

# RECORD OF RESOLUTIONS

Resolution No. 2018-12R

Passed

June 19

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**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF PICKERINGTON AND AMERICAN STRUCTUREPOINT, INC. FOR PROFESSIONAL ENGINEERING SERVICES AND OTHER NECESSARY DOCUMENTS TO PROVIDE BASIC ENGINEERING SERVICES AS OUTLINED THEREIN AND ENGINEERING SERVICES ABOVE BASIC SERVICES**

**WHEREAS**, The City request Structure Point to provide basic engineering services as set forth in Section 2 of the Agreement for a flat rate of \$7,100 a month (See Exhibit A) beginning on June 28, 2018;

**WHEREAS**, for engineering services beyond the basic services outlined in Section 2 of the Agreement, American Structurepoint has provided rates and such work can be commenced by American Structurepoint upon written notice to the City that such work is outside the scope of the monthly flat fee proposal; and

**WHEREAS**, Council finds it is in the best interest of the City to approve the execution of this addendum.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PICKERINGTON, FAIRFIELD-FRANKLIN COUNTIES, OHIO, A MAJORITY OF ITS MEMBERS CONCURRING:**

**Section 1:** The City Manager is hereby authorized to execute all necessary documentation, including but not limited to, the professional engineering services Agreement in substantially the same form as the one attached hereto, with changes not inconsistent with this Ordinance, not substantially adverse to the City, and which shall be approved by the City Manager and Director of Law. The approval of changes thereto by those officials, and their character as not being substantially adverse to the City, shall be evidenced conclusively by their execution thereof.

**Section 2:** This Resolution shall take effect and be in force from the earliest date permitted by law.

APPROVED BY: \_\_\_\_\_

Lee A. Gray, Mayor

DATE OF APPROVAL: \_\_\_\_\_

June 19, 2018

EFFECTIVE DATE: \_\_\_\_\_

June 19, 2018

ATTEST: \_\_\_\_\_

Heather Moore, City Clerk

SPONSOR: **FINANCE COMMITTEE**

APPROVED AS TO FORM AND LEGALITY OF PURPOSE: \_\_\_\_\_

Philip K. Hartmann, Law Director

**CONTRACT BETWEEN THE CITY OF PICKERINGTON  
AND  
AMERICAN STRUCTUREPOINT, INC.  
FOR  
PROFESSIONAL ENGINEERING SERVICES**

**SECTION 1 - IDENTIFICATION AND AUTHORIZATION**

THIS IS A CONTRACT effective the 19 day of June, 2018, by and between the City of Pickerington, Ohio, party of the first part, hereinafter designated as the "CITY", and American Structurepoint, Inc., 2550 Corporate Exchange Boulevard, Columbus, Ohio 43231, party of the second part, hereinafter designated as the "ENGINEER".

**WHEREAS:**

The CITY requires the ENGINEER to provide engineering for various services as set forth in Section 2 beginning on June 28, 2018. Contingent upon sufficient appropriations by the CITY's legislative authority, said Contract shall be terminated upon thirty (30) days' notice in writing by either party thereto, and the said ENGINEERS hereby accept said employment upon the following terms and conditions, to-wit:

**NOW THEREFORE:**

The CITY and the ENGINEER in consideration of their mutual covenants herein agree, in respect of the performance of engineering services by the ENGINEER and the payment for those services by the CITY, as set forth below.

The ENGINEER shall designate and authorize a representative approved by the CITY, who is an employee of the ENGINEER to act as its agent under this Contract.

For the purpose of this Contract, the agent for the CITY and liaison officer with respect to the matters contained herein shall be the City Manager, successor, or such other person(s) designated by the CITY on an individual project basis.

**SECTION 2 - SERVICES TO BE PROVIDED BY ENGINEER**

2.1 The ENGINEER shall furnish personnel, equipment and material necessary to perform the services as defined herein and as initiated by the CITY.

