

ORDINANCE NO. 77-24

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACTUAL AGREEMENT WITH AMERICAN STRUCTURE POINT FOR ENGINEERING DESIGN SERVICES FOR THE US 42 RESURFACING PROJECT.

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

- SEC. 1:** That the Mayor is hereby authorized and directed to execute a Contractual Agreement with American Structure Point for engineering design services for the US 42 Resurfacing Project (Homestead to Lafayette)
- SEC. 2:** That the funds to cover the agreement, in the estimated amount of \$118,862.00 are available in Account No. 108-0610-54411.
- SEC. 3:** That a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein.
- SEC. 4:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.
- SEC. 5:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: April 9, 2024

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: April 9, 2024

SIGNED: Dennis Hanwell
Mayor



ORD 77-24
EKH.A

March 15, 2024

City of Medina Engineering Department
132 North Elmwood Avenue
Medina, Ohio 44256
Attn: Mr. Patrick Patton, PE

Subject: MED-42-16.78 US 42 Resurfacing (City of Medina), PID 119446
Proposal for Professional Services

Dear Mr. Patton,

As a follow up to our meeting on February 28, 2024, our team is pleased to submit our fee proposal for the City's review. The fee proposal was developed in concurrence with the current Ohio Department of Transportation Consultant Fee Guidance and the approved project task list which includes Preliminary Engineering (Field Survey, Combined Stage I/Stage II Design), Final Engineering (Stage III Design, Final Plan Package), and Pre-Construction (Prebid Support).

Project Overview:

This project involves an ODOT District 3 LPA delivery for the proposed scope of services as listed below

- **Lafayette Road to 300 ft. north of West Homestead Street**
 - Localized pavement repairs as needed
 - Asphalt milling and resurfacing
 - Proposed ADA Curb ramps (excluding Smith Road)
 - Minor adjustment to drainage castings (if required)
 - Milling and resurfacing

The following scope items are provided for clarification and fee proposal development:

- Sidewalk repairs will be limited and localized to ADA Curb Ramp replacements only
- ADA curb ramp replacement for compliance with current ODOT standards
- Drainage structures will be adjusted as needed to provide compliance with ADA crossings
- ROW will not be required as all work is scoped to be completed within existing limits
- Pedestrian push button pedestals may require adjustments following field review (if-authorized)
- Deliverables will follow ODOT plan standards for engineering, design, and submittals
- Milling and resurfacing improvements will follow ODOT maintenance standards

Proposed scope items are included Preliminary Engineering (Field Survey, Combined Stage I/II Design), Final Engineering (Stage III Design, Final Plan Package), and Pre-Construction (Prebid Support) as detailed in the following section. Prior to the combined Stage I/Stage II submittal, the design team will develop a working scroll plot exhibit to confirm the proposed curb ramp layouts and associated traffic control updates.

Preliminary Engineering Phase

Field Survey

2.3.A - Field Survey and Aerial Mapping

American Structurepoint will perform topographic surveys at specific locations along the project corridor as described below. This scope includes the determination of right-of-way lines at the curb ramp locations.

- A. Establish horizontal (Ohio North, NAD 1983) and vertical (NAVD 1988) survey control
- B. Spot topographic surveys of intersections within the project corridor
 1. Intersections with Court Street that are included in the survey are: Lafayette Street*, Mill Street**, Washington Street*, Liberty Street*, Friendship Street*, North Street*, Bishop Street**, Union Street*, Bradway Street**, and Homestead Street*
 - a. * = four-corner intersections; ** = two-corner intersections
 2. Also includes survey of the curb ramps for the midblock pedestrian crossing across Court Street at Public Square
 3. Survey limits at each ramp are 50' in each direction of the ramp and 10' into the road, as well as 5-feet behind the walk where the walk is not up against a building
 4. Survey at each location includes locating all walk, sidewalk panel joints, face of buildings, curb, bollards, signals, pushbuttons, property pins if visible, castings in the intersection, pull boxes, and other visible features
- C. Locate above ground evidence of utilities
 1. American Structurepoint will make a request for record utility plans, and to have public utilities marked within public rights-of-way, 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, for utilities that are not marked or that are mismarked, or for inaccurate/incomplete utility plans provided to us. Determining the depth of utilities is not a part of this scope. Private utilities will need marked by the owner in order to be included in the survey.
- D. Process raw survey data, drafting and creation of a TIN and contours (1-foot vertical interval) for design
- E. Right of Way Determination: We will determine the RW line locations for the project, which will include research for plats, record surveys, R/W plans and potential R/W drop deeds. Does not include research for individual adjacent property deeds. Locate controlling evidence of R/W lines, including front R/W pins, intermediate curb and sidewalk shots within each block, and relevant building face shots. Using the record documents and the located R/W line evidence, determine the R/W line locations for the project areas. Does not include a determination of adjacent property boundary lines. Should easements and/or additional R/W drops be needed for the project, additional boundary surveying may be required at specific locations to satisfy OAC 4733-37 requirements.

