

## LOCAL FUNDED ENGINEERING AGREEMENT

This Agreement is made and entered into March 27, 2018, by and between City of Noblesville, acting by and through the Board of Public Works and Safety, hereinafter referred to as the "LOCAL PUBLIC AGENCY", and

American Structurepoint, Inc.

7260 Shadeland Station

Indianapolis, Indiana 46256

hereinafter referred to as the "CONSULTANT".

### WITNESSETH

WHEREAS, the LOCAL PUBLIC AGENCY desires to contract for the engineering services for the project hereinafter described; and

WHEREAS, the CONSULTANT has expressed a willingness to provide the engineering services for the project hereinafter described; and

WHEREAS, the parties hereto agree that said CONSULTANT shall provide the services and documents hereinbefore and hereinafter described in relation to the following described project:

2018 Land Acquisition

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

#### **Section I. Services by CONSULTANT**

The services to be provided by the CONSULTANT under this Agreement are as set out in Appendix "A", which is attached to this Agreement and incorporated herein by reference.

#### **Section II. Information and Services to be Furnished by LOCAL PUBLIC AGENCY**

The information and services to be furnished by the LOCAL PUBLIC AGENCY are as set out in Appendix "B", which is attached to this Agreement and incorporated herein by reference.

### **Section III. Notice to Proceed Schedule**

The CONSULTANT shall begin the services to be performed under this Agreement immediately upon receipt of the written notice to proceed from the LOCAL PUBLIC AGENCY, and shall deliver the work to the LOCAL PUBLIC AGENCY in accordance with the Schedule contained in Appendix "C", which is attached to this Agreement and incorporated herein by reference.

The CONSULTANT shall not begin work prior to the date of the notice to proceed.

The LOCAL PUBLIC AGENCY reserves the right to issue notice to proceed on all or part of the services included in this Agreement subject to available funding.

### **Section IV. Compensation**

The CONSULTANT shall receive payment for the services performed under this Agreement as set forth in Appendix "D", which is attached to this Agreement and incorporated herein by reference.

### **Section V. General Provisions**

#### **1. Work Office**

The CONSULTANT shall perform the services under this Agreement at the following office(s):

American Structurepoint, Inc.

7260 Shadeland Station

Indianapolis, Indiana 46256

#### **2. Subletting Assignment of Contract**

No portion of the services under this Agreement shall be sublet, assigned, or otherwise disposed of, except with the consent of the LOCAL PUBLIC AGENCY. Consent to sublet, assign, or otherwise dispose of any portion of the services under this Agreement shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this Agreement. A subconsultant shall not subcontract any portion of its services under this Agreement.

3. Ownership of Documents

All reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by the CONSULTANT as instruments of service shall remain the property of the CONSULTANT. The CONSULTANT shall retain all common law, statutory, and other reserved rights, including the copyright thereto.

4. Access to Records

Full access to the work during the progress of the work shall be available to the LOCAL PUBLIC AGENCY. The CONSULTANT and his subconsultants shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred and shall make such materials available at its respective offices at all reasonable times during the period of this Agreement, and for three years from the date of final payment under the terms of this Agreement, for inspection by the LOCAL PUBLIC AGENCY.

5. Permit Applications

The CONSULTANT agrees that, in performance of the services herein enumerated by him or by a subconsultant, he or they will assist the LOCAL PUBLIC AGENCY in obtaining all permits that are applicable to the entry into and the performance of this Agreement.

6. Liability for Damages

Neither the professional activities of the CONSULTANT, nor the presence of the CONSULTANT or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties, and responsibilities, including but not limited to, construction means, methods, sequence, techniques, or procedures necessary for performing, superintending, and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The LOCAL PUBLIC AGENCY agrees that the General Contractor shall be solely responsible for jobsite safety and warrants that this intent shall be carried out in the LOCAL PUBLIC AGENCY's contract with the General Contractor. The LOCAL PUBLIC AGENCY also agrees that the LOCAL PUBLIC AGENCY, the CONSULTANT, and the CONSULTANT's

subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance on a primary and non-contributory basis.

The CONSULTANT shall be knowledgeable of applicable national and state laws and municipal ordinances and regulations affecting the CONSULTANT's services or performance under this Agreement, and shall indemnify the LOCAL PUBLIC AGENCY, its officers, agents, and employees, against any liability, including reasonable attorney's fees, based on the violation of applicable laws, regulations, or ordinances.

To the fullest extent permitted by law, the CONSULTANT shall indemnify and hold harmless the LOCAL PUBLIC AGENCY and any employees of it from and against all damages, losses, and expenses, including but not limited to, reasonable attorney's fees resulting from the services performed under this Agreement, to the extent such damage, loss, or expense is caused by the negligent acts or omissions of CONSULTANT, its subconsultants, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnities that would otherwise exist as to a party or person described in this paragraph.

The CONSULTANT shall be responsible for keeping the LOCAL PUBLIC AGENCY currently advised as to the status of any claims made for damages against the CONSULTANT resulting from services performed under this Agreement. The CONSULTANT shall send notice of claims related to services performed under this Agreement to:

\_\_\_\_\_  
John Beery, City Engineer  
\_\_\_\_\_  
City of Noblesville  
\_\_\_\_\_  
16 South 10<sup>th</sup> Street  
\_\_\_\_\_  
Noblesville, Indiana 46060  
\_\_\_\_\_

The CONSULTANT's indemnity obligations shall survive the completion, cancellation, or early termination of the Agreement.

7. Worker's Compensation and Liability Insurance

The CONSULTANT shall procure and maintain, until final payment by the LOCAL PUBLIC AGENCY for the services covered by this Agreement, insurance of the kinds hereinafter described provided by insurance companies authorized to do such business in the

State of Indiana covering all operations under this Agreement performed by CONSULTANT. The CONSULTANT shall require the same of its subconsultants performing services covered by this agreement. The CONSULTANT will not be given a notice to proceed until the CONSULTANT has furnished a certificate or certificates in a form satisfactory to the LOCAL PUBLIC AGENCY showing that this section has been complied with. During the life of this Agreement, the CONSULTANT shall furnish the LOCAL PUBLIC AGENCY with certificates showing that the required insurance coverage is maintained. The certificate or certificates shall provide that written notice will be given to the LOCAL PUBLIC AGENCY if the policies are canceled. In the event that such written notice of cancellation is given, the LOCAL PUBLIC AGENCY may at its sole option terminate this Agreement and no further compensation shall in such case be made to the CONSULTANT.

