

OWNER-CONTRACTOR AGREEMENT

Owner:

Village of Bainbridge, Ohio
113 1/2 Dewey Street,
Bainbridge, Ohio 45612

Contractor:**Contractor's Representative:****Owner's Representative(s):**

Matt Conley, Mayor

Scope: General Contractor

Project:

Bainbridge Streetscape Project

This document is an agreement between the Owner and the Contractor for the Work described in the Contract Documents related to the Scope identified above for the Project defined above and is effective as of the date the Agreement is signed by the Owner.

The funding for the Project is through the American Rescue Plan Act (ARPA) and will be subject to compliance with the requirements for ARPA funded projects. The State of Ohio has awarded the funding for the Project to the Owner through the Appalachian Community Grant Program.

The Owner and the Contractor agree as set forth in the following sections:

1. CONTRACT DOCUMENTS. The Contract Documents consist of the following documents:

- A. Public Notice;
- B. Instructions to Bidders;
- C. Bid Form;
- D. Contractor's Qualification Statement;
- E. Owner-Contractor Agreement;
- F. Contractor Personal Property Tax Affidavit;
- G. General Conditions of the Contract for Construction (AIA Document A201-2017), as modified;
- H. Drawings and Specifications included in the Project Manual prepared by American Structurepoint, Inc. dated 7/14/2025;
- I. Bid Guaranty and Contract Bond;
- J. Tax Exemption Certification; Statement of Claim Form; Certificate of Substantial Completion Form;
- K. Contractor Affidavit for Amounts Withheld;
- L. Contractor Progress Payment Waiver;
- M. Contractor Final Waiver;
- N. Subcontractor Final Waiver;
- O. Prevailing Wage Rates;
- P. Pre-Bid Substitution Form;
- Q. Contractor Payment Application Checklist; and
- R. ACGP Minority Hiring Goal Form;
- S. Modifications issued after the execution of the Agreement, including:
 - i. A Change Order;
 - ii. A Work Change Directive; or,
 - iii. A written order for a minor change of the Work issued by the Design Professional in accordance with the General Conditions.

OWNER-CONTRACTOR AGREEMENT

OCA-1

1.1. Notwithstanding anything in the Contract Documents to the contrary, in the event of any inconsistency, the provisions of this Agreement shall control over any other Contract Document, proposal, document, or other attachment. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Contractor shall provide the better quality or greater quantity of Work or comply with the more stringent requirements.

1.2. Contractor will use the State of Ohio Subcontract Form for all subcontracted Work, in accordance with ORC 153.503(C) and OAC 153:1-3-02.

Note: Non-Contract Documents. The following are the reports and tests of subsurface conditions at or contiguous to the Site, if any, that the Design Professional has used in preparing the Contract Documents. These are not Contract Documents. Geotechnical data is not a warranty of subsurface conditions and is not to be relied upon as a complete representation of all possible soil conditions. Neither Owner nor its consultants warrant the accuracy of the geotechnical data. It is possible that there may be other reports, and/or tests of subsurface conditions at or contiguous to the Site not prepared by or on behalf of Owner. The Owner makes no representation about such reports and/or tests, assuming they exist. Additional information, if needed by Contractor for geotechnical data or site survey, shall be obtained by the Contractor at no additional cost to Owner. The General Conditions, as modified, contain additional terms related to these reports and tests.

Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings listed below, and except for such reliance on "technical data," Contractor shall not rely upon or make any claim against Owner or Architect with respect to: (1) the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or (2) other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or (3) any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by Contractor to estimate locations or quantities of subsurface strata are independent factual assumptions which Owner does not warrant. (None if none are listed.)

Note: Non-Contract Documents. The following are those reports and drawings related to any Hazardous Conditions at the Site, if any. These are not Contract Documents. The General Conditions, as modified, contain additional terms related to these reports and drawings. (None if none are listed.)

2. DESIGN PROFESSIONAL RELATIONSHIP. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Design Professional and the Contractor or any Subcontractor or Material Supplier to the Project. The Design Professional, however, shall be entitled to performance of the obligations of the Contractor intended for its benefit and to enforcement of such obligations, but nothing contained herein shall be deemed to give the Contractor or any third party any claim or right of action against the Design Professional that does not otherwise exist without regard to this Contract. The Contractor and its Subcontractors shall not be deemed to be beneficiaries of any of the acts or services of the Design Professional that are performed for the sole benefit of the Owner. Except as otherwise set forth herein, the Contractor shall communicate with the Owner through the Design Professional. Contractor shall copy Owner on all communications that may result in a request for an adjustment to the Contract Time or Contract Sum.