- F. Create a basemap of right-of-way and boundary lines, and best fit to the project area using located features and RW pins we are able to locate. The basemap will be developed following the details shared in Item (F) above and any available record plans and/or GIS datasets.

Stage 1/2 Design – Combined Submittal

2.7.A – Roadway

Complete roadway plan development per L&D Volume III deliverables for combined Stage I/II design including title sheet, general notes, schematic plan, typical sections, plan sheets, intersection details, and traffic control. Asphalt milling depth, resurfacing material type, and applicable pay items will be included in this submittal for approval by the City and District 3.

2.7.C – Utilities

Utility coordination will advance to confirm potential conflicts, outreach to affected utility owners, and resolution of Stage I/Stage II design needs.

2.7.H - Prepare Cost Estimates and Update Milestones

Prepare Stage I/II cost estimate compliant with ODOT Estimator software and deliverables and recent City of Medina bid tab history (where applicable).

2.8 - Project Management for Preliminary Engineering Phase

Perform project management duties, facilitate monthly status reports to the City, and assist with plan oversight. Attend District 3 quarterly LPA meetings via TEAMS if required.

3.3.E – Maintenance-of-Traffic

Complete MOT utilizing ODOT Standard Construction Drawings. Pedestrian accommodations/detours (if required) will utilize ODOT Standard Drawings where applicable to minimize project costs.

Final Engineering Phase

Stage 3 Design and PS&E Submittal

4.2.A - Quantities and Notes

Complete final plan quantities, sub summaries, and General Summary and notes per L&D Volume III deliverables for Stage III design.

4.3 - Prepare Cost Estimates and Revise Milestone

Prepare Stage III cost estimate compliant with ODOT Estimator software and deliverables and recent City of Medina bid tab history (where applicable).

4.4 - Final Plan Package

Complete final plan package per L&D Volume III for Final Tracings and PS&E submittal to the Department.

4.5 - Project Management for Final Engineering and Right of Way Phase

Perform project management duties, facilitate monthly status reports to the City, and assist with plan oversight. Attend District 3 quarterly LPA meetings via TEAMS if required.

Pre-Construction Phase

Pre-bid Activities

5.1.A - Pre-bid Questions

Provide support for pre-bid questions during the bidding phase as needed.

The following estimated sheets will be included in the final deliverable:

- Title sheet (1)
- Schematic Plan (1)
- General Notes (4)
- Maintenance of Traffic (2)
- Typical sections (3)
- General Summary (2)
- Material Sub-summaries and Pavement Calculations (2)
- Plan sheets (10)
- Intersection/Curb Ramp details (10)
- Traffic control (Combined with Plan Sheets above)

If Authorized:

2.7.K – Signal Plans

This task is to provide ADA compliant pedestrian pushbuttons at noncompliant intersections. Existing equipment will be utilized where possible. It is anticipated that 5 intersections do not have compliant pedestrian pushbuttons. Work includes ADA compliant plan layout and elevations, wiring configuration if needed, and notes and quantities. Following the field review, the working exhibit will be updated to identify locations that require pedestrian pushbutton upgrades.

Schedule:

American Structurepoint is ready to begin work as soon as the notice to proceed is available from the City of Medina. Please see Appendix A for a recommended project schedule.

Compensation:

American Structurepoint is pleased to submit the following not to exceed lump sum fee for the proposed improvements as detailed in Appendix B:

Topographic Field Survey	\$24,361
Right of Way Determination (Curb Ramp Locations)	\$7,195
Stage I/Stage II Design	\$57,766
Stage III Design and PS&E Submittal	\$20,002
Pre-Bid Support	\$1,759
Total Base Services	\$111,083
If Authorized	
Pedestrian Push Button Upgrades	\$7,779
Proposal Total (Base Services + If Authorized)	\$118,862

Mr. Pat Patton, PE

March 15, 2024

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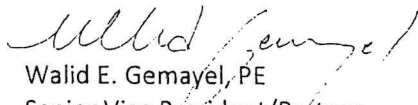
Additional Services, Exclusions

The Scope of Work identified in this document is based on American Structurepoint's knowledge of the project requirements at the time of document preparation and serves as the basis for the price proposal and agreed fee. However, changes in work may be required as the project develops, and more complete information becomes available. 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. Any services that are not included under this work scope can be provided under a separate fee proposal and authorization, as approved by City of Medina. Specific services that are not included as part of this proposal include, but are not limited to the following:

1. Private utility design services
2. Signal design, lighting, or traffic analysis (outside of pedestrian pushbutton scope provided above)
3. Stormwater studies and/or hydraulic reports
4. Full corridor sidewalk design; limited to localized ADA ramp replacements only
5. ODOT ROW plan development services
6. ODOT ROW Acquisition services
7. Geotechnical exploration
8. Public meetings
9. NEPA services

We look forward to working with the City of Medina and ODOT District 3 on this important project for the community. If you have any questions on the fee proposal, or if you need additional information, please contact Ed Kagel at your earliest convenience at (216) 302-3694.