The kinds of insurance required are as follows:

- a) Policy covering the obligations of the CONSULTANT in accordance with the provisions of the Worker's Compensation Law, specifically including coverage for the State of Indiana. This agreement shall be void and of no effect unless the CONSULTANT procures such policy and maintains it until acceptance of the CONSULTANT's services.
- b) The CONSULTANT shall maintain a Comprehensive General Liability form of insurance. The policy shall include LOCAL PUBLIC AGENCY as an additional insured. The policy shall specifically include coverage for "hold harmless" clause (Contractual Liability) contained elsewhere in the Agreement, and this shall appear on the certificate.
- c) The CONSULTANT shall maintain a Comprehensive Automobile form of insurance. This coverage may be provided either as a separate policy or as part of the Comprehensive General Liability form of policy described previously. The automobile insurance must include coverage for all owned, non-owned, and hired vehicles.
- d) CONSULTANT shall maintain Professional Liability coverage. The Professional Liability coverage shall be in effect from the effective date of this Agreement and the CONSULTANT shall endeavor to keep coverage in effect

continuously, if available to the engineering profession and of reasonable premium level. Coverage also shall extend to employees who may retire, transfer, or otherwise cease employment with the CONSULTANT during the coverage period only for work done on behalf of the CONSULTANT.

8. Progress Reports

The CONSULTANT shall submit a Progress Report to the LOCAL PUBLIC AGENCY with each request for payment showing progress to the ending date of the period for which the claim is being made. The report shall consist of a progress chart with the initial schedule over which shall be superimposed the current status of the CONSULTANT's services.

9. Changes in Work

In the event that the LOCAL PUBLIC AGENCY requires a major change in scope, character or complexity of the CONSULTANT's services after the services have progressed as directed by the LOCAL PUBLIC AGENCY, adjustments in compensation to the CONSULTANT and adjustments to time allowed for performance of the services as modified shall be determined by the LOCAL PUBLIC AGENCY in the exercise of its honest and reasonable judgment. The CONSULTANT shall not commence the additional services or the change of the scope of the services until a supplemental agreement is executed and the CONSULTANT is authorized in writing by the LOCAL PUBLIC AGENCY.

10. Delays and Extensions

The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by the LOCAL PUBLIC AGENCY. It being understood, however, that the permitting of the CONSULTANT to proceed to complete any services, or any part of them, after the date to which the time of completion may have been extended shall in no way operate as a waiver on the part of the LOCAL PUBLIC AGENCY of any of its rights herein.

11. Suspension of Services

The LOCAL PUBLIC AGENCY reserves the right to suspend this Agreement for any reason upon written notice. If the Project or the CONSULTANT's services are suspended by the LOCAL PUBLIC AGENCY for more than sixty (60) calendar days, consecutive or in the aggregate, over the term of this Agreement, the CONSULTANT shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the LOCAL PUBLIC AGENCY shall compensate the CONSULTANT for expenses incurred as a result of the suspension and resumption of its services, and the CONSULTANT's schedule and fees for the remainder of the Project shall be equitably adjusted.

If the CONSULTANT's services are suspended for more than ninety (90) days, consecutive or in the aggregate, the CONSULTANT may terminate this Agreement upon giving not less than ten (10) calendar days' written notice to the LOCAL PUBLIC AGENCY.

If the LOCAL PUBLIC AGENCY is in breach of the payment terms or otherwise is in material breach of this Agreement, the CONSULTANT may suspend performance of services upon ten (10) calendar days' notice to the LOCAL PUBLIC AGENCY. The CONSULTANT shall have no liability to the LOCAL PUBLIC AGENCY, and the LOCAL PUBLIC AGENCY agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the LOCAL PUBLIC AGENCY. Upon receipt of payment in full of all outstanding sums due from the LOCAL PUBLIC AGENCY, or curing of such other breach which caused the CONSULTANT to suspend services, the CONSULTANT shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

If the LOCAL PUBLIC AGENCY shall abandon the services herein mentioned, the CONSULTANT shall deliver to the LOCAL PUBLIC AGENCY all data, reports, drawings, specifications, and estimates completed or partially completed and these shall become the property of the LOCAL PUBLIC AGENCY. The earned value of the services performed shall be based upon an estimate of the portions of the total services as have been rendered by the CONSULTANT to the date of the abandonment, which estimate shall be made by the LOCAL PUBLIC AGENCY in the exercise of its honest and reasonable judgment for all services to be

paid for on a lump-sum basis, and shall be based upon an audit for those services to be paid for on a cost basis or a cost plus fixed fee basis.

12. Termination

The LOCAL PUBLIC AGENCY may terminate this Agreement for the LOCAL PUBLIC AGENCY's convenience and without cause upon giving the CONSULTANT not less than seven (7) calendar days' written notice.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:

- a. Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- b. Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- c. Suspension of the Project or the CONSULTANT's services by the LOCAL PUBLIC AGENCY for more than ninety (90) calendar days, consecutive or in the aggregate;
- d. Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not the fault of the CONSULTANT, the LOCAL PUBLIC AGENCY shall pay the CONSULTANT, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the CONSULTANT in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

In the event of termination of this Agreement by either party, the LOCAL PUBLIC AGENCY shall within thirty (30) calendar days of termination pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement.

If the LOCAL PUBLIC AGENCY terminates this Agreement under item a above, LOCAL PUBLIC AGENCY may by any method it deems to be necessary designate and employ

other consultants, by contract or otherwise, to perform and complete the services herein described. No further compensation will be made to the CONSULTANT for services completed but terminated under this paragraph.

In case the LOCAL PUBLIC AGENCY shall act under the preceding paragraph, then and in such event, all data, reports, drawings, plans, sketches, sections, and models, all specifications, estimates, measurements, and data pertaining to the project, prepared under the terms or in fulfillment of this Agreement, shall be delivered within twenty (20) days to the LOCAL PUBLIC AGENCY. In the event of failure by the CONSULTANT to make such delivery upon demand, then and in that event, the CONSULTANT shall pay to the LOCAL PUBLIC AGENCY any damages it may sustain by reason thereof.

