

CITY OF OBERLIN, OHIO

ORDINANCE No. 23-51 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH AMERICAN STRUCTUREPOINT, INC. OF CLEVELAND, OHIO, FOR PROFESSIONAL ENGINEERING DESIGN SERVICES FOR THE REPLACEMENT OF THE EAST VINE STREET BRIDGE IN THE CITY OF OBERLIN AS AN EMERGENCY MEASURE

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a contract with American Structurepoint, Inc. of Cleveland, Ohio for professional engineering design services for the replacement of the East Vine Street Bridge in the City of Oberlin in an amount not-to-exceed \$270,438. A copy of the proposed contract is attached hereto and incorporated herein by reference.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to proceed with design as soon as possible to ensure the timely replacement of the East Vine St. Bridge in accordance with the schedule established by the Ohio Department of Transportation and provided that it is elevated to emergency status by the affirmative vote of at least five members of Council and receives the affirmative vote of at least five members of Council upon final passage, it shall go into full force and effect from and immediately after its passage; otherwise, it shall take effect at the earliest period allowed by law.

PASSED: 1st Reading: July 3, 2023
2nd Reading: _____
3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



BRYAN BURGESS
PRESIDENT OF COUNCIL

POSTED: July 4, 2023

EFFECTIVE DATE: July 3, 2023



June 26, 2023

'23 JUL 14 AM 9:45

Mr. Jeff Baumann
Public Works Director
85 South Main Street
Oberlin, Ohio 44074

Re: Proposal and Agreement for Professional Services for LOR-East Vine Street Bridge Replacement (PID 119360)

Dear Mr. Baumann:

American Structurepoint, Inc., is pleased to present this proposal and agreement for professional services related to the East Vine Street bridge replacement (PID 119360), including survey, environmental, detailed design, hydraulic analysis, geotechnical investigation/analysis (to be performed by a subconsultant), right-of-way plans, right of way acquisition (to be performed by a subconsultant), and general project coordination. Since the proposed improvements utilize ODOT's Municipal Bridge Program funds, we are required to follow ODOT Design Standards and Right-of-Way Plan Development.

Scope of Services

American Structurepoint's scope of services for this project is as follows. Please see attachment for detailed task narrative.

- I. Project Limits
 - A. Approximate project limits include 50 feet east and west of the existing Plum Creek stream crossing. The project termini will be at approximately 100 feet to the east and 100 feet to the west.
- II. Improvements to be Designed:

The general scope of the improvements is as described below:

 - A. The new E. Vine Street bridge over Plum Creek will replace the deficient existing concrete slab structure. Pending confirmation through the hydraulic and geometric analysis, the replacement structure will be a 3-sided precast box culvert, a single span composite box beam, or a single span concrete slab. These alternatives will not be compared, but the preferred alternative will be the first structure that works in the order previously presented. The bridge typical section will match the existing approach roadway.

- B. The project limits include portions of roadway, creek, embankment, and adjacent parcels as required to accommodate the new bridge geometry and fully address necessary scope items required for acquisition, bidding, and construction. The project footprint will be minimized with the proposed roadway work transitioning into the existing condition as soon as practical.
- C. The roadway will be closed for the duration of the construction. A detour plan will be developed to re-route traffic during construction. Right-of-way plans will be developed for adjacent parcels impacted by the project are part of the project's scope.
- D. Environmental Services have been included.
- E. If authorized tasks have been included or evaluation of the existing building to the west of the bridge and stream restoration between E Vine Street and S Main Street.

III. Deliverables

American Structurepoint will provide the following deliverables in accordance with ODOT's Project Development Process (PDP) as described under Path 2:

A. Stage 1 submittal

Hydraulic, geotechnical investigation/analysis, and preferred structure alternative will be identified at this stage. Should a 3-sided flat top precast structure be deemed to be not feasible through hydraulic analysis or geometrics, a single span composite box beam structure advanced for final design. Should a single span composite box beam structure be deemed to be not feasible through hydraulic analysis or geometrics, a single span concrete slab structure will be advanced for final design via a change order for either option.