2.1. The Design Professional is:

American Structurepoint, Inc.
2550 Corporate Exchange Drive, Suite 300
Columbus, Ohio 43231

Any references to the "Architect" or the "Engineer" in the Contract Documents are deemed to refer to the Design Professional identified herein.

3. TIME FOR COMPLETION ("CONTRACT TIME") AND PROJECT COORDINATION.

3.1. **DATE OF COMMENCEMENT.** The date of commencement of the Work shall be the date identified as the "Date of Commencement" in the Notice to Proceed issued by the Owner, or by the Owner through the Design Professional, to the Contractor, or if there is no Notice to Proceed, the Effective Date of this Agreement.

3.2. **DATE OF SUBSTANTIAL COMPLETION.** The Project and Work for the Project consists of all labor, materials, equipment, and services necessary for construction of the Project, all in accordance with the Drawings and Specifications prepared by the Design Professional. The Contractor shall achieve Substantial Completion of its Work on the Project, as defined in the General Conditions, on or before **8/30/2026** ("Date of Substantial Completion").

3.2.1. **DATE OF FINAL COMPLETION.** The Contractor shall achieve Final Completion of its Work on the Project, as defined in the General Conditions, within **30 calendar days** of the Date of Substantial Completion ("Date of Final Completion"). **All work on the Project must be completed prior to October 30, 2026, without exception.**

3.2.2. **SHUTDOWN DATES.** Due to events scheduled by the Owner and/or other Owner considerations, Contractor will not be able to perform Work on the Project on the following dates: N/A. Contractor's Construction Schedule for performing the Work shall account for Contractor not being able to perform Work on these dates and the contractual dates for Substantial Completion and Final Completion will not be changed due to Contractor not being able to perform Work on these dates. The Contractor will coordinate any system interruptions with the Owner and the Design Professional and all system interruptions are subject to Owner's prior written approval.

3.2.3. **UTILITIES AND OPERATIONS.** Contractor shall not interrupt utilities to facilities or existing operations without prior written notice and approval by Owner.

3.3. **CONSTRUCTION SCHEDULE.** The Construction Schedule shall be developed by the Contractor as provided in the Contract Documents.

3.4. **LIQUIDATED DAMAGES.** If the Contractor does not have its Work on the Project Substantially Complete by the specified Date for Substantial Completion or if the Contractor does not have its Work on the Project Finally Complete by the specified Date for Final Completion, the Contractor shall pay the Owner (and the Owner may set off from sums coming due the Contractor) Liquidated Damages in the per diem amount(s) identified in the chart below:

Liquidated Damages Per Day for Failure to Timely Achieve	
Substantial Completion	Final Completion
\$5,000	\$200

The Contractor acknowledges that such amounts of Liquidated Damages represent a reasonable estimate of the actual damages for loss of or interference with the intended use of the Project that the Owner would incur if the Contractor's Work is not Substantially Complete by its Date for Substantial Completion or Finally Complete by the required Date for Final Completion, or both. Any waiver of consequential damages shall not preclude the Owner from recovering Liquidated Damages.

3.4.1. Nothing in this Section shall be construed to diminish Owner's indemnity rights pursuant to this Agreement nor shall it preclude the Owner from recovering its actual damages from the Contractor for third-party claims against the Owner or for damages not attributable to delay.

3.5. **INITIAL DECISION MAKER.** The Initial Decision Maker renders initial decisions on Claims in accordance with the claims process set forth in the General Conditions. The Initial Decision Maker shall be the Design Professional, unless a different Initial Decision Maker is identified below:

3.6. Time is of the Essence for the Contractor's performance of the Work.

4. **CONTRACT SUM (also called Contract Price).** The Contract Sum to be paid by the Owner to the Contractor, as provided herein, for the satisfactory performance and completion of the Work and all of the duties, obligations, and responsibilities of the Contractor under this Agreement and the other Contract Documents is [REDACTED] Dollars (\$ [REDACTED]), subject to adjustment as set forth in the Contract Documents. The Contract Sum includes Allowances, Accepted Alternates, and all federal, state, county, municipal, and other taxes imposed by law, including but not limited to any sales, use, commercial activity, and personal property taxes payable by or levied against the Contractor on account of the Work or the materials incorporated into the Work. The Contractor will pay any such taxes. The Contract Sum includes the following:

4.1. Base Bid Amount: \$ [REDACTED] (Lump Sum Bid);

4.2. Accepted Alternates, included in the Contract Sum:

Alternate No.	Description	Amount
[REDACTED]	[REDACTED]	\$ [REDACTED]

4.3. Allowances included in the Contract Sum:

Allowance Description	Amount
[REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]

4.4. Unit Prices. If directed by the Design Professional, such Work will be paid for in accordance with the Unit Prices proposed and identified below:

4.5. If after Substantial Completion of its Work, the Contractor fails to submit its final payment application with all the documents required to be submitted with such application within ninety (90) days after written notice to do so from the Owner and without prejudice to any other rights and remedies the Owner may have available to it, the balance of the Contract Sum shall become the Owner's sole and exclusive property, and the Contractor shall have no further interest in or right to such balance.