When written notice is referred to herein, it shall be deemed given when deposited in the mail addressed to the respective party at its last known address.

13. Standard of Care

The CONSULTANT shall endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services if the errors or deficiencies resulted, independently of all other causes, from negligence of the CONSULTANT.

Neither the LOCAL PUBLIC AGENCY's review, approval, or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the CONSULTANT shall be and remain liable to the LOCAL PUBLIC AGENCY in accordance with applicable law for all damages to the LOCAL PUBLIC AGENCY caused by the CONSULTANT's negligent performance of any of the services furnished under this Agreement. Any construction costs, legal fees, and administrative costs incurred by the LOCAL PUBLIC AGENCY due to negligent performance or errors in design by the CONSULTANT shall be paid by the CONSULTANT.

14. Non-Discrimination

The CONSULTANT and his subconsultants, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of services under this Agreement with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, handicap, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

15. Successors and Assignees

The LOCAL PUBLIC AGENCY, insofar as authorized by law, binds itself and its successors, and the CONSULTANT binds its successors, executors, administrators, and assignees, to the other party of this Agreement, and to the successors, executors, administrators, and assignees of such other party, as the case may be insofar as authorized by law, in respect to all covenants of this Agreement.

Except as above set forth, neither the LOCAL PUBLIC AGENCY nor the CONSULTANT shall assign, sublet or transfer its or his interest in this Agreement without the consent of the other.

16. Supplements

This Agreement may only be amended, supplemented, or modified by a written document executed in the same manner as this Agreement.

17. Governing Law

This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

18. Notification

All written notices required by this Agreement shall be sent to the parties at the following addresses:

LOCAL PUBLIC AGENCY:

John Beery, City Engineer

City of Noblesville

16 South 10th Street

Noblesville, Indiana 46060

CONSULTANT:

Willis R. Conner, President

American Structurepoint, Inc.

7260 Shadeland Station

Indianapolis, Indiana 46256

19. Mediation

In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the LOCAL PUBLIC AGENCY and the CONSULTANT agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The LOCAL PUBLIC AGENCY and the CONSULTANT further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants to also include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers, and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

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IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement.

CONSULTANT

American Structurepoint, Inc.

By: Gregory Kicinski  
(Signature)

Gregory Kicinski  
Transportation Group Leader  
(Typed Name & Title)

Date: 3/9/2018

LOCAL PUBLIC AGENCY

Board of Public Works and Safety  
City of Noblesville, Indiana

By: John Ditslear  
John Ditslear, Mayor

By: Lawrence J. Stork  
Lawrence J. Stork, Member

By: Jack Martin  
Jack Martin, Member

Attest: Evelyn L. Lees  
Evelyn Lees, Clerk

Date: 3-27-2018

(Form approved by the Attorney General.)

**NON-COLLUSION AFFIDAVIT**

STATE OF INDIANA )

)

COUNTY OF MARION )

The undersigned, being duly sworn on oath, says that he is the contracting party, or, that he is the representative, agent, member, or officer of the contracting party, that he has not, nor has any other member, representative, agent, or officer of the firm, company, corporation, or partnership represented by him, directly or indirectly, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of the annexed agreement other than that which appears upon the face of the agreement.

American Structurepoint, Inc.

(Firm Name)

7260 Shadeland Station, Indianapolis, Indiana 46256

(Firm Address)

*Gregory Kicinski*

(Signature)

GREGORY KICINSKI

(Print or Type Name)

Subscribed and sworn to before me this 7<sup>th</sup> day of March, 2018.



*Margaret E. Kantz*

Notary Public

Margaret E. Kantz

(Typed Name)

My Commission Expires: 9-17-2020

County of Residence: Marion

## APPENDIX "A"

### SERVICES TO BE FURNISHED BY CONSULTANT:

1. Right-of-Way Management and Supervision
  - a. CONSULTANT shall be responsible for administering, scheduling, and coordinating all activities necessary to certify right-of-way has been acquired and the project is clear for construction letting. This responsibility shall include:
    - i) Meetings, conferences, and communications with property owners, relocatees, attorneys, engineers, appraisers, buyers, and LOCAL PUBLIC AGENCY
    - ii) Revisions to construction plans, right-of-way plans, plats, legal descriptions, and right-of-way stake-outs that may be required
  - b. These right-of-way services include all reasonable services as required to secure all parcels based on the approved engineering design or to recommend to the LOCAL PUBLIC AGENCY that condemnation proceedings be filed.
  - c. The CONSULTANT shall make arrangements for delivery of payment to each property owner and/or displacee.
2. Right-of-Way Engineering
  - a. The CONSULTANT shall prepare title research, legal descriptions, route survey plats and/or right-of-way parcel plats, and other materials to be used in the acquisition of right-of-way in accordance with INDOT's Right-of-Way Engineering Procedure Manual, hereinafter called the MANUAL, and 865 IAC 1-12.
  - b. The CONSULTANT shall compare and study, in detail, all of the title information and survey data furnished with it, and the CONSULTANT shall calculate or otherwise determine all other data, as may be necessary, for writing the legal description of every right-of-way parcel, all in conformity with the MANUAL.
  - c. The CONSULTANT may, with prior written approval of LOCAL PUBLIC AGENCY, undertake additional title research in order to resolve errors or omissions in provided abstracting, as may be deemed necessary by LOCAL PUBLIC AGENCY for the purpose of completing the services included in this Agreement.
  - d. The CONSULTANT may, with the prior written approval of LOCAL PUBLIC AGENCY, undertake field surveys for the purpose of checking title or plan data and/or for the acquisition of vital locative and boundary information that is not contained in existing records, as may be considered necessary to complete fully and satisfactorily the services included in this Agreement.
  - e. Each right-of-way (parcel) plat and each sheet of legal description and access control clause issued by the CONSULTANT will be dated and will bear the signature and seal of the Registered Land Surveyor (Indiana) by whom the same is prepared, or under whose

personal supervision the same is prepared by his/her regularly employed subordinates, and for which he/she takes full responsibility.