**A. BASIC SERVICES**

The following services will be performed under the retainer provisions of the Contract:

1. Attend Service Committee meetings and Service Committee work sessions of Council; City Council meetings and work sessions as requested
2. Attend staff meetings as requested
3. Administration of the City's CIP
4. The ENGINEER'S representative will be available in the CITY offices 4 hours per week.

**EXHIBIT**   A

5. Receive and respond to inquiries and requests for information from Mayor, City Council, City staff, and residents, and provide technical assistance and interpretation of a non-design nature concerning water, wastewater, traffic, transportation, buildings and other infrastructure as requested
6. Research and transmit file information and documents (including existing traffic counts) to City Council and City staff upon request
7. Provide technical interpretation and advice regarding existing Citywide planning and infrastructure record documents and engineering standards, including copies as requested (Thoroughfare Plan, Transportation Improvement Plan, Access Management Plan, Utility Atlases, Traffic Control Map, Water Distribution System Model, Statewide 208 Plan, NPDES Phase 2/Stormwater Management Plan)
8. Traffic signal troubleshooting at all signal locations, for problems regarding daily signal operations, not including monitoring or management of ACS Lite System software
9. Provide traffic signal preventive maintenance recommendations and perform periodic controller hardware and software reviews and minor updates to existing operating system (i.e., Violet Festival 'flash' coordination, etc.)
10. Coordinate as requested by staff with Ohio Department of Transportation (ODOT) staff regarding general aspects of roadway and traffic within the City
11. Signage, lane assignment, and access reviews as requested, including technical assistance and conceptual planning on modifications to improve safety
12. Provide written monthly report for Council packets detailing work performed during the period
13. Technical assistance in creating new ordinances or revising existing ordinances

**B. ADDITIONAL CONTRACTUAL SERVICES**

Beyond the scope of the retainer position of the Contract, the following are other areas of work specifically excluded from the monthly retainer, but which may be required of the ENGINEER as approved in writing by the CITY in advance of the ENGINEER doing the work, on an hourly rate base provided for in Section 5.3 of this Contract:

1. Meeting attendance at any committee of City Council or staff meetings beyond what is specifically included in Section 2.1.A of this document
2. CIP Project design, bidding, administration, construction observation, survey, or ROW acquisition services, all of which are awarded by a separate contract
3. Provide technical assistance and oversight to CIP projects designed by others, including plan review and coordination meetings, for establishment of project goals and consistency with City policies and standards.

4. Monitoring and management of ACS Lite software system
5. Traffic Impact Studies (TIS)
6. Draft TIS scope for use by developers
7. Accident Analysis
8. Intersection Safety Studies
9. Court Testimony or preparation for (including document research, data gathering, meetings, mediation, arbitration, depositions, and other court action) legal proceedings
10. All Updates requested of Citywide Planning Documents, to include: Access Management Plan, Thoroughfare Plan, Transportation Improvement Plan, Utility Atlases, Water Distribution System Model, 208 Plan, Traffic Control Map, Comprehensive Plan and Zoning Maps, Bikeway Master Plan, Stormwater Management Plan, Emergency Response Plan, Vulnerability Assessment, to include data gathering
11. Grant or Loan Applications to any federal, state, or local agency
12. Speed Studies and Traffic Counts of any nature, and crash or other data gathering, review and interpretation
13. Signal Warrant Studies
14. General ROW acquisition and existing road ROW research
15. General survey services (easement descriptions, vacation plats, topographic surveys, boundary surveys, etc.)
16. Development (residential, commercial, or otherwise) plan reviews and Preliminary Development Conference participation
17. Preparation of or technical guidance on City Capital Improvement Plan
18. Technical assistance and coordination of annual Water and Wastewater Treatment System audits by OEPA
19. Services as required of the City Engineer including review and comment, and approval as appropriate, of work product created by City staff and involving significant oversight of the City Engineer
20. Other services not specifically provided for in the retainer portion of this contract

