



April 22, 2021

Stephania Bernard-Ferrell
City of Gahanna
Director of Parks and Recreation
200 S Hamilton Rd
Gahanna, Ohio 43230

Re: Trail Improvements

Dear Stephania,

American Structurepoint, Inc., is pleased to provide the following proposal for the Trail improvements at Trapp Park. The current alignment of the trail is too narrow and not ADA compliant. We will provide a new alignment for the trail at Trapp Park that is ADA compliant. A detailed scope of work is provided below. The work required for this project will be completed according to the schedule that was provided with the proposal.

PROJECT SCOPE – TRAPP PARK

Trapp Park is located at the corner of Cherrystone Dr. and Trapp Dr.

Task 1 – Topo Survey

- Establish horizontal (Ohio South, NAD 1983) and vertical (NAVD 1988) survey control
- Site topo survey (0.3 acres +/-)
 - Includes locations of individual trees
- Locate above ground evidence of utilities
 - American Structurepoint will make a request to have public utilities marked within public rights-of-way or recorded easements by notifying the Ohio Utilities Protection Service (Ohio811) prior to beginning our survey. We will not be responsible for damages resulting from a utility company who does not respond or for utilities that are not marked or that are mismarked. Determining the depth of the public utilities is not a part of this scope.
- Locate and invert storm and sanitary sewer structures within and adjacent to the site for design tie-in
- Process raw survey data, drafting and creation of a TIN and contours (1-foot vertical interval) for design
- Land surveyor review

Task 1 Fee \$2,800

Task 2 – Path Alignment (30%)

1. Provide an alternate ADA compliant alignment to connect the path that starts at the end of Eastchester Drive and connects into the sidewalk along Cherrystone drive. The current alignment does not meet code and will be widened to eight or ten feet wide, depending on City preference.
2. Provide bollards at the end of Eastchester Drive at the beginning of the path.
3. One (1) review meeting with City Staff.

Deliverables to include 30% construction drawings, specifications, and opinion of probable construction cost.

Task 2 Fee \$3,100

Task 3 – Final Design

A. Items to be included in this task include the following:

1. Once a layout and design is approved by the City, our team will provide 100% construction drawings. Pages in the drawing set shall include but are not limited to:
 - Title sheet
 - General notes and details
 - Schematic layout
 - Grading plan
2. If disturbance is over an acre, a SWPPP and EPA NOI will be completed. It is not anticipated that disturbance will be more than an acre.
3. Trail design shall be per the City of Gahanna Standards
4. One review meeting with City Staff

Deliverables to include 100% construction drawings, specifications, and opinion of probable construction cost.

Task 3 Fee\$4,300

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Task 4 – Construction Services and As-Builts

Items to be included in this task include the following:

- 1. As-built drawings
- 2. Responses to contractor RFIs

Task 4 Fee\$1,000

Compensation

Total for Trapp Road\$11,200

We will perform these services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

Assumptions

- A. The City will be completing the front end bid documents.
- B. City to provide any plans for the storm/sanitary and water lines in the area
- C. Drainage design will be per the City of Columbus Drainage Manual
- D. EPA NOI permit fees are not included in this proposal.

The services listed above represent the total scope of work as we understand it at this time. Should the need for additional services arise, we are willing to provide them for a supplemental fee.

Stephania, we thank you for this opportunity and look forward to working with you on this project. The fees for services contained in this proposal are valid for one (1) year from the date of this letter. We are prepared to begin work on the project immediately upon written acceptance of this proposal. If the terms of this proposal are agreeable, please indicate your acceptance by returning a signed copy of the attached EJCDC Agreement to our office. We will consider this our notice to proceed.

If you have any questions, please feel free to contact our office. If you have any questions, please feel free to contact our office.

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Very truly yours,
American Structurepoint, Inc.

A handwritten signature in blue ink, appearing to read "Darrell Miller". The signature is fluid and cursive, with the first name "Darrell" written in a larger, more prominent script than the last name "Miller".

Darrell Miller, PE
Project Manager

DM:mtw
Enclosures

**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 Gahanna, 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: Trail Improvements ("Project").

Engineer's services under this Agreement are generally identified as follows: Please see Engineer's fee proposal dated April 22, 2021 ("Services").

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 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 45 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 due date, 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 follows:

1. A Lump Sum amount of \$11,200.00 broken down as follows:

Task 1 – Topo Survey - \$2,800.00

Task 2 – Path Alignment (30%) - \$3,100.00

Task 3 – Final Design - \$4,300.00

Task 4 – Construction Services and As-Builts - \$1,000.00

2. 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.

B. Reimbursable expenses will be invoiced separately at their direct cost.

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 60 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 receipt of notice 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 hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including reasonable 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.
 - 5. Upon payment in full of all fees due by Owner, all right, title, and interest in any documents, plans, drawings, or instruments of service shall vest solely in the Owner. Notwithstanding the foregoing, Engineer shall retain its rights in pre-existing and standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property that is not specifically created exclusively for the Owner in the performance of the services under this Agreement shall also remain the property of the Engineer.

- 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.
- 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 under this Agreement shall be limited to **\$50,000** or the total amount of compensation received by Engineer, whichever is greater, notwithstanding applicable insurance coverage.
- 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. 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.
- M. **If the 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.**
- N. **The Owner acknowledges the ongoing COVID-19 pandemic and agrees that Engineer's Compensation does not include any schedule or cost impacts that may occur as a result thereof. To the extent that there are cost or schedule impacts resulting from the COVID-19 pandemic, Engineer shall be entitled to an equitable modification to this Agreement.**

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.

Attachments:

Engineer’s Proposal Letter dated April 22, 2021

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

Owner: City of Gahanna, Ohio

Engineer: American Structurepoint, Inc.

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

By: _____
 Print name: Darrell Miller, PE
 Title: Project Manager
 Date Signed: _____

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

State of: Ohio

Address for Owner’s receipt of notices:
Stephania Bernard-Ferrell
200 S. Hamilton
Gahanna, Ohio 43230

Address for Engineer’s receipt of notices:
Willis R. Conner
2550 Corporate Exchange Drive, Suite 300
Columbus, Ohio 43231