3. Title Research Services

a. Preparation of Title and Encumbrance Reports – Permanent Right-of-Way

- i) A Title and Encumbrance Report will be provided for each permanent right-of-way parcel. The Title and Encumbrance Report will be created by adequately researching all available records and documenting the research to identify all parties or entities having any ownership interest in the property to be acquired, including an abstract of all pertinent data, legal descriptions, all liens (taxes, mortgages, and recorded judgments), assessments, taxes, and any encumbrances against the property.

b. Preparation of Title and Encumbrance Reports – Temporary Right-of-Way

- i) A Title and Encumbrance Report will be provided for each temporary right-of-way parcel that contains the deed of record for the current fee owner, documentation for any sell-offs and contiguous property, and current tax information.

c. Supplemental Title and Encumbrance Reports (Updates)

When requested, the CONSULTANT shall provide title work from the date of the original Title and Encumbrance Report to the present date. The CONSULTANT shall provide the following, in duplicate:

- i) A cover sheet that identifies any changes and the associated recording documents. In addition, the CONSULTANT shall note the current status of the taxes.
- ii) Copies of any documents recorded since the date of the original Title and Encumbrance Report that affect the caption property.

4. Appraising

- a. Information pertaining to the Appraisers shall be submitted to LOCAL PUBLIC AGENCY prior to LOCAL PUBLIC AGENCY giving the Notice to Proceed on the Appraising.
- b. The Appraiser(s) shall be a licensed appraiser in the State of Indiana.
- c. No services by the Appraiser(s) shall be sublet, assigned, or otherwise performed by anyone other than the Appraiser(s).
- d. Should the quality and/or progress of the appraisals be deemed unsatisfactory, the LOCAL PUBLIC AGENCY may terminate the services of the Appraiser(s) by giving five (5) days written notice. The earned value of the services performed shall be based upon an estimate of the portion of the services as have been

rendered by the Appraiser(s) to the date of termination. All services, completed or partially completed, shall become the property of the LOCAL PUBLIC AGENCY.

- e. The Appraiser(s) shall examine the plans for this project and review in the field the various parcels herein designated.
- f. The Appraiser(s) shall give the owner of each parcel to be appraised the opportunity to accompany the Appraiser(s) during the inspection of the parcel.
- g. The Appraiser(s) shall follow accepted principles and techniques in evaluation of real property in accordance with state laws. Any appraisal that does not meet requirements shall be further documented or reappraised, as the case may be, without additional compensation to the Appraiser(s).
- h. The Appraiser(s) will furnish the LOCAL PUBLIC AGENCY, attached to each report, all comparables used in the report, consisting of sufficient sales data in the vicinity of the project and of such recent date that a pattern of values may be established. Each comparable property is to be identified by photograph and will be located on electronic map attached to each report that is to be furnished to the LOCAL PUBLIC AGENCY.
- i. The Appraiser(s) shall not give consideration to nor include in the appraisal any allowance for relocation assistance benefits.
- j. Where an entire property is to be acquired, the estimate of just compensation shall be the fair market value of the property. Where only part of a property is to be acquired, the estimate of just compensation shall be that amount arrived at in accordance with the laws governing just compensation applicable to the acquiring agency, including those laws governing compensable and non-compensable items and the treatment of general and special benefits. For whole or partial acquisitions, the appraisal report shall show what in the appraiser's judgment is a reasonable allocation of the "before value" to the various land, building, and other improvement components. For partial acquisitions, the appraisal report shall further show a similar allocation of the "after value."
- k. In estimating just compensation for the acquisition of real property, appraisal reports shall to the greatest extent practicable under state law, disregard any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement for which such property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner.
- l. Documentation of estimates of value (either the before, the after, or the acquisition value) of damages and/or of special benefits shall be by the most applicable and appropriate means available. If support for the after value by the usual methods of market or income data or indications from severance damage studies is not feasible, the Appraiser(s) shall so state and explain why it is not

feasible. In such instances, the Appraiser(s) must then fully explain the reasoning for the after value estimate.

- m. The Appraiser's report shall conform to statutory and judicial determinations regarding non-compensable items.
  - i) The purpose of the appraisal, which includes a statement of value to be estimated and the rights or interests being appraised.
  - ii) Identification of the property and its ownership, including at least a 5-year delineation of title.
  - iii) Statement of appropriate contingent and limiting conditions, if any.
  - iv) An adequate description
  - v) Identified photographs of the subject property, including all principal above-ground improvements or unusual features affecting the value of the property to be acquired or damaged.
  - vi) An identification or listing of the buildings, structures, and other improvements on the land, as well as the fixtures that the Appraiser considers to be a part of the real property to be acquired.
  - vii) The estimate of just compensation for or resulting from the acquisition. In the case of a partial acquisition, where appropriate, the Appraiser(s) shall make a reasonable allocation of the estimate of just compensation for the real property to be acquired and for damages and/or special benefits to remaining real property.
  - viii) The date(s) on which and/or as of which, as appropriate, the just compensation is estimated. The effective date of value estimate must be the last day of inspection.
  - ix) The certification, signature, and date of signature of the Appraiser(s).
  - x) Other descriptive material (maps, charts, plans, and photographs).
  - xi) That the property owner was given the opportunity to accompany the Appraiser(s) during the inspection of the property.
- n. Appraisal reports shall be typewritten and dated and signed by the individual making the appraisal.
- o. Each appraisal report shall contain an appraiser's certification. A new certificate shall be prepared where there is a change in the appraisal report that affects the estimate of just compensation or changes the date of valuation. An exception to including all requirements in each appraisal report is permitted where project data containing the same information has been developed to supplement the reports. In

such instances, an appropriate reference to the information may be considered as equivalent to its inclusion in the appraisal report.

- p. The Appraiser(s) agrees/agree to furnish one white copy and one green copy of the appraisal report.
- q. The Appraiser(s) agrees/agree to updating reports for one year after the initial completion of the report and/or testifying in court on behalf of the LOCAL PUBLIC AGENCY on any of the parcels described herein. In consideration for actions taken, the LOCAL PUBLIC AGENCY will agree in writing to fees for testimony prior to the date the Appraiser must testify.
- r. All information contained in the appraisal report and all parts thereof are to be treated as a privileged communication. The Appraiser(s) shall take all necessary steps to ensure neither he/she nor any member of his/her staff or organization divulges any information concerning the report except to a duly authorized representative of the LOCAL PUBLIC AGENCY, until authorized in writing by the LOCAL PUBLIC AGENCY to reveal the communication to another designated party.

