make visits to the site 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.
 - 3) 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.
- c. *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.
 - d. *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.
 - e. *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.
 - f. *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.

- g. *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.
- h. *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.
- i. *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.
- j. *Application for Payment.* Based on Construction Manager's observations and on review of Applications for Payment and accompanying supporting documentation:
 - 1) 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.
 - 2) 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.

k. Contractor's Completion Documents.

- 1) 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.
 - 2) Receive and review guarantees.
 - 3) 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.
 - 4) CM shall review status of records documents on a monthly basis to ensure documents are being adequately maintained during construction.
 - 5) Forward annotated record documents to Design Consultant(s) at completion of construction. Forward other documents to the City.
- l. *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 C and D below.
- m. *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.
- n. *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*.

- o. *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.
- C. *Commissioning and Start-Up Plan.* CM Team shall coordinate and assist Commissioning and Start-Up Activities, as defined in the Contract Documents. CM Team 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.
- D. *Start-Up Phase Services.* CM Team shall coordinate the start-up phase of new facilities, as needed, following construction. CM Team 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.
- E. 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 C
SCOPE OF SERVICES**

**CONSTRUCTION MANAGEMENT AND
RESIDENT PROJECT REPRESENTATIVE SERVICES AGREEMENT
For
WPCP PONDS NO. 2 & NO. 3 SWEETWATER PUMPSTATION**

POST-CONSTRUCTION PHASE SERVICES

General:

- A. *Post - Construction Phase Services.* Upon written authorization of City, CM Team during the Post-Construction Phase shall:
1. Provide assistance in connection with the adjusting of Project equipment and systems.
 2. Assist City in additional training of City's staff to operate and maintain Project equipment and systems.
 3. Assist City in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
 4. Together with City staff, visit the Project to observe any apparent defects in the Work, assist City in consultations and discussions with Contractor concerning correction of any defects, and make recommendations as to replacement or correction of Defective Work, if present.
 5. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
 - a. In conjunction with City's asset management personnel, assemble and furnish project's new asset list and retired assets to CITY.
 - b. In conjunction with City's Computerized Maintenance Management System (CMMS) and O&M personnel, assemble and furnish CMMS asset list.
 6. In company with City and Design Consultant, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
- B. *Post-Construction Phase Timing:* 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 1
EXHIBIT D
SCOPE OF SERVICES**

**CONSTRUCTION MANAGEMENT AND
RESIDENT PROJECT REPRESENTATIVE SERVICES AGREEMENT
For
WPCP PONDS NO. 2 & NO. 3 SWEETWATER PUMPSTATION**

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 B in this Agreement.

ATTACHMENT 2

SCOPE OF SERVICES FEE PROPOSAL

**CONSTRUCTION MANAGEMENT AND
RESIDENT PROJECT REPRESENTATIVE SERVICES AGREEMENT
For
WPCP PONDS NO. 2 & NO. 3 SWEETWATER PUMPSTATION**

Construction Phase Services

For services outlined in Attachment 1 Exhibits A, B, D a fee of: \$142,060.00

Optional Additional Services

For services outlined in Attachment 1 Exhibit C a fee of: \$5,480.00

Total Not to Exceed Fee \$147,540

See breakdown attached: Attachment 2, Scope of Services Fee Proposal

ATTACHMENT 3

HOURLY RATE SCHEDULE

**CONSTRUCTION MANAGEMENT AND
RESIDENT PROJECT REPRESENTATIVE SERVICES AGREEMENT
For
WPCP PONDS NO. 2 & NO. 3 SWEETWATER PUMPSTATION**

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 are **at or below** the provided rate per the schedule by profession. Hourly rates will be in accordance with the following schedule:

<u>EMPLOYEE CLASSIFICATIONS</u>	<u>RATE</u>
--	--------------------

See attached hourly rate schedule

ATTACHMENT 3
BILLING RATES BY CLASSIFICATION
CITY OF FORT WAYNE
WPCP PONDS No. 2 & No. 3 SWEETWATER PUMP STATION CM/RPR

<u>ID</u>	<u>Classification</u>	<u>PROPOSED 2017/2018 TEAM RATE</u>		
1	Construction Manager / Field Manager	\$150.00		
2	Technical Advisor	\$140.00		
3	Resident Project Representative	\$100.00		
4	Document Controls Specialist	\$120.00		

NOTES

- 1 Billing rates include overhead and fixed fee
- 2 Overtime hours shall be billed at 115% of the rates
- 3 Rates are effective through December 31, 2018

CITY OF FORT WAYNE, INDIANA

American Structurepoint, Inc.
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

