

ORDINANCE NO. 122-17

PASSED: October 23, 2017

ORDINANCE AUTHORIZING MAYOR TO ENTER INTO AN AGREEMENT WITH AMERICAN STRUCTUREPOINT FOR GENERAL CONSULTING AND PROFESSIONAL DESIGN SERVICES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF REYNOLDSBURG, OHIO:

SECTION 1. That the Mayor be and is hereby authorized and directed to enter into an agreement with American Structurepoint, Inc., 2550 Corporate Exchange Drive, Suite 300, Columbus, OH 43231, for the period of January 1, 2018 through December 31, 2019, for engineering services for the City of Reynoldsburg.

See Exhibit "A" attached hereto and incorporated herein.

SECTION 2. That upon adoption by Council this ordinance shall be in effect thirty days following signature by the Mayor.

Doug Joseph
Doug Joseph, President of Council

ATTEST: April L. Beggerow
April L. Beggerow, Clerk of Council

APPROVED: Bradley L. McCloud DATE 10/25/17
Bradley L. McCloud, Mayor

CERTIFICATE

I, April L. Beggerow, Clerk of Council, City of Reynoldsburg, Ohio do hereby certify the foregoing to be a true and correct copy of Ordinance No. 122-17 as passed by Council of said City on the 23rd day of October, 2017 and as recorded in the Record of Proceedings of said Council.

April L. Beggerow
April L. Beggerow, Clerk of Council

Filed with Mayor: 10/24/17

Published: _____

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

THIS IS AN AGREEMENT effective as of the date of the latest required signature below ("Effective Date") between City of Reynoldsburg, Ohio ("Owner") and American Structurepoint, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: General Consulting and Professional Design Services ("Project").

Engineer's services under this Agreement are generally identified as follows: The Services to be provided by the Engineer for specific projects will be detailed in a duly executed individual task order. Each task order will indicate the specific tasks and functions to be performed and deliverables to be provided. Engineer and Owner shall agree on the scope, time for performance, and basis of compensation for each task order. Generally, Engineer's Services will include:

1. Preparation of preliminary and final engineering, structural engineering, and architectural project documentation, as directed by the Owner, and/or as detailed in a separate task order for professional services prepared by the Engineer.
2. Plan review and on-site construction inspection and administrative services for private site developments and Capital Improvement Projects.
3. Preparation of project documentation as outlined by the Owner's Quality Based Selection Manual.
4. Preparation of funding applications.
5. Preparation of as-built drawings.
6. General review services for Owner departments that undertake engineering/architectural services themselves.
7. Other as-needed and as-directed services requested by the Owner.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above ("Additional Services").
- B. Engineer shall complete its Services within the following specific time period: Services to be authorized in 2018 and 2019, and performed on schedules set forth in individual task orders. If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment*

- A. Owner shall pay Engineer for Services as established in each task order, based on either a lump sum or hourly rates as follows:
1. A Lump Sum amount as established in the task order. The portion of the compensation amount billed monthly for Engineer's Services will be based upon Engineer's estimate of the percentage of the total Services actually completed during the billing period. **OR**
 2. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class, plus reimbursable expenses and Engineer's consultants' charges, if any, not-to-exceed the amount authorized in the task order.

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer ~~an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.~~ **a fee to be negotiated at the time such Additional Services are requested.**

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, ~~or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I.~~
 - c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
 - d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
 - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole

risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;

3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol. **Copies of documents that may be relied upon by the Owner are limited to the printed copies that are signed or sealed by Engineer or its subconsultants. Files in electronic media format of text, data, graphics, or of other types that are furnished to Owner by Engineer are only for convenience of Owner. Copies of Owner-furnished data that may be relied upon by Engineer are limited to the printed copies. Files in electronic media format of text, data, graphics, or of other types that are furnished by Owner to Engineer are only for convenience of Engineer.**
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner **for any given task order performed** under this Agreement shall be limited to **\$50,000** or the total amount of compensation received by Engineer **for that task order**, whichever is greater.
- I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated **in accordance with ORC 2710, Uniform Mediation Act**. If mediation is unsuccessful, then the parties may exercise their rights at law.
- K. This Agreement is to be governed by the law of the state in which the Project is located.
- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing

surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Definitions*

- A. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner’s work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 *Insurance Requirements*