5. **RETAINAGE.** Retainage applicable to the Contract will be withheld in accordance with Ohio Revised Code Sections 153.12, .13, and .14 and the Modified General Conditions.

5.1. **RETAINAGE FOR LABOR.** Payments for labor incorporated into the Work will be at the rate of 92% of the amount set forth in Contractor's payment application and approved by Owner until the Work is 50% complete, unless the parties agree otherwise. When the Work is 50% complete, the payment for labor incorporated into the Work will be at the rate of 100% of the amount set forth in Contractor's payment application and approved by Owner.

5.2. **RETAINAGE FOR MATERIALS AND EQUIPMENT.** Payments for materials and equipment will be at the rate of 92% of the invoice cost of materials and equipment delivered to the Project site or other storage site approved by Owner. The balance of the invoice cost will be payable when the materials or equipment are incorporated into the Work. Incorporated into the Work means such materials and equipment are installed and conform to the requirements of the Contract Documents. When payment is made on account of materials or equipment not yet incorporated into the Project, such materials and equipment will become the property of Owner; provided that if such materials or equipment are stolen, destroyed, or damaged before being fully incorporated into the Project, Contractor shall be required to replace them at its expense.

6. **PREVAILING WAGE RATES.** The Contractor and its subcontractors, regardless of tier, shall strictly comply with their obligation to pay their employees working on the Project site at the applicable prevailing wage rates for the type of work, including any changes thereto, pursuant to Ohio Revised Code Chapter 4115. Contractor shall submit a Certified Payroll Report for payment of prevailing wages with each Application for Payment as well as a final certified payroll report and the required Affidavit of Compliance with its final Application for Payment. The Contractor can access applicable prevailing wages at <https://com.ohio.gov/divisions-and-programs/industrial-compliance/wage-and-hour/guides-and-resources/view-prevailing-wage-rates>.

7. **GENERAL.**

7.1. **MODIFICATION.** No modification or waiver of any of the terms of this Agreement or of any other Contract Documents shall be effective against a party unless set forth in writing and signed by or on behalf of a party. In the case of the Owner, the person executing the modification or waiver must be duly authorized by action of the Owner's governing body. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge and agree that it may not rely upon common law waiver or estoppel principles to establish an alleged waiver or modification of this Agreement or the Contract Documents and rather that this Agreement and the Contract Documents can only be waived or modified pursuant to this paragraph. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Paragraph.

7.2. **ASSIGNMENT.** Contractor may not assign this Agreement without the written consent of Owner, which Owner may withhold in its sole discretion.

7.3. **THIRD PARTIES.** Nothing contained in the Contract Documents shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or Contractor. However, it is understood that the Owner is an intended third-party beneficiary of Contractor's agreements with its Suppliers, and Subcontractors, and Suppliers' and Subcontractors' agreements with their Sub-Suppliers, and Sub-Subcontractors. Contractor shall incorporate the obligations of this Agreement into its respective agreements and subcontracts.

7.4. **LAW AND JURISDICTION.** All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligations of the parties shall be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court for the county in which the Project is located and each party hereby expressly consents to the exclusive jurisdiction of such court. Each party waives its right to remove any such suit to federal court.

7.5. **STATUTE OF LIMITATIONS.** Regardless of any provision to the contrary, the statute of limitations with respect to defective or non-conforming Work shall not commence until Substantial Completion or until the discovery of the defective or non-conforming Work by the Owner, whichever is later.

7.6. CONSTRUCTION. The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and has voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

7.7. APPROVALS. Except as expressly provided herein, the approvals and determinations of Owner will be subject to the sole discretion of Owner and will be valid and binding on the Contractor, provided only that they be made in good faith, i.e., honestly. If Contractor challenges any such approval or determination, Contractor bears the burden of proving by clear and convincing evidence that it was not made in good faith.

7.8. PARTIAL INVALIDITY. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

7.9. COMPLIANCE WITH LAWS AND REGULATIONS. The Contractor, at its expense, will comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work, including but not limited to Chapter 4115 of the Ohio Revised Code and Sections 153.59 and 153.60 of the Ohio Revised Code, which prohibit discrimination in the hiring and treatment of employees, with respect to which the Contractor agrees to comply and to require its subcontractors to comply.

7.10. PROJECT SAFETY. Contractor must follow all applicable safety and health regulations during the progress of the Project and monitor all of its employees and its subcontractors for compliance with such safety and health regulations. In undertaking the responsibilities set forth in this section, Contractor does not assume any duty of responsibility to the employees of any Subcontractor or supplier, regardless of tier. Owner assumes no responsibility for the development, review, or implementation of any project safety plan or for Project safety and has no authority to direct the means and methods of Contractor.

7.11. EQUAL OPPORTUNITY. Contractor will not, and it will ensure that its Subcontractors, regardless of tier, do not, discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Such action includes but is not limited to the following: employment, upgrading, demotion, transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. Contractor is responsible to ensure that each of its Subcontractors, regardless of tier, states in all solicitations or advertisements for employees placed by them or on their behalf that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

7.12. NO FINDINGS FOR RECOVERY. The Contractor represents that the Contractor is not subject to a finding for recovery under Section 9.24, Ohio Revised Code, or that the Contractor has taken the appropriate remedial steps required under Section 9.24, Ohio Revised Code, or otherwise qualifies under this section. If this representation and warranty is found to be false, the Contract is void, and Contractor will immediately repay Owner any funds paid to Contractor under this Contract.

7.13. NON-DISCRIMINATION. Contractor agrees:

- .1 That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Contractor, subcontractor, or any person acting on behalf of either of them, shall by reason of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

- .2 That neither the Contractor, subcontractor, nor any person acting on behalf of either of them shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color.
- .3 That there shall be deducted from the amount payable to the Contractor by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
- .4 That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

7.14. ETHICS. By signing and entering into this agreement with the Owner, the Contractor represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements. The Contractor understands that failure to comply with the ethics laws is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the Owner.

7.15. JOB MEETINGS. The Contractor or one of its representatives with authority to bind the Contractor will attend all job meetings. The Owner anticipates that job meetings will be scheduled on a bi-weekly basis during construction or as needed. The Contractor will ensure that its Subcontractors also hold regular job meetings at which safety issues and job matters are discussed as these relate to the Work being performed. Job meetings include, but are not limited to, pre-construction meetings, weekly job meetings, weekly safety tool box meetings, and monthly safety meetings.

7.16. PROPERTY TAX AFFIDAVIT. The Contractor's affidavit given under Section 5719.024, Ohio Revised Code, is incorporated herein.

7.17. WARRANTIES. Notwithstanding anything to the contrary in the Contract Documents, including the Project Manual, Drawings, and Specifications, no warranties by Contractor shall be limited to any time shorter than the statute of limitations for written contracts in Ohio.

7.18. ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

7.19. APPALACHIAN COMMUNITY GRANT PROGRAM. It is anticipated that the Project will be funded, in part, through federal funds made available by the Appalachian Community Grant Program ("ACGP") through the American Rescue Plan Act ("ARPA") and will be subject to compliance with the requirements for ACGP and ARPA funded projects. The Contractor shall comply with all applicable ACGP and ARPA requirements and assist Owner with such compliance.

7.20. RECORD RETENTION. The Contractor shall comply with the record retention requirements detailed in 2 CFR § 200.334 and the Appalachian Community Grant Program Grant Agreement entered into between the Ohio Department of Development and the Owner. Therefore, financial records, supporting documents, statistical records, and all other records pertinent to the state and federal award must be retained for a period of five years from the date of the completion of the project.

7.21. ACCESS TO RECORDS. The Contractor shall comply with the access to records requirements detailed in 2 CFR § 200.337. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the Contractor

which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents.

7.22. INCOME TAX. If applicable, the Contractor shall make provisions for the withholding of appropriate income taxes of all individuals employed by the Contractor on the work to be performed under this Agreement and shall notify all employees and the appropriate City officials of such payroll deduction. In addition, the Contractor shall make provisions for and notify the appropriate City officials relative to the City income taxes applicable to this Agreement for work.

7.23. ACGP MINORITY HIRING GOAL COMPLIANCE. Contractor shall make a good faith effort to employ minority persons in the same percentage as the average percentage of minority persons who reside in the county in which the project is located and any contiguous Ohio counties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their properly authorized representatives and agree that this Agreement is effective as of the date first set forth above.

Owner: VILLAGE OF BAINBRIDGE, OHIO

Contractor :

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CERTIFICATE

(Section 5705.41, R.C.)

The undersigned, fiscal officer of the Owner, certifies that the moneys required to pay that part of the Contract Sum coming due during the current fiscal year, under the Agreement to which this Certificate is attached have been lawfully appropriated for such purpose and are in the appropriate account of the Owner, or in the process of collection to the credit of the appropriate account or fund, free from any previous encumbrances. Moneys due in excess of the Contract Sum shall require an additional and separate Fiscal Officer's Certificate.

DATED: _____

Fiscal Officer