## 5. Buying

- a. The CONSULTANT shall perform the buying services covered by this Agreement through the services of a subconsultant. The Buyer shall be a licensed real estate broker in the State of Indiana or an attorney licensed to practice law in the State of Indiana.
- b. No services by the Buyer shall be sublet, assigned, or otherwise performed by anyone other than the Buyer.
- c. The Buyer shall make every reasonable effort to acquire expeditiously parcels listed herein.
- d. The Buyer shall make a prompt offer to acquire each parcel for the full amount that has been established and approved as just compensation for the acquisition. The Uniform Property or Easement offer letter shall be given each parcel owner or sent by certified mail with return receipt requested.
- e. Upon initiation of buying, the Buyer shall provide owner of real property to be acquired with a written statement of, and a summary of the basis for, the amount that has been established by the LOCAL PUBLIC AGENCY as just compensation for the proposed acquisition.
- f. The Buyer shall perform the services under this Agreement in compliance with the following regulations:
  - i) Make all reasonable efforts to personally contact each owner or his designated representative, explain the acquisition, and offer in writing the

approved estimate of just compensation. When all efforts to make a personal contact have failed, or in the event the property owner resides out of state, the owner may be contacted by certified or registered first-class mail or other means appropriate to the situation.

- ii) The owner of improvements located on lands being acquired for right-of-way should be offered the option of retaining those improvements at a retention value determined by the Buyer and approved by the LOCAL PUBLIC AGENCY.
- iii) A revised offer and summary statement of just compensation shall be provided to the owner if the extent of the taking is revised.
- iv) The Buyer shall maintain adequate records to include a report for each parcel containing but not limited to:
  - (a) The date and place of contact
  - (b) Parties of interest contacted
  - (c) Offer made
  - (d) Counter-offer or reasons offer was not accepted
  - (e) The report must be signed and dated by the Buyer, and initiated by the person contacted.
- v) The property owner may be given a copy of the report on each contact.
- vi) When attempts to buy are unsuccessful, the Buyer shall prepare his/her recommendation for action and submit it to the LOCAL PUBLIC AGENCY.
  - (a) The recommendation shall consider administrative settlement, including amount of settlement and reasons for a settlement.
  - (b) Otherwise, a condemnation report shall be filled out, title update ordered, and completed file submitted with the completed file after receiving a completed title update.
- g. All information contained in the appraisal shall be treated as confidential. The Buyer is to take all steps to ensure that he/she does not divulge any of this information to anyone other than a duly authorized representative of the LOCAL PUBLIC AGENCY unless authorized in writing by the LOCAL PUBLIC AGENCY to reveal the information to another designated party.
- h. Should the quality and/or progress of the buying be unsatisfactory, the LOCAL PUBLIC AGENCY may terminate the services of the Buyer by giving five (5) days written notice. The earned value of the services performed shall be based

upon the percentage of services completed at the time of the termination. All records of the Buyer and services completed or partially completed, shall become the property of the LOCAL PUBLIC AGENCY.

- i. If condemnation services are required, the CONSULTANT can provide them as an Additional Service.

## **APPENDIX "B"**

### **INFORMATION AND SERVICES TO BE FURNISHED BY THE LOCAL PUBLIC AGENCY:**

The LOCAL PUBLIC AGENCY shall furnish the CONSULTANT with the following:

1. Provide access to enter upon public and private lands as required for the CONSULTANT to perform work under this Agreement
2. All legal services as may be required for development of the project
3. An LOCAL PUBLIC AGENCY representative with decision-making authority for inquiries
4. LOCAL PUBLIC AGENCY letterhead to be used to make offers to property owners
5. LOCAL PUBLIC AGENCY accounts payable vouchers. If LOCAL PUBLIC AGENCY does not have accounts payable vouchers, standard State Board of Accounts vouchers will be used.
6. LOCAL PUBLIC AGENCY attorney contact information for review and approval of conveyance documents
7. LOCAL PUBLIC AGENCY policy regarding recording of conveyance and other applicable documents
8. LOCAL PUBLIC AGENCY partial mortgage release policy
9. LOCAL PUBLIC AGENCY closing policy regarding total acquisitions
10. Right-of-way staking is to be provided by others.
11. LOCAL PUBLIC AGENCY shall be responsible for recordation.

## **APPENDIX "C"**

### **SCHEDULE:**

No work under this Agreement shall be performed by the CONSULTANT until the CONSULTANT receives a written notice to proceed from the LOCAL PUBLIC AGENCY.

All work by the CONSULTANT under this Agreement shall be completed and delivered to the LOCAL PUBLIC AGENCY for review and approval within the approximate time periods shown in the following submission schedule:

1. Appraisals and documentation within 45 days after the notice to proceed with the appraisals
2. Buying and documentation within 180 days after receipt of notice to proceed with buying on each parcel

## APPENDIX "D"

### A. Amount of Payment

1. The CONSULTANT will be paid for the services performed under this Agreement based on the specific cost per unit multiplied by the actual units of work. Estimated unit costs are shown in Exhibit 1, which is attached hereto and incorporated herein. The final amount will be adjusted according to the actual subconsultant invoices; however, the final amount shall not exceed \$80,335 unless and until a supplemental agreement is executed. Eleven parcels are assumed.
2. The CONSULTANT shall not be paid for any service performed by the LOCAL PUBLIC AGENCY or not required to develop this project.

### B. Method of Payment

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the LOCAL PUBLIC AGENCY.  
  
The invoice voucher shall represent the value, to the LOCAL PUBLIC AGENCY, of the partially completed work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of each pay item in Section A.1 of this Appendix, percentage completed, and prior payments.
2. The LOCAL PUBLIC AGENCY, for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay to the CONSULTANT for rendering such services the fees established above in the following manner:
  - a. For completed work, and upon receipt of invoices from the CONSULTANT and the approval thereof by the LOCAL PUBLIC AGENCY, payments covering the work performed shall be due and payable to the CONSULTANT.
  - b. From the partial payment thus computed, there shall be deducted all previous partial fee payments made to the CONSULTANT.
3. In the event of a substantial change in the scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with item 6, Changes In Work, of the General Provisions set out in this Agreement.