B. Preliminary Right-of-Way Submittal

C. Stage 2 submittal

D. Final Right-of-Way submittal

E. Stage 3 Submittal

F. Final Tracings

G. Estimated costs for construction will be submitted with each plan submittal

American Structurepoint shall have no responsibility for any services or work, except as expressly identified in our agreement or as subsequently agreed to in writing. Any and all actions, communications, or work by American Structurepoint related to the project shall be subject to the terms of our agreement, except as otherwise stated by American Structurepoint. We shall have no responsibility for oversight or supervision of the contractors or their employees, for the means and methods of construction, for the safety of persons on or off the job site, or the schedule. We shall have no responsibility to inspect for, or remove, hazardous materials.

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. American Structurepoint's services are intended for the sole benefit of the client and are not intended to create any rights or benefits for any other parties. American Structurepoint shall not be responsible for the acts or omissions of the owner, the contractor and subcontractors, and their respective agents and employees, or any other persons or entities performing work on the project who are not under the direct control or authority of American Structurepoint.

We will exercise reasonable care to incorporate the design requirements of governmental authorities having jurisdiction over the project into the construction documents as those requirements are known and understood by reasonable and prudent engineers under the same or similar circumstances. Our duty to incorporate the design requirements of governmental authorities into the construction documents is limited to design requirements as they are known and understood by reasonable and prudent engineers at the time of preparation of the construction documents, but we shall have no responsibility or liability for costs resulting from revised or different interpretations of the design requirements by the governmental authorities after completion of the construction documents or new and different design requirements that are adopted after completion of the construction documents.

Following submission of design documents and requests for permits to governmental authorities for their review and approval as may be required, we have no control over the ability to influence the governmental review process and the time required to complete the process and we shall have no liability for loss, costs, or damages sustained or incurred by client as a result of delays or extended time required for governmental review process.

Schedule

American Structurepoint has developed a revised project schedule based on ODOT Ellis dates (See attached). Additional details regarding project submittal timelines will be coordinated with the City and finalized prior to the Notice to Proceed.

Clarifications

The scope of work identified in this document is American Structurepoint's knowledge of the project requirements at the time when this document was prepared and serves as the basis for our price proposal and agreed fee. However, changes in work may be required as the project develops. Such changes may be dictated by revisions to written procedures included in manuals or decisions made by the Village or other reviewing agencies. Although American Structurepoint routinely incorporates minor design changes in our work, we will notify the City in writing of any significant changes in the work that may require modification of the agreement and will maintain separate cost accounting for each specific issue.

Supplemental Services

Additional items, including but not limited to those listed below can be included as additional tasks if requested by the City. We are available to provide them for a supplemental fee if such a need should arise.

1. Traffic Data Collection, Analysis, and/or Design
2. Design of a single span composite box beam or a single span concrete slab including structure rating
3. Mussel Survey
4. OEPA Notice of Intent (NOI) (Not Required as EDA < 1 acre)
5. CLOMR/LOMR
6. Roadway drainage design
7. Additional NEPA studies or public involvements activities as required by ODOT or any other agency
8. Analysis of tributary area or flows for the sanitary sewers; it is assumed that the existing sanitary sewers have adequate capacity

- 9. Estimate impact to wetlands, streams, and other regulated waters of the US and potential wetland mitigation
- 10. Regulated Materials Review Assessment
- 11. Permit fees required for environmental, hydraulic, OEPA PTI applications, including fees for public notice/newspaper publication
- 12. Private/public utility relocation design/plan production
- 13. Lighting design/analysis
- 14. Layout staking

Additional services will be performed based upon an agreed upon scope and fee, and receipt of written authorization by the owner.

Right-of-Entry

It is understood that the Client hereby grants American Structurepoint permission (if the site is not owned by the Client) that permission has been duly granted for a Right-of-Entry by our firm, agents, staff, consultants, and subcontractors for the purpose of obtaining field information pertinent to the subject project.