- A. Prior to the commencement of any Services under this Agreement, Engineer shall furnish Owner certificates of insurance showing that Engineer has obtained the following insurance policies with insurance companies licensed and authorized to do business in the State of Ohio. A new certificate of insurance must be provided to the Owner each year at the time of policy renewal.
 - 1. *Worker’s Compensation Insurance*: Engineer shall procure and maintain during the life of this Agreement, Worker’s Compensation Insurance, including Employers Liability Coverage, in accordance with the applicable statutes of the State of Ohio.
 - 2. *Commercial General Liability Insurance*: Engineer shall procure and maintain during the life of this Agreement Commercial General Liability Insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury, and Property Damage.
 - 3. *Motor Vehicle Liability*: Engineer shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including Ohio coverages, with limits of liability of not less than \$1,000,000 combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

4. Professional Liability: Professional Liability Insurance on a claims made basis with limits of liability of not less than \$1,000,000 per claim/aggregate. Professional Liability coverage must be maintained for three (3) years after the completion of Services performed under this Agreement.
- B. Cancellation Notice: Each of the policies in Paragraph A shall be endorsed to provide Owner thirty (30) days advance written notice of cancellation, non-renewal, reduction and/or material change, except for ten (10) days notice for cancellation due to lack of payment.
- C. If a Project is constructed, Owner shall require the Constructor to purchase and maintain general liability insurance and to cause Engineer and Engineer's Consultants to be listed as additional insureds on a primary and non-contributory basis with respect to such liability insurance purchased and maintained by the Constructor for the Project.

9.01 ***Additional Terms and Conditions***

- A. Engineer affirmatively represents and warrants that it is not subject to any unresolved finding for recovery issued by the Auditor of State under Ohio Revised Code Section 9.24, or that it has taken the appropriate remedial steps required under Section 9.24, or that it otherwise qualifies under that section.
- B. Engineer affirms that, as applicable, no party listed in Division (I), (J), (Y), or (Z) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual within the two previous calendar years, one or more contributions totaling in excess of \$500.00 to any elected official of the City of Reynoldsburg.
- C. The Owner is a tax exempt entity and shall provide a tax exempt certificate to the Engineer.
- D. The Engineer agrees to withhold all City Income Taxes due or payable under the provisions of Chapter 191 of the Codified Ordinance of the City of Reynoldsburg for wages, salaries, and commissions paid to employees and further agrees that any subcontractors shall be required to agree to withhold any such City Income Taxes due under said Chapter 191 of the Codified Ordinances of the City of Reynoldsburg for Services performed under this Agreement.
- E. The Engineer will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), and these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The Engineer shall abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.
- F. The Engineer shall indemnify and hold the Owner and the Owner's officers and employees harmless, but not defend, from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Engineer, its employees and its consultants in the performance of professional services under this Agreement. The Engineer has no obligation to pay for any of the indemnitees' costs prior to a final determination of liability or to pay any amount that exceeds the

Engineer's finally determined percentage of liability based upon the comparative fault of the Engineer, its employees and its consultants.

Attachments:

Appendix 1, Engineer's Standard Hourly Rates

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

Owner: City of Reynoldsburg, Ohio

Engineer: American Structurepoint, Inc.

By: _____
Print name: _____
Title: _____
Date Signed: _____

By: _____
Print name: _____
Title: _____
Date Signed: _____

Engineer License or Firm's Certificate No. (if required):

State of: Ohio

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

Willis R. Conner
2550 Corporate Exchange Drive, Suite 300
Columbus, Ohio 43231

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services.

Engineer's Standard Hourly Rates

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 2.01, 2.02, and 2.03, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

EMPLOYEE CLASSIFICATION	<u>HOURLY RATE</u>
Principal	\$250
Project Manager	\$200
Senior Engineer	\$180
Project Engineer	\$145
Senior Planner	\$135
Project Planner	\$120
Senior Environmental Specialist	\$165
Environmental Specialist	\$95
*Staff Engineer, Staff Planner, or Staff Surveyor	\$100
*Staff Scientist	\$65
*Senior Technician	\$140
*Technician	\$100
*Researcher	\$100
Registered Land Surveyor	\$155
*Survey Crew Member	\$85
*Resident Project Representative	\$125
*Construction Inspector	\$95
*Interns and Co-ops	\$65
Landscape Architect	\$130

*Rates for these classifications are subject to overtime premium of an additional 0.16 x hourly rate.