

OWN, Inc. 3213 South West Bypass Springfield, Missouri 65807	The City of Republic, Missouri 4221 S. Wilson's Creek Blvd Republic, MO 65738
Project: Stormwater Engineering Services – future Morris Park location	

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Republic, Missouri (“City”) and OWN, Inc. (“Provider” or “OWN”). City and Provider are collectively referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, City is a municipal corporation and Charter City located in Greene County, Missouri; and

WHEREAS, Provider is a domestic corporation authorized to do business in the State of Missouri and in good standing with the Missouri Secretary of State, having a principal place of business located at 3213 South West Bypass in Springfield, Missouri 65807 and a registered agent located at 117 South Lexington Street, Suite 100, Harrisonville, Missouri 64701; and

WHEREAS, on or about October 4, 2022, via Resolution 22-R-63 (**Exhibit A – Resolution 22-R-63**), the City Council approved of sixteen (16) professional engineering firms that met the criteria defined in the City’s Request for Qualifications for the same, one of which was OWN (formerly known as Anderson Engineering and identified as such on Exhibit A); and

WHEREAS, in or around July 2024, the City sought proposals from six (6) of the aforementioned sixteen (16) approved professional engineering firms, one of which was OWN, to provide stormwater engineering services for the Morris Park area located between 444 West Logan Street and 512 West Logan Street in Republic, Missouri (“the Project” and/or “the Services”); and

WHEREAS, the City has deemed OWN to be the most qualified of the firms who responded to the City’s request to provide the Services; and

WHEREAS, the City desires to engage Provider for provision of the Services, as more fully detailed in the “Project Proposal for Park Stormwater Improvements” submitted by OWN, attached hereto and labeled **Exhibit B – Project Proposal**; and

WHEREAS, OWN wishes to provide the Services to City in exchange for fair and adequate consideration; and

WHEREAS, the City and OWN now wish to enter into an agreement for provision of the Services, as more fully described herein below in paragraph 1 and any accompanying exhibits as referenced therein.

NOW, THEREFORE, for the consideration stated herein below, the validity and sufficiency of which is acknowledged by the Parties, it is agreed by and between City and Provider as follows:

1. Services. The City hereby engages OWN to provide engineering services for new stormwater improvements at the site of the future Morris Park, located on approximately seven (7) acres of land on the south side of West Logan Street approximately 700 feet west of West Avenue within the City limits (hereinafter, the “Property”), as detailed in this paragraph and any exhibits referenced herein, for the purpose of preparing the Property to serve as the site of the future Morris Park. The Services specifically include all items detailed on pages 3 and 4 of EXHIBIT A, attached hereto and incorporated by reference herein. The Services also include preparation and submittal of a Letter of Map Revision (“LOMR”) to the Federal Emergency Management Agency (“FEMA”) for

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the proposed grading changes to the current special flood hazard area (Zone AE), which encumbers the Property.

2. Standard of Care. The Services shall be provided by Provider in accordance with the standard of care, skill, and expertise ordinarily used by other members of Provider's profession in performing similar Services. Provider shall furnish all supervision, labor, tools, equipment, materials, and supplies necessary to perform the Services.

3. Personnel. Provider shall secure, at its own expense, all personnel required to perform the Services. Such personnel shall not be employees of the City, nor shall they have any contractual relationship with the City, except to the extent such a relationship exists by way of this Agreement. The Services shall be performed by Provider, or under Provider's direct supervision, and all personnel engaged in performing the Services shall be fully qualified and authorized under local, state and federal law to perform such Services. None of the Services covered by this Agreement shall be subcontracted without the written approval of City.

4. Term. This Agreement shall be effective commencing on the date of the last signature affixed hereto and until the Services are fully completed to the satisfaction and acceptance of City. Provider shall complete such Services as are commonly performed prior to or contemporaneous with the submission of a Letter of Map Revision to FEMA, along with preparation and submission of the LOMR on this Project, by no later than December 15, 2025 ("Completion Date"). After submission of the LOMR to FEMA, the Parties may, but shall not be required to, execute an Addendum to this Agreement setting forth any additional deadline(s) for completion of any remaining Services under this Agreement.