Very truly yours,
American Structurepoint, Inc.


Walid E. Gemayel, PE
Senior Vice President/Partner
WEG/EDK:pmm


Ed Kagel, PE
Project Manager

Enclosures

- Appendix A – Schedule
- Appendix B – Fee Proposal
- Appendix C – EJCDC Agreement

Appendix A

<i>Task</i>	<i>Ellis</i>	<i>Revised</i>
Working Exhibit - Pavement Repairs/Ramps	6/1/2024	
Stage 2 Plans - Submitted	8/1/2024	
Preliminary R/W Review Submission - Submitted	N/A	
NEPA Start Date	5/1/2024	
Preliminary R/W Review Submission - Approved	N/A	
Stage 2 Plans - Complete	9/1/2024	
Compliance R/W Review Submission- Submitted	N/A	
Compliance R/W Review Submission - Approved	N/A	
Environmental Document Approved	2/1/2025	
Stage 3 Plans - Submitted	11/1/2024	
Stage 3 Plans - Complete	12/1/2024	
Plan Package Submitted to District	3/1/2025	
District R/W Certification	2/15/2025	
Plan Package Received in C.O.	4/1/2025	
Sale	6/1/2025	
Award	7/1/2025	
Begin Construction	4/1/2026	
End Construction	8/1/2026	

SUMMARY OF STEPS

C-R-S MED-42-16.78
 Consultant: American Structurepoint, Inc.
 Agreement No. 1
 Modification No. 0
 PID No. 119446
 Proposal Date 3/15/2024

Average Hourly Rate	Total Hours	Labor Costs	Overhead Costs	Cost of Money	Direct Costs	Subcon Costs	Net Fee	Total Cost
AUTHORIZED TASKS:								
Planning Phase								
\$0.00	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Preliminary Engineering Phase								
\$49.33	555	\$27,380	\$50,732	\$148	\$2,255	\$0	\$7,764	\$88,279
Environmental Engineering Phase								
\$41.50	8	\$332	\$615	\$2	\$0	\$0	\$94	\$1,043
Final Engineering Phase								
\$47.12	147	\$6,926	\$12,833	\$37	\$0	\$0	\$1,964	\$21,761
Construction Engineering Phase								
\$47.12	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL AUTHORIZED TASKS								
\$48.79	710	\$34,638	\$64,181	\$187	\$2,255	\$0	\$0	\$111,083
IF-AUTHORIZED TASKS:								
Planning Phase								
Preliminary Engineering Phase								
\$41.27	\$80.00	\$2,476.00	\$4,587.78	\$13.37	\$0.00	\$0.00	\$702.12	\$7,779
Environmental Engineering Phase								
Final Engineering Phase								
Construction Engineering Phase								
TOTAL IF-AUTHORIZED TASKS								
								\$7,779
GRAND TOTAL								
								\$118,862

PROPOSAL LABOR SUMMARY

C-R-S	MED-42-16.78										
Consultant:	American Structurepoint, Inc.										
Agreement No.	1										
Modification No.											
PID No.	119446										
Proposal Date	3/15/2024										
		No. of Units	Project Manager	Senior Engineer	Project Engineer	Staff Engineer	Registered Land Surveyor	Staff Surveyor	Two-man Survey Crew	Hours	Cost
Task Description			\$70.00	\$55.00	\$45.00	\$37.00	\$52.00	\$32.00	\$78.00	565	\$27,380
	Total - 2 Preliminary Engineering Phase		30	32	98	272	14	4	105		

3 - Environmental Engineering Phase

3.3 - Stage2	3.3.E - Maintenance of Traffic										
	3.3.E.A - MOT General Notes			2		6				8	\$332
	TOTAL 3.3 - Stage2		0	2	0	6	0	0	0	8	\$332
	Total - 3 Environmental Engineering Phase		0	2	0	6	0	0	0	8	\$332