Compensation

The total Compensation for the services rendered will be as indicated below and invoiced monthly on a percent complete basis. Please refer to attachment for fee summary.

Tasks:

Planning Phase.....	(hourly, NTE) \$ 2,519
Preliminary Engineering Phase	(hourly, NTE) \$ 140,848
Environmental Engineering Phase	(hourly, NTE) \$ 91,912
Final Engineering Phase	(hourly, NTE) \$15,183
Construction Phase.....	(hourly, NTE) \$5,057
Total.....	(hourly, NTE) \$ 255,519

If authorized tasks:

Environmental Engineering Phase.....	(hourly, NTE) \$ 3,252
Environmental Engineering Phase.....	(hourly, NTE) \$ 11,667
Total.....	(hourly, NTE) \$ 14,919

Grand Total (hourly, NTE) \$270,438

Mr. Jeff Baumann
June 26, 2023
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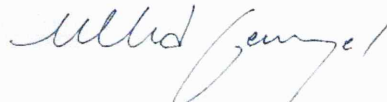
Full payment of invoices is due within 30 days from invoice date. If payment is not made within 30 days of the date when the payment is due, we may, at our option, and effective upon the delivery of written notice of our intention to do so, terminate the contract or suspend further performance of our services under the contract, and we shall have no liability for delay or damage that results from the termination of the contract or suspension of services.

If the assumptions made in the scope of services relative to extent of work are found to change, you will be notified in writing and a new (extra or reduced) fee will be presented. However, we recognize that it may not always be possible to provide written changes, as the client may need to request immediate change or additional services, and the administrative delays could be detrimental and costly to the project. In such case, requests for additional services will be invoiced on a time and materials basis.

Mr. Baumann, we appreciate the opportunity to provide engineering services and look forward to working with you on the successful advancement of this project. If this proposal is acceptable, please return a signed copy of the attached agreement. If you have any questions or require additional information, please do not hesitate to contact me at 216-302-3694 or ekagel@structurepoint.com

Sincerely,
American Structurepoint, Inc.


Edward D. Kagel
Project Manager


Walid E. Gemayel
Senior Vice President

EDK/WEG: mma

cc: Randall Roberts, City Engineer
File

Enclosures:
Agreement
ODOT Fee Proposal Spreadsheet
Preliminary Schedule
Survey Limits
Rii Geotechnical and SUE Services Proposals
Lawhon Asbestos and Mussel Survey
OR Colan Right-of-Way Acquisition Services Proposal

**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 Oberlin, 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: LOR-East Vine Street Bridge Replacement (PID 119360) ("Project").

Engineer's services under this Agreement are generally identified as follows: Please see Engineer's fee proposal dated June 26, 2023 ("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 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:

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2023.01079

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1. For Authorized Tasks, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class, plus Engineer's consultants' charges, if any, not to exceed \$255,519.
2. For If Authorized Tasks, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class, plus Engineer's consultants' charges, if any, not to exceed \$14,919.

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.

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- 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. **The Owner shall furnish, at the Owner's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Engineer may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Engineer shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Owner, consultants or contractors which the Owner specifically requires Engineer to hire, and/or the Owner's consultants and contractors.**
- 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.

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- 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 **\$500,000** or the total amount of compensation received by Engineer, whichever is greater, notwithstanding applicable insurance coverage.