### **SECTION 3 - RESPONSIBILITIES OF THE CITY**

- 3.1 The CITY shall furnish to the ENGINEER all existing reports, data (including legal and financial data), plans, maps, existing property surveys and descriptions, reproducible drawings, construction contract documents and other pertinent items applicable to the Project which are in the possession of the CITY.
- 3.2 The CITY shall provide access to the ENGINEER to all sites where services of the ENGINEER are to be performed.
- 3.3 The CITY shall provide all applicable legal notices, public meeting notifications, permit fees and approval fees.
- 3.4 The services, information surveys, and reports required by Paragraphs 3.1 through 3.3 inclusive shall be furnished at the CITY'S expense.
- 3.5 The CITY shall notify the ENGINEER promptly of any claims, litigations, deficiencies or other problems related to the ENGINEER.

**SECTION 4 - INDEPENDENT CONTRACTOR**

- 4.1 It is the intention of the parties that the ENGINEER be an independent contractor and not an employee, agent, joint venturer, or partner of the CITY. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between the CITY and either the ENGINEER or any employee or agent of the ENGINEER.

**SECTION 5-PAYMENTS FOR SERVICES**

5.1 BASIC SERVICES

A retainer of \$7,100.00 per month for basic services. The parties may, by mutual agreement, review the actual services provided under the retainer and modify the retainer fee should the current scope of work under the retainer provisions of the contract substantially change.

5.2 ADDITIONAL CONTRACTUAL SERVICES

For services beyond the retainer portion of the Contract (see Paragraph 2.1.B), payment shall be for work performed on an hourly basis at the hourly rates in the attached schedule (the rate schedule will be revised annually on January 1 of each year to reflect average hourly rates).

When the total cost of engineering services on a specific project are estimated to exceed two thousand five hundred dollars (\$2,500), the ENGINEER will prepare and submit a proposal with an outline of the scope of services to be provided, and a not-to-exceed amount for total engineering services related to that specific scope.

5.3 HOURLY RATE SCHEDULE

Rates for services of the ENGINEER's personnel shall be based on the following, and adjusted annually on January 1 of each year. These rates are understood to include the direct labor cost of the ENGINEER's personnel, indirect labor costs, overhead costs, and profit.

Principal	\$199
Project Manager	\$179

Senior Engineer or Senior Planner	\$137
Project Engineer or Project Planner	\$111
Senior Environmental Specialist	\$147
Staff Engineer, Staff Planner, or Staff Surveyor	\$82
Plan Reviewer	\$137
Environmental Specialist	\$105
Staff Scientist	\$67
Senior Technician	\$113
Technician	\$66
Registered Land Surveyor	\$129
Survey Crew Member	\$61
Resident Project Representative	\$105
Construction Inspector	\$81
Interns and Co-ops	\$47

5.4 REIMBURSABLE EXPENSES

For additional (non-retainer) services, any direct job related expenses approved by the CITY shall be paid at actual costs. Automobile mileage shall be reimbursed at a rate of 54.5 cents per mile (the mileage rate will be revised annually on January 1 of each year with reference to the standard mileage rates published by the Internal Revenue Service).

5.5 INVOICING

The ENGINEER shall invoice the CITY for services on a regular monthly basis. Invoices shall be issued on a specific project basis and shall include the CITY'S reference name and/or number.

5.6 PAYMENTS

Payments for service performed shall be due and payable thirty (30) days from date of invoice.

**SECTION 6 - GENERAL CONDITIONS**

6.1 PROGRESS SCHEDULE

Services will be started immediately upon execution of this Contract. Schedules for individual projects shall be submitted by the ENGINEER for approval. The ENGINEER will maintain a sufficient force of personnel to complete the services authorized as set forth in the schedule agreed upon by both parties, contingent upon timely review and input of the CITY and others.

6.2 TERMINATION

The CITY or ENGINEER may, at any time prior to the completion of full performance of all services under this Contract, terminate the Contract by giving written notice by certified mail not less than thirty days prior to the effective date of its intention to do so. If the Contract is terminated by either party, payment to the ENGINEER will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made. In the event the contract is terminated prior to its completion, the ENGINEER upon payment, as specified, shall

deliver to the CITY all reports, field books, drawings and other documents which have been prepared in the course of the work done under this Contract. All such material shall become and remain the property of the CITY, to be used in such manner and for such purpose as the CITY may choose.

