

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 (“Effective Date”) between City of Pataskala (“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: General Engineering and Plan Review Services (“Project”).

Engineer’s services under this Agreement are generally identified as follows: Provide on-call, as-needed general engineering and plan review services as outlined in the Engineer’s proposal dated December 15, 2023. Upon request by Owner, Engineer will prepare a Task Order, including anticipated costs for each task assigned. The proposal will be submitted to the Owner for approval prior to commencing the services. (“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 indicated per Task Order.***
- 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.
- D. **This Agreement shall be valid for a period of one year from the Effective Date with the option for two one-year renewals.**

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 30 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 thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer an hourly, not-to-exceed fee as described in each specific task order. The total aggregate fee of all Task Orders shall not exceed \$120,000, unless this agreement is amended in writing and approved by both parties.

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer **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 90 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 **with a 30-day** written notice from Owner.

- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date 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.

- 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 indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including 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 **for any given task** shall be limited to **\$100,000** or the total amount of compensation received by Engineer, whichever is greater, **for that task**.

- 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**

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.**

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 dated December 15, 2023

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

Owner: City of Pataskala

Engineer: American Structurepoint, Inc.

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

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:
 City of Pataskala
 621 W. Broad Street
 Pataskala, Ohio 43062

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