5. Costs Not to Exceed: ***The Parties acknowledge and agree that City is limited by law with respect to the amount of money it is permitted to pay for the Project, and consequently will, in no event, pay Provider a total amount in excess of Thirty Thousand Dollars and Zero Cents (\$30,000.00) ("Not-to-Exceed Amount") in connection with the services to be provided under the Agreement.*** City hereby agrees to pay Provider for the services it provides in accord with the payment schedule and/or compensation terms set forth in the Agreement Documents, and only upon City's acceptance of the Work. No partial payment by City to Provider shall operate or otherwise be construed as City's approval or acceptance of the work performed by Provider or materials furnished hereunder. The Parties expressly acknowledge that the Not-to-Exceed Amount may not be exceeded ***unless*** the Agreement is amended, in writing and signed by all Parties, pursuant to approval of the City Council, which shall be a prerequisite to any such amendment.

6. Procedure for Payments.

- a. Submission of Invoice(s): Provider shall submit a detailed invoice, or invoices, to the City for work it has completed under this Agreement. Invoices may be submitted on an as-completed basis, but in no event shall more than one invoice be submitted to the City within a single thirty-day period. Each invoice shall detail the work completed, associated costs, and shall include any documentation necessary to substantiate the completed work.
- b. Payment Schedule: City will remit payment within thirty (30) days after receipt and approval of each invoice submitted by Provider, subject to any retention or holdback as may be agreed upon by the Parties or as otherwise required by law.
- c. Review and Approval of Invoices: Upon receipt of an invoice from Provider, the City shall have reasonable opportunity to verify the work has been satisfactorily completed according to the agreed upon Project specifications, at its discretion, and expressly reserves the right to adjust the amount payable on any invoice to reflect the actual work completed, in accord with the provisions of this section.

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- d. Disputed Charges: In the event of a dispute regarding any charge in an invoice, City will promptly notify Provider, in writing, of the nature of the dispute and the amount in question. Disputed charges will not affect the payment of non-disputed charges.
- e. Records and Audits: Provider shall maintain accurate and detailed records of all costs incurred in connection with the Project. These records must be available for inspection by City upon request, and shall be retained by Provider for a period of three (3) years after the final payment under this Agreement, or longer if required by law.

7. Supplemental and Additional Services: Should City desire or need any supplemental and/or additional services under the Agreement, City shall have to right to use their own employees, engage other third party service providers, or enter into a second (or subsequent/supplemental) agreement with Provider for such supplemental and/or additional services.

8. Termination of Agreement.

- a. This Agreement may be terminated by either party for cause, such termination to become effective upon written notice provided by the terminating party to the non-terminating party at least twenty-four (24) hours in advance of such termination, containing the reason(s) for the termination.
- b. This Agreement may be terminated by either party without cause, so long as the terminating party provides written notice of such termination to the non-terminating party at least sixty (60) days prior to such termination. In the event of termination under this section, final payment owed to Provider shall be limited to Services in fact completed by Provider as of the effective date of said termination.
- c. Notwithstanding the terms set forth herein above, this Agreement shall terminate immediately and automatically upon the termination of funding in the City's budget for the Services or upon any valid vote of the City Council for the City of Republic, Missouri ("City Council") requiring such termination.
- d. Non-compliance with any portion of the Agreement, or the violation of any State, Federal or local law in connection with the provision of Services under this Agreement, constitutes just cause for immediate termination of this Agreement. Just cause may also include other grounds as determined by City including but not necessarily limited to unprofessional conduct on the part of Provider, unsatisfactory workmanship or work product provided by Provider, etc.
- e. In the event the City Council declines or otherwise fails to approve and/or appropriate funds for this Agreement, this Agreement may be terminated by the City without penalty or other monies or damages owed to Provider.

9. City's Right to Proceed. In the event this Agreement is terminated pursuant to the provisions of Paragraph 8, above, City may assume completion of any Services remaining to be performed under or relating to this Agreement, through City personnel or other third party provider(s), at City's sole discretion. The foregoing provisions are in addition to, and not in limitation of, the rights of City under any other provisions of the Agreement, applicable city ordinances, state and/or federal law.

10. Insurance Requirements: For the entire duration of the Agreement, Provider shall maintain certain insurance to protect it and the City against risks of loss in connection with the Project, as defined more fully below. Provider shall furnish City with proof of insurance that satisfies the requirements stated below, unless otherwise agreed to or specified by City.

- a. Workers' Compensation: Provider shall maintain Workers Compensation coverage for all

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persons it will employ or retain to perform any work in connection with the Agreement, and in the event Provider subcontracts any such work, Provider shall require the Subcontractor(s) to provide similar Workers Compensation Insurance for the Subcontractor's employees, unless such employees are covered by Provider's coverage. Workers' Compensation coverage shall meet the minimum requirements set forth in Section 287.010 RSMo., et seq.