If sufficient funds are not appropriated by the CITY's legislative authority for any renewal term of the Contract, the Contract shall terminate upon such lapse in appropriation.

### 6.3 ASSIGNMENT

Neither the CITY nor the ENGINEER shall assign or transfer its interest in this Contract, including monies that may become or are due, without the express written consent of the other party hereto. Unless specifically stated to the contrary in any express written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent or any public body, nor shall it be construed as giving any rights or benefits under this Contract to anyone other than the CITY and the ENGINEER.

### 6.4 DOCUMENT OWNERSHIP AND REUSE

All documents including Drawings and Specifications prepared or furnished by the ENGINEER (and the ENGINEER's independent professional associates and consultants) pursuant to this Contract are instruments of service in respect of the Project and the ENGINEER shall retain an ownership and property interest therein whether or not the Project is completed. The CITY may make and retain copies for information and reference in connection with the use and occupancy of the Project by the CITY and others; however, such documents are not intended or represented to be suitable for reuse by the CITY or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by the ENGINEER for the specific purpose intended will be at the CITY'S sole risk and without liability or legal exposure to the ENGINEER, or to the ENGINEER's independent professional associates or consultants.

### 6.5 CONSTRUCTION COST ESTIMATES

Since the ENGINEER has no control over the cost of labor, materials or equipment, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, their estimates of cost for the projects provided for herein are to be made on the basis of their experience and qualifications and represent their best judgment as a design professional familiar with the construction industry. However, the ENGINEER cannot and does not guarantee that proposals, bids, or the project construction costs will not vary from cost estimates prepared by them.

### 6.6 HOLD HARMLESS

The ENGINEER shall indemnify and hold the CITY harmless from and against any and all liabilities, losses, damages, costs, expenses, and disbursements imposed on asserted against or incurred by the CITY to the extent that said liabilities result from the negligent performance of the ENGINEER's obligations.

### 6.7 RISK ALLOCATION

In recognition of the relative risks, rewards and benefits of the project to both the CITY and ENGINEER, the risks have been allocated so that the CITY agrees that, to the fullest extent permitted by law, ENGINEER's total liability to CITY under this Agreement for claims arising out

of ENGINEER's professional liability shall be limited to the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of CITY's Claims under the terms and conditions of ENGINEER's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal) or \$500,000, whichever is less. Such causes include, but are not limited to, the ENGINEER's negligence, errors, omissions, strict liability, or breach of Agreement. ENGINEER's total liability to CITY under this Agreement for all other claims shall not exceed the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of CITY's Claims under the terms and conditions of ENGINEER's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). The ENGINEER shall carry insurance for the term of this Agreement with limits not less than those shown below.

1.	Workers' Compensation	Statutory
2.	Employer's Liability	
	a. Each Accident	\$1,000,000
	b. Disease, Policy Limit	\$1,000,000
	c. Disease, Each Employee	\$1,000,000
3.	General Liability	
	a. Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
	b. General Aggregate	\$2,000,000
4.	Excess or Umbrella Liability	
	a. Each Occurrence	\$3,000,000
	b. General Aggregate	\$3,000,000
5.	Automobile Liability	
	a. Combined Single Limit (Bodily Injury and Property Damage) Each Accident	\$1,000,000
6.	Professional Liability	\$3,000,000

**SECTION 7 - CONFLICT OF INTEREST**

- 7.1 The ENGINEER will endeavor to avoid a conflict of interest with the CITY or other clients, but when unavoidable, the ENGINEER shall fully disclose the circumstances to the CITY. The ENGINEER will inform the CITY of any business connections, interests, or circumstances which may be deemed as influencing its judgment or the quality of its services.
- 7.2 The ENGINEER agrees that they will not, at any time during the existence of this Contract without approval of the CITY, do any work directly for a subdivider, developer, contractor, or any other person within the CITY where the CITY may become involved, without previously notifying the CITY pursuant to section 7.1 of this document. It is the ENGINEER's obligation to solely represent the CITY in connection with engineering work. In the event there is a conflict of interest, the CITY may waive said conflict in writing, or request that the ENGINEER shall immediately resign from their representation of the outside interest.
- 7.3 It is also understood that the ENGINEER must be an independent reference for the CITY without



possibilities of conflict of interest due to private work performed by the ENGINEER.