Exhibit 1

2018 Noblesville Land Acquisition, EN-295														
FEE PROPOSAL, Dated: 3/02/2018														
				R/W ENGINEERING - Title Reports			R/W Services							
Parcel	Owner	Tax I.D.	Appraisal Report Type	Title Work Fee	Title Update Fee	Subtotal R/W Engineering	Appraisal Fee	Second Appraisal Fee	Buying Fee [includes title update fee]	Recording NA Agency Records	Relo NA	Management Fee	R/W Services Subtotal	Total Fees
Mid100	Woodrum, Edgar E.	11-10-02-00-00-035.101	Short Form	\$ 375.00	\$ 125.00	\$ 500.00	\$ 2,625.00	\$ 2,625.00	\$ 1,785.00			\$ 1,200.00	\$ 8,235.00	\$ 8,735.00
Mid101	City of Noblesville	13-11-22-00-00-008.000	IA Roadway Dedicatio	\$ 375.00	\$ 125.00	\$ 500.00	\$ -	\$ -	\$ 1,785.00			\$ 1,200.00	\$ 2,985.00	\$ 3,485.00
TBD	E&F Realty Co, LLP	13-11-22-00-00-014.003	Short Form	\$ 375.00	\$ 125.00	\$ 500.00	\$ 2,625.00	\$ -	\$ 1,785.00			\$ 1,200.00	\$ 5,610.00	\$ 6,110.00
TBD	FVE MW LLC	12-11-15-00-00-012.000	Short Form	\$ 375.00	\$ 125.00	\$ 500.00	\$ 2,625.00	\$ -	\$ 1,785.00			\$ 1,200.00	\$ 5,610.00	\$ 6,110.00
Mid102	Spartz	12-11-15-00-00-014.000	Short Form	\$ 375.00	\$ 125.00	\$ 500.00	\$ 2,625.00	\$ 2,625.00	\$ 1,785.00			\$ 1,200.00	\$ 8,235.00	\$ 8,735.00
Mid103	Meadow Brook Village LLC	20-11-15-00-00-014.001	Short Form	\$ 375.00	\$ 125.00	\$ 500.00	\$ 2,625.00	\$ 2,625.00	\$ 1,785.00			\$ 1,200.00	\$ 8,235.00	\$ 8,735.00
131st-1	MAB Capital Investments LLC	12-11-15-00-00-009.000	Short Form	\$ 375.00	\$ 125.00	\$ 500.00	\$ 2,625.00	\$ 2,625.00	\$ 1,785.00			\$ 1,200.00	\$ 8,235.00	\$ 8,735.00
LehrGr1	Spaethe, Sue A. & James A. CoTrustees Sue A. Spaethe Tru	20-11-15-00-00-010.001	Short Form	\$ 375.00	\$ 125.00	\$ 500.00	\$ 2,625.00	\$ 2,625.00	\$ 1,785.00			\$ 1,200.00	\$ 8,235.00	\$ 8,735.00
LehrGr2	Buttz, Douglas & Michele (Resi Prop)	20-11-15-00-01-073.000	Short Form	\$ 375.00	\$ 125.00	\$ 500.00	\$ 2,625.00	\$ -	\$ 1,785.00			\$ 1,200.00	\$ 5,610.00	\$ 6,110.00
LehrGr3	Buttz, Douglas & Michele B. (Busi Prop)		Short Form	\$ 375.00	\$ 125.00	\$ 500.00	\$ 2,625.00	\$ -	\$ 1,785.00			\$ 1,200.00	\$ 5,610.00	\$ 6,110.00
	Contingency for Unknowns			\$ 375.00	\$ 125.00	\$ 500.00	\$ 2,625.00	\$ 2,625.00	\$ 1,785.00			\$ 1,200.00	\$ 8,235.00	\$ 8,735.00
						\$ -							\$ -	\$ -
						\$ -							\$ -	\$ -
	UNALLOCATED FEE:					\$ -							\$ -	\$ -
						\$ -								
	SUBTOTAL			\$ 4,125.00	\$ 1,375.00	\$ 5,500.00	\$ 26,250.00	\$ 15,750.00	\$ 19,635.00	\$ -	\$ -	\$ 13,200.00	\$ 74,835.00	\$ 80,335.00
						\$ -								
						\$ -	\$ -							
	Date of Fully Executed R/W Services Client Contract													
10/01/17	Date of INDOT Fee Schedule Applied to Fee Estimate													
						\$ -								
	TOTAL			\$ 4,125.00	\$ 1,375.00	\$ 11,000.00	\$ 26,250.00	\$ 15,750.00	\$ 19,635.00	\$ -	\$ -	\$ 13,200.00	\$ 74,835.00	\$ 80,335.00

**MEMORANDUM**

**TO: THE BOARD OF PUBLIC WORKS AND SAFETY**

**FROM: JOHN BEERY, CITY ENGINEER**

**DATE: MARCH 21, 2018**

**RE: CONTRACT FOR LAND ACQUISITION SERVICES WITH AMERICAN STRUCTUREPOINT**

Attached is a contract with American Structurepoint for land acquisition and appraisal services for the Midland Trace Trail and the replacement of a culvert under Greenfield Avenue immediately east of Marilyn Road. Attached is a resolution passed by Council approving subject parcels. Additionally, included in this project is the appraisal of Midland Trace Trail parcels between River Road and Cicero Creek, which will not be acquired by eminent domain, but possibly purchased based on appraisals with approval from the adjacent land owner to correct an easement issue.