- 1. FINANCIAL INTERESTS;**
- 2. POTENTIAL CONFLICTS OF INTEREST;**
- 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 \$50,000 or more. Vendors shall disclose their 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 for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the 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% ☒ (X)
- (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**

Address: **7260 Shadeland Station, Indianapolis, Indiana 46256**

- b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship ☐ () stock ☒ (X)
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:

Name: **Willis R. Conner 79.12%**

Name: **Gregory L. Henneke 7.33%**

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 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 ☒

- 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 ☒

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years:

Yes _____ No ☒

- d. Relationship to Member of Immediate Family holding appointive City office currently or in the previous 3 years:

Yes _____ No ☒

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

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

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

Project	Contract Date	Contract No.	City Contact
Fairfield and Ewing Roundabout	8/7/2013	Work Order No. 12285	Shan Gunawardena
CSO 055 Relief Sewer and CSO 032 (3Rport)	5/11/2016	Unknown	Matthew Wirtz
Harrison and Superior Street Utility Improv.	9/12/2016	Unknown	Matthew Wirtz
Smurfit Site Development	Unknown	Unknown	Unknown
Lakeside Sewer Separation	5/28/2015	Unknown	Matthew Wirtz
WPCP Process Review & Operation	Unknown	Unknown	Unknown

Junk Ditch Lift Station	3/18/2015	Unknown	Matthew Wirtz
State Blvd between Spy Run and Cass Street	9/3/2009	Unknown	Shan Gunawardena

- b. Does Vendor have **pending** contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes ☒ No ☐

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).

Project	Contract Date	Bid No.	City Contact
WWTP	N/A	N/A	N/A
Leesburg Road Extension	N/A	N/A	N/A
RFQ 2015-03 On-Call Small Plant Project	N/A	N/A	N/A
State Blvd Realignment	N/A	N/A	N/A
Boutique Hotel and Parking Garage	N/A	N/A	N/A
Convention Center and Hotel	N/A	N/A	N/A
Ft. Wayne Downtown Arena	N/A	N/A	N/A
High Strength Waste Storage Facility	N/A	N/A	N/A
Leesburg Road and Main Street Roundabout	N/A	N/A	N/A

- c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes ☐ No ☒

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

Name / Position / Payment Terms:

Name / Position / Payment Terms:

- d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: _____

Company / Name / Payment Terms: _____

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;

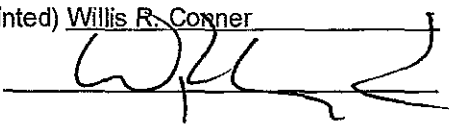
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year 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
- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

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
RConner@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) Willis R. Conner Title President
Signature  Date July 13, 2017

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: July 20, 2017
To: Common Council Members
From: Chris Ravenscroft, City Utilities Engineering
RE: **WPCP Pond 2 & 3 Sweetwater Pump Station CM/RPR**
W.O. # 76242

Council District # City Wide

Engineer shall provide the City professional Engineering services in all phases of the Project to which the scope of services applies. These services will include serving as City's professional representative for the Project, providing professional Engineering consultation and advice, and other customary services incidental thereto. Construction Management (CM) and Resident Project Representative (RPR) services during the construction of the Pond 2 & 3 Sweetwater Pump Station that include oversight on Contractor activities, inspection services for all work, change management, schedule management, coordination with plants activities, and document controls. In addition, Engineer will coordinate startup, training, and project commissioning services.

Implications of not being approved: The Work being constructed is an integral part of plant maintenance and operations. The CM and RPR roles are critical elements that represent and protect the Owner's interest. The project must be monitored and coordinated by a multi-disciplined construction engineering team to ensure the project is constructed according to the plans, specifications, and project schedule. City Utilities engineering does not have the resources to monitor these construction activities.

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

Selection and Approval Process:

The consultant was selected through the Competitive Sealed Proposal (CSP) process. The RFQ announcement was sent to over 100 firms and posted on the City website, and 4 firms submitted a statement of qualifications. Utilities Engineering staff reviewed the qualifications of all interested firms, established a short list of consultants. A request for proposals was then developed and sent to the selected shortlisted firms. Three (3) shortlisted firms submitted Competitive Sealed Proposals. A scoring matrix was used to score all firms based on responses to the RFQ and RFP's. RFP scoring was based on expertise, prior work experiences, qualifications, proposed scope of work and fee. Using this process, Utilities Engineering selected American StructurePoint, Inc. for this project and finds their scope and fee to be the best value for this project. The Board of Public Works approved the contract on July 19, 2017.

The cost of said project funded by State Revolving Funds

Council Introduction Date: July 25, 2017

CC: BOW
Matthew Wirtz
Diane Brown
Construction Manager
Chrono
File