- b. Employers' Liability: Provider shall maintain Employers' Liability coverage of not less than \$1,000,000 each occurrence.
- c. Commercial General Liability: Provider shall maintain Commercial General Liability coverage for personal and advertising injury, bodily injury including accidental death, and broad-form property damage, which may arise from the performance of any obligations under the Agreement or otherwise in connection with the Project, in an aggregate amount of no less than \$2,000,000 each occurrence and \$1,000,000 each person.
- d. Commercial Automobile Liability (*applies to any project requiring Provider's operation of a vehicle in executing Services under this Agreement; does not apply if such operation is solely for the purpose of transportation/mobilization to and from the Project location*): Provider shall maintain Commercial Automobile Liability coverage of not less than \$2,000,000 each occurrence and \$1,000,000 each person for "any auto" on an occurrence basis.

11. Insurance Requirements for Subcontractors. In case any portion of the Services to be provided under the Agreement is assigned or subcontracted, Provider shall require the Subcontractor(s) to procure and maintain all insurance(s) required in Paragraph 10, above.

12. Proof and Maintenance of Insurance. Prior to beginning any work under the Agreement, Provider, and/ any Subcontractors, shall furnish the City with acceptable proof of the insurance coverage(s) required in Paragraph 10, above. Provider, and any Subcontractors, shall not cancel, reduce, modify or otherwise fail or refuse to renew the coverages provided for herein, without providing at least thirty (30) days' prior written notice to the City. In such event, the City has the right to require Provider, or Subcontractor, to reinstate or obtain new coverage in the amount(s) required to satisfy the provisions of Paragraph 10, above, or alternatively, to terminate the Agreement without any penalty to the City.

13. Pending Legislation: In the event the scope or extent of City's tort liability as a governmental entity, as described in Sections 537.600 through 537.650, RSMo., is broadened or increased during the term of the Agreement, by legislative or judicial action, City may require Provider, upon 10 days' written notice, to execute an Agreement whereby Provider agrees to provide, at a price not exceeding Provider's actual increased premium cost, additional liability insurance coverage as City may require to protect City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the Agreement.

14. Provider's Responsibility for Subcontractors: Provider shall be as fully responsible to City for the acts and omissions of its Subcontractor(s), and persons either directly or indirectly employed by it/them, as Provider is for the acts and omissions of persons it directly employs. Provider shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all Subcontractors to Provider by all the terms herein set forth, and insofar as applicable to the work of Subcontractors and to give Provider the same power regarding the termination of any subcontract as City may exercise over Provider under any provisions of this contract. Nothing contained in the Agreement shall create any contractual relationship between the Subcontractors and City or between any Subcontractor.

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15. Liquidated Damages: Not applicable.
16. Liability and Indemnity: The Parties mutually agree to the following:
- a. In no event shall City be liable to Provider for special, indirect, or consequential damages, except those caused by City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of the Agreement. The maximum liability of City shall be limited to the amount of money to be paid or received by City under the Agreement.
 - b. Provider shall defend, indemnify, and hold harmless City, its elected officials, agents, and employees from and against any and all liability, suits, damages, costs (including attorney's fees), losses, outlays and expenses, from claims arising out of or relating in any way to the Agreement, or the work or any subcontract thereunder (Provider hereby assuming full responsibility for relations with Subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of the Agreement to Provider, notwithstanding any alleged negligence on the part of City, its officials, agents, and employees. This provision does not require Provider to defend, indemnify or hold harmless City for gross negligence or intentional misconduct on the part of City.
 - c. Provider shall indemnify and hold City harmless from all wages or overtime compensation due and owing to its employees in rendering Services pursuant to the Agreement or any subcontract under the Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law, or any other federal or state law.
 - d. The indemnification obligations herein shall not negate, abridge or reduce, in any way, any additional indemnification which City, including its elected or appointed officials, agents and employees, is otherwise entitled to seek or receive under state or local law, applicable regulation, or in equity.
 - e. Provider affirms that it has had full and fair opportunity to recover the costs of any liability or other insurance required under the Agreement in its pricing.
17. City Benefits: Provider shall not be entitled to any of the benefits established for the employees of City nor be covered by City's worker's compensation program/benefits.
18. Affidavit for Agreements Over \$5,000 (E-Verify): Pursuant to Sections 285.525 through 285.550, RSMo., if the total value of the Agreement exceeds \$5,000, and Provider is associated with a business entity, Provider shall provide an acceptable notarized affidavit (see **Exhibit C – E-Verify Affidavit**) stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the Services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the Services. Additionally, Provider must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.
19. Proof of Lawful Presence: Pursuant to Section 208.009, RSMo, Provider shall provide to City the documentation necessary for demonstrating compliance with the lawful presence terms contained within Section 208.009 RSMo. Affirmative proof of lawful presence can be established through furnishing any documentation recognized by the Department of Revenue as acceptable proof of lawful presence, or, any documentation issued by the United States Government that confirms lawful presence in the United States.
20. General Independent Provider Clause: The Agreement does not create an employee/employer