4 - Final Engineering and R/W Phase

4.2 - Stage 3 Detailed Design Plans	4.2.A - Quantities and Notes										
	4.2.A.A - Pavement Subsummary	1		2		8				10	\$406
	4.2.A.C - Roadway Subsummary	1		2	4	10				16	\$660
	4.2.A.F - Pavement Marking Subsummary	1		2	4	10				16	\$660
	4.2.A.G - Signing Subsummary	1		2	2	6				8	\$312
	4.2.A.M - General Summary Sheet	2		4	8	20				32	\$1,320
	4.2.A.P - General Notes	4		2		14				16	\$628
	4.2.D - Miscellaneous			2						2	\$110
	4.2.D.A - Obtain Railroad Agreement			14	18	68	0	0	0	100	\$4,096
	TOTAL 4.2 - Stage 3 Detailed Design Plans		0	14	18	68	0	0	0	100	\$4,096
	4.3 - Prepare Cost Estimates and Revise Milestone										
	4.3.A - Roadway/Interchange Costs			2	4	10				16	\$660
	TOTAL 4.3 - Prepare Cost Estimates and Revise Milestone		0	2	4	10	0	0	0	16	\$660
	4.4 - Final Plan Package										
	4.4.A - Submission of Final Tracings and Documentation		9							9	\$630
	4.4 - Final Plan Package		9	0	0	0	0	0	0	9	\$630
	4.5 - Project Management for Final Engineering and Right of Way Phase										
	4.5.A - Meetings		2							2	\$140
	4.5.B - General Oversight		12							12	\$840

C-R-S		PROPOSAL LABOR SUMMARY										Version:
MED-42-16.78												Sept 2021
Consultant:	American Structurepoint, Inc.											
Agreement No.	1											
Modification No.												
PID No.	119446											
Proposal Date	3/15/2024											
		No. of Units	Project Manager	Senior Engineer	Project Engineer	Staff Engineer	Registered Land Surveyor	Staff Surveyor	Two-man Survey Crew	Hours	Cost	
Task Description			\$70.00	\$55.00	\$45.00	\$37.00	\$52.00	\$32.00	\$78.00			
TOTAL 4.5 - Project Management for Final Engineering and Right of Way Phase			14	0	0	0	0	0	0	14	\$980	
4.6 - Pre-Bid Activities			8							8	\$560	
4.6.A - Pre-Bid Questions			8	0	0	0	0	0	0	8	\$560	
TOTAL 4.6 - Pre-Bid Activities			31	16	22	78	0	0	0	147	\$6,926	
TOTAL - Final Engineering Phase												
TOTAL AUTHORIZED PARTS			61	50	120	356	14	4	105	710	\$34,638	
IF-AUTHORIZED TASKS:												
2.7.K - Signal Plans		5		8	14	38				60	\$2,476	
TOTAL IF-AUTHORIZED PARTS												
GRAND TOTAL												\$34,638

**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 Medina, 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: MED-42-16.78 US 42 Resurfacing (City of Medina), PID 119446 ("Project").

Engineer's services under this Agreement are generally identified as follows: Please see Engineer's fee proposal dated March 15, 2024 ("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 the following specific time period: as outlined in Engineer's fee proposal dated March 15, 2024. If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably, **as outlined below in Part 5.01.R.**

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.

V. 10-2023

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

2024.00165

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2.02 Basis of Payment

A. Owner shall pay Engineer for Services as follows:

1. For the Base Services, a Lump Sum amount of \$111,083.00.
2. For "If Authorized" services, a Lump Sum amount of \$7,779.00.
3. 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.

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.

V. 10-2023

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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 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.

V. 10-2023

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2024.00165

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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.
- 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. **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**

V. 10-2023

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2024.00165

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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 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 correlate 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.
- R. If the Project or the Engineer's services are suspended by the Owner for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this Agreement, the Engineer 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 Owner shall compensate the Engineer for expenses incurred as a result of the suspension and resumption of its services, and the Engineer's schedule and fees for the remainder of the Project shall be equitably adjusted.

If the Engineer's services are suspended for more than ninety (90) days, consecutive or in the aggregate, the Engineer may terminate this Agreement upon giving not less than five (5) calendar days' written notice to the Owner.

If the Owner is in breach of the payment terms or otherwise is in material breach of this Agreement, the Engineer may suspend performance of services upon seven (7) calendar days' notice to the Owner. The Engineer shall have no liability to the Owner, and the Owner 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 Owner. Upon receipt of payment in full of all outstanding sums due from the Owner, or curing of such other breach which caused the Engineer to suspend services, the Engineer shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

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.

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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 March 15, 2024

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

Owner: City of Medina, Ohio

Engineer: American Structurepoint, Inc.

By: 
 Print name: Dennis Hanwell
 Title: Mayor
 Date Signed: April 9, 2024

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

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

State of: Ohio

Address for Owner’s receipt of notices:
Patrick Patton
132 North Elmwood Avenue
Medina, Ohio 44256

Address for Engineer’s receipt of notices:
Willis R. Conner
600 Superior Avenue East, Suite 2401
Cleveland, Ohio 44114