**I recommend that the Board of Public Works approve the contract with American Structurepoint for an amount not to exceed \$80,355.**

RESOLUTION ##RC-2-18

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF  
NOBLESVILLE CONCERNING ACQUISITION OF REAL ESTATE

WITNESS THAT:

WHEREAS, the City of Noblesville, Hamilton County, Indiana, ("the City") has identified various locations in the City of Noblesville in need of public improvements ("The Projects"); and,

WHEREAS, the City needs to acquire land for a public roadway and pedestrian improvements for the Projects from the landowners identified below ("the Real Estate");

County Parcel Number	Owner
12-11-15-00-00-012.000	Spaethe, Sue A & James A. CoTrustees of Sue A Spaethe Trust 18009 E 49th Terrace Ct S Independence, MO 64055
12-11-15-00-00-014.000	Buttz, Douglas & Michele 11998 Greenfield Avenue Noblesville, IN 46060
20-11-15-00-00-014.001	Cawley, Darren C 11906 Greenfield Avenue Noblesville, IN 46060
12-11-15-00-00-009.000	Buttz, Douglas G & Michele B 12484 156th St E Noblesville, IN 46060
20-11-15-00-00-010.001	Deerchase Housing Partners LP 3333 Founders Rd Ste 120 Indianapolis, IN 46268
20-11-15-00-01-073.000	Creekside At Cedar Path Homeowners Association Inc 3002 E 56TH ST Indianapolis, IN 46220
13-11-22-00-00-008.000	MAB Capital Investments LLC 14701 Cumberland Rd Ste 170 Noblesville, IN 46060
13-11-22-00-00-014.003	Wilson, Robert E & Marsha A 12280 136th St E Noblesville, IN 46060

WHEREAS, the City, as purchasing agent, has determined that the acquisition of the Real Estate is necessary to implement and construct the Projects; and,

WHEREAS, it has been estimated that the purchase price of the Real Estate needed for any of the Projects may exceed Twenty-five Thousand Dollars (\$25,000); and,





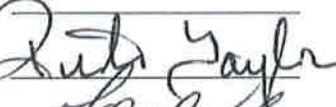

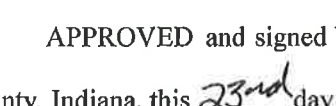
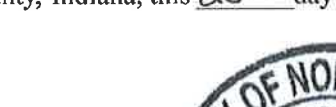

IT IS THEREBY RESOLVED by the Common Council of the City of Noblesville as follows:

1. The Common Council of the City of Noblesville hereby resolves that it is interested in purchasing Real Estate described above, and any other parcels adjacent to those listed which may be required as the designs for the project are being completed.
3. The Mayor of the City of Noblesville is requested to obtain two (2) appraisals of each affected parcel by licensed appraisers; to authorize the issuance of an offer to purchase the Real Estate; and to initiate acquisition of the Real Estate pursuant to Indiana Code 32-24-1, if necessary.

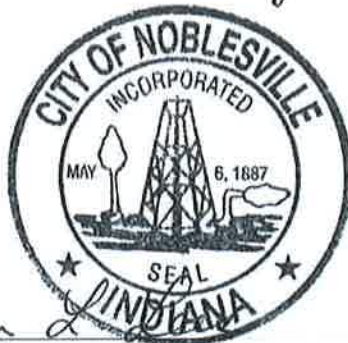
ALLOF WHICH IS RESOLVED by the Common Council of the City of Noblesville,

Indiana, this this 23rd day of January, 2018\_\_\_\_\_.

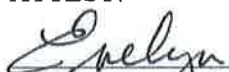
COMMON COUNCIL OF THE CITY OF NOBLESVILLE

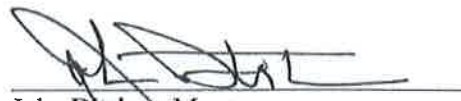
Aye		Nay
	Brian Ayer	_____
	Mark Boice	_____
	Wil Hampton	_____
	Chris Jensen	_____
	Roy Johnson	_____
	Gregory O'Connor	_____
	Mary Sue Rowland	_____
	Rick Taylor	_____
	Megan Wiles	_____

APPROVED and signed by the Mayor of the City of Noblesville, Hamilton  
County, Indiana, this 23rd day of January, 2018.