## **SECTION 8 - TECHNICAL PROVISIONS**

### **8.1 APPLICABLE LAWS**

The ENGINEER shall comply with all applicable foreign, federal, state, and local laws, rules, regulations, orders, ordinances and government requirements in the performance of this Contract, including all applicable non-discrimination requirements, including without limitation the provisions of Presidential Executive Order 11246 and the rules and regulations issued thereunder, which are incorporated herein by this reference.

### **8.2 NOTICES**

All notices and other communications hereunder must be in writing and will be deemed to have been duly given if delivered by hand, or on the next business day if delivered by a recognized overnight courier, or on the third business day if mailed (by certified mail, return receipt requested, first class postage prepaid), to the parties with written confirmation of receipt at the following addresses:

If to the CITY:

William Vance City Manager  
City of Pickerington 100 Lockville Road  
Pickerington, Ohio 43147

If to the ENGINEER:

American Structurepoint, Inc.  
2550 Corporate Exchange Boulevard  
Columbus, Ohio 43231

### **8.3 WAIVER**

No delay or failure on the part of any party hereto in exercising any right, power, or privilege under this Contract or under any other instruments given in connection with or pursuant to this Contract shall impair any such right, power, or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power, or privilege shall preclude the further exercise of such right, power, or privilege, or the exercise of any other right, power or privilege.

### **8.4 SEVERABILITY**

If any provision in this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, such provision shall be enforced to the greatest extent permitted by law and the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

### **8.5 PARTIES IN INTEREST**

This Contract is enforceable only by the ENGINEER and the CITY. The terms of this Contract are not a contract or assurance regarding compensation, continued employment, or benefit of any kind

to any of the ENGINEER's personnel assigned to the CITY's work, or any beneficiary of any such personnel, and no such personnel, or any beneficiary thereof, shall be a third-party beneficiary under or pursuant to the terms of this Contract.

8.6 GOVERNING LAW

This Contract will be governed by and construed in accordance with the laws of the State of Ohio without regard to its conflict of law principles.

8.7 SUCCESSORS

This Contract shall inure to the benefit of and shall be binding upon the ENGINEER, the CITY and their respective successors, heirs and permitted assigns.

8.8 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Contract may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto.

**SECTION 9 - SIGNATURES**

IN WITNESS WHEREOF, the CITY and the ENGINEER have made and executed this Contract as of the day, month, and year first above written.

AMERICAN STRUCTUREPOINT, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF DICKERINGTON

By: Frank P. Wilson

Title: City Mgr.

Date: 6-28-18

to any of the ENGINEER's personnel assigned to the CITY's work, or any beneficiary of any such personnel, and no such personnel, or any beneficiary thereof, shall be a third-party beneficiary under or pursuant to the terms of this Contract.

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IN WITNESS WHEREOF, the CITY and the ENGINEER have made and executed this Contract as of the day, month, and year first above written.

AMERICAN STRUCTUREPOINT, INC.

By: *Ellid Gengel*  
Title: *Senior Vice President*  
Date: *6-28-18*

CITY OF DICKERINGTON

By: *Frank A. Weimer*  
Title: *City Mgr.*  
Date: *6-28-18*

**CERTIFICATE OF AVAILABILITY OF FUNDS**

I certify that the money required to meet this contract has hereby been lawfully appropriated for such purposes and is in the treasury or in the process of collection to the credit of this fund, free from any previous obligation or certifications as required by Ohio Revised Code 5705.01 to 5705.47.

6/27/18  
Date