1. Engineer shall maintain the following insurance until termination of this Agreement.

- a. **Commercial General Liability with policy limits of not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage.**
 - b. **Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Engineer with policy limits of not less than \$1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.**
 - c. **Workers' Compensation at statutory limits.**
 - d. **Employers' Liability with policy limits not less than \$500,000 each accident, \$500,000 each employee, and \$500,000 policy limit.**
 - e. **Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than \$2,000,000 per claim and \$2,000,000 in the aggregate.**
 - f. **To the fullest extent permitted by law, the Engineer shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Engineer's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.**
 - g. **The Engineer shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 5.01.H.1.**
- 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. Mediation shall be administered by the American Arbitration Association in accordance with the Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall share the mediator's fees and any filing fees equally. The mediation shall be held in the place where the project is located, unless another location is mutually agreed upon. Agreement reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. 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 of Ohio.
- 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. **If required by the Contract Documents, Engineer shall review and approve, or take other action upon, the Constructor's submittals such as shop drawings, product data and samples, but only for the limited purposes of checking for conformance with the information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy or completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Constructor's responsibility. The Engineer's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.**
- O. **If Engineer is required to review any submittals prior to final approval of plans by Owner or any required approval by governmental authorities, the review shall be limited to confirm general conformance with the preliminary design concept expressed by the preliminary design documents that are subject to material revisions in the process of developing the Owner-approved Contract Documents that bear the professional seal of the Engineer. The Owner understands and agrees that it is the Constructor's obligation to assume all costs to comply with the Contract Documents even if the Contract Documents differ materially from the preliminary design concept that is the subject of the submittal. Any notes made by Engineer on the submittal shall not relieve the Constructor from its duty to ensure compliance with the Contract Documents. Design and certification of manufactured items that are not specifically designed and detailed in the Contract Documents are the responsibility of the registered professional engineer**

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working for the Constructor. The Constructor is responsible for all dimensions, quantities, fabrication, fit, and the coordination with other trades. Dimensions shall be confirmed and correlated by the Constructor at the job site.

- P. The Engineer will exercise reasonable care to incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents as those requirements are known and understood by reasonable and prudent engineers under the same or similar circumstances. Engineer's duty to incorporate the design requirements of governmental authorities into the Construction Documents is limited to design requirements as they are known and understood by reasonable and prudent engineers at the time of preparation of the Construction Documents, but Engineer shall have no responsibility or liability for costs resulting from revised or different interpretations of the design requirements by the governmental authorities after completion of the Construction Documents or new and different design requirements that are adopted after completion of the Construction Documents.
- Q. Following submission of design documents and requests for permits to governmental authorities for their review and approval as may be required, Engineer has no control over or ability to influence the governmental review process and the time required to complete the process and Engineer shall have no liability for loss, costs or damages sustained or incurred by Owner as a result of delays or extended time required for any governmental review process.

6.01 *Incorporation by Reference*

- A. The following documents, or specified portions thereof, are hereby incorporated into and made a part of this Agreement as though expressly rewritten herein:
 - (i) The Ohio Department of Transportation's "Specifications for Consulting Services, 2016 Edition." ("ODOT Specifications")
 - (ii) The most current Office of Budget and Management Travel Policy as published on the State of Ohio website (<https://budget.ohio.gov/TravelRule>).

7.01 *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.
- B. In the event of any conflict or inconsistency between the terms of this Agreement and the ODOT Specifications, the terms of the ODOT Specifications shall prevail.

8.01 *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.

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EJCDC® E-520, Short Form of Agreement Between Owner and Engineer for Professional Services.

2023.01079

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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:

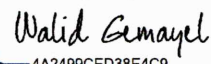
Engineer's Proposal Letter dated June 26, 2023

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

Owner: City of Oberlin, Ohio

By: 
Print name: Robert Hillard
Title: City Manager
Date Signed: 7/12/2023

Engineer: American Structurepoint, Inc.

DocuSigned by:
By: 
Print name: Walid E. Gemayel, PE
Title: Senior Vice President
Date Signed: 7/14/2023

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

State of: Ohio

Address for Owner's receipt of notices:

Jeff Baumann
85 South Main Street
Oberlin, Ohio

Address for Engineer's receipt of notices:

Willis R. Conner
600 Superior Avenue East, Suite 2401
Cleveland, Ohio 44114

Approved as to form:  7/10/23
Jon D. Clark Date
Law Director