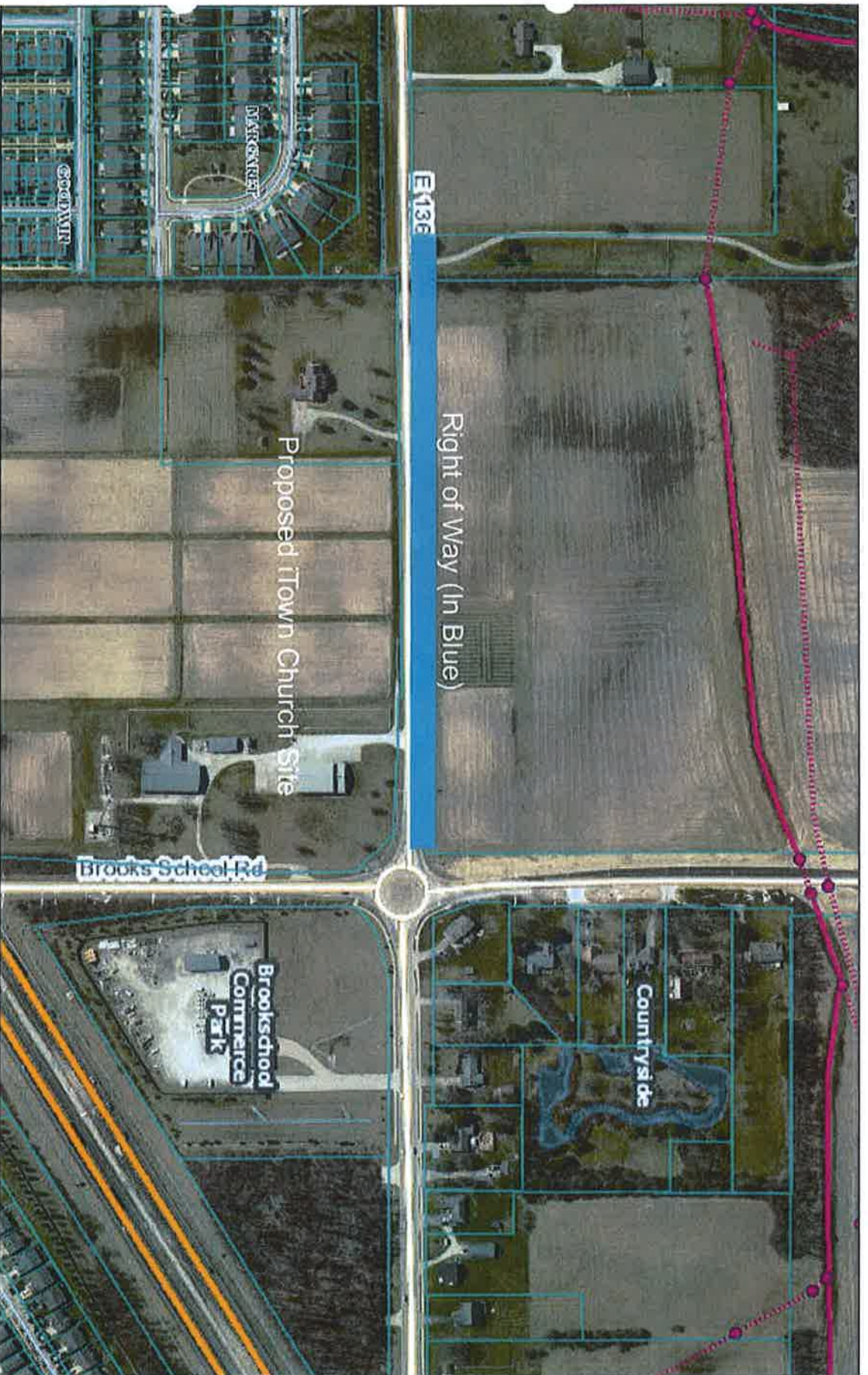


ATTEST:

  
Evelyn Lees, Clerk  
City of Noblesville, Indiana

  
John Ditslear, Mayor  
City of Noblesville

# iTown Church Map



January 18, 2018

☒ US Lift Stations

• san\_air\_release\_valve

**Drainage Structures**

• All Other Structures

**Regulated Drains**

⊕ MUNICIPAL MANHOLE

■■■■ CLOSED DRAIN

Drain Name

— MUNICIPAL DRAIN

— OPEN DRAIN

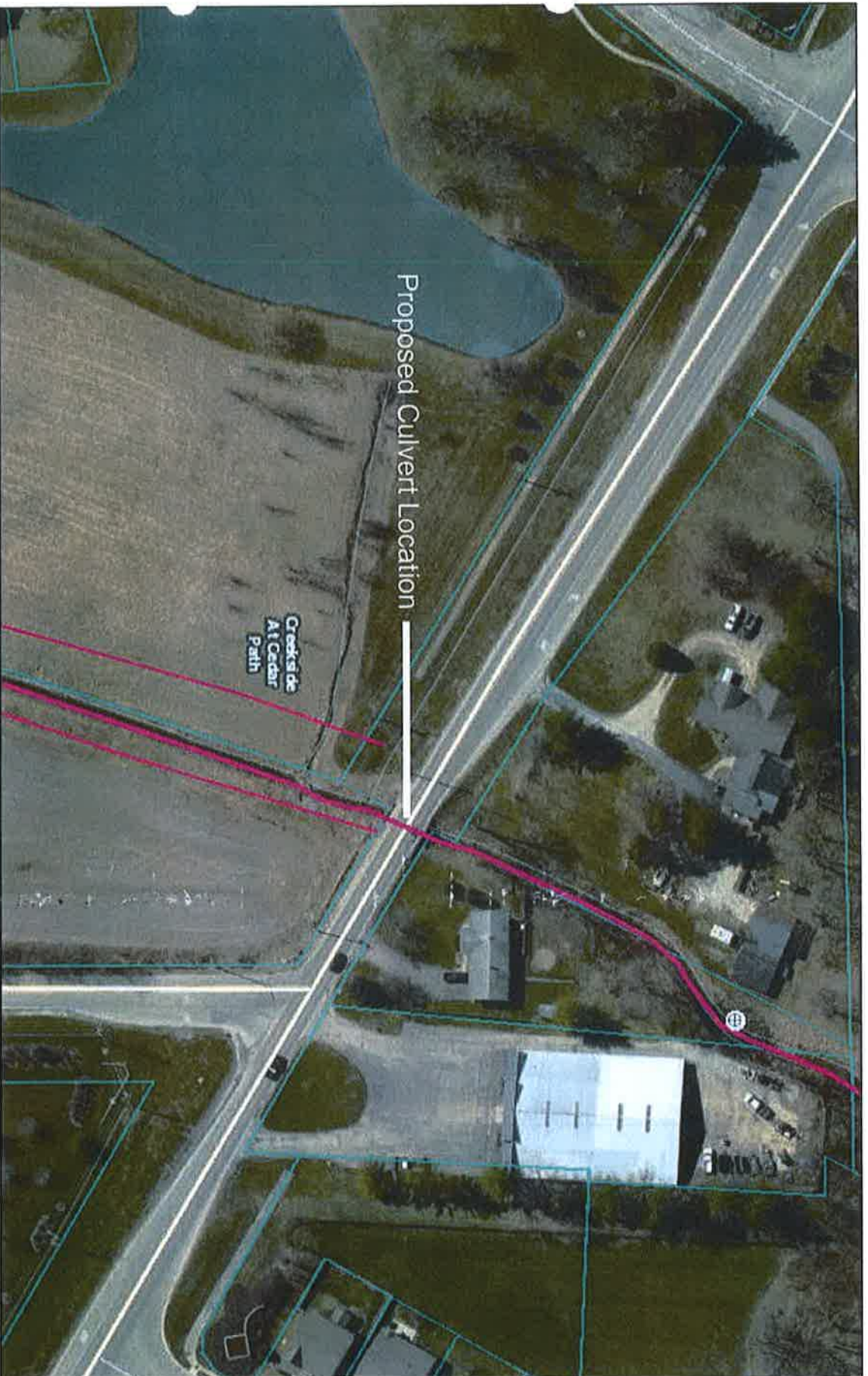
SSD

Basemap information here

1:3,600



# Marilyn Road and Greenfield Avenue Culvert



January 18, 2018

☒ Lift Stations

• san\_air\_release\_valve

**Drainage Structures**

• All Other Structures

⊕ MUNICIPAL MANHOLE

**Drain Name**

**Regulated Drains**

■■■■ CLOSED DRAIN

— MUNICIPAL DRAIN

— OPEN DRAIN

— SSD

Base map information here