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relationship between the Parties. It is the Parties' intention that Provider is and shall be an independent Provider for City and is not an employee of City for any purpose, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. Provider will retain sole and absolute discretion in the judgment of the manner and means of carrying out Provider's activities and responsibilities hereunder. Provider agrees that it is a separate and independent enterprise from City, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the Services. The Agreement shall not be construed as creating any joint employment relationship between Provider and City, and City will not be liable for any obligation incurred by Provider, including but not limited to unpaid minimum wages and/or overtime premiums.

21. Occupational License(s): Unless exempted under state or local law, Provider must be authorized to do business within the State of Missouri, and shall maintain, for the duration of the Project, all required occupational licensure by/through the City. The cost for such licensing shall be the sole responsibility of Provider.

22. Nondiscrimination: Nondiscrimination. In discharging its obligations under the Agreement, Provider agrees not to discriminate in any way on the basis of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or a qualified individual with a disability, or political opinion or affiliation, against any employee of Provider or applicant for employment, and shall include a similar provision in any sub-contracts executed hereunder. The Parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

- a. Provider shall abide by the provisions of 41 C.F.R. § 60-300.5(a), which prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime Providers and Subcontractors to employ and advance in employment qualified protected veterans.
- b. Provider shall abide by the provisions of 41 C.F.R. § 60-741.5(a), which prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime Providers and Subcontractors to employ and advance in employment qualified individuals with disabilities.

23. Waiver: No provision of the Agreement documents shall be construed, expressly or by implication, as a waiver by the City of any existing or future right or remedy available by law in the event of any claim of default or breach of contract.

24. Entire Agreement: This Agreement, along with the other Agreement Documents identified herein, contains the entire agreement between the Parties and supersedes all prior and contemporaneous written or oral agreements. The Agreement may not be modified or amended other than in writing as agreed and signed by all the Parties.

25. Jurisdiction and Venue: The Agreement Documents shall be taken and deemed to have been fully executed and made by the parties herein and governed by the laws of the State of Missouri for all purposes and intents. Venue under the Agreement, or any disputes that come from it, shall solely lie in the Circuit Court of Greene County, Missouri.

26. Dispute: In the event City is the prevailing party in any litigation arising out of or relating in any way to the Project or the Agreement, City shall be entitled to recover its reasonable attorneys' fees and expenses

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incurred in connection with the resolution of such dispute, no matter the forum in which such dispute is resolved.

27. Liability: Nothing in the Agreement shall be construed to create any liability on behalf of the City for any direct, special, indirect, or consequential damages. The City shall not pay any attorney fees of any other Party even if that Party is the prevailing party.

28. Execution: The Parties agree that signatures transmitted by facsimile or scanned and emailed shall have the legal effect of original signatures. In addition to facsimile or scanned and emailed signatures, the Agreement may be executed by the Parties in accordance with the applicable version of the Uniform Electronic Transactions Act (“UETA”) and the Electronic Signatures in Global and National Commerce Act (“ESIGN”). The Parties hereto agree to conduct transactions by electronic means and hereby affirmatively consent to use electronic records to memorialize and execute the Agreement and any alterations thereto. At the request of either Party, the Parties shall promptly exchange executed original counterparts of the Agreement or any amendment.

29. Survival: The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns as provided in the Agreement.

30. Headings: The headings in the Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.

31. Whereas Clauses: The “Whereas” clauses stated above are incorporated herein by reference.

32. Public Body City and Missouri Sunshine Law: The Parties recognize that City is a governmental body subject to the open records provisions of the Missouri Sunshine Law (RSMo., Chapter 610) (“Sunshine Law”). Records generated in connection with the performance of Services under the Agreement are subject to disclosure upon request for the same, unless excepted from disclosure under the Sunshine Law or otherwise permitted to be closed under the Sunshine Law. If a request under the Sunshine Law (“Sunshine Request”) is presented to City for records pertaining to the Agreement, City shall notify Provider of the Sunshine Request, and Provider shall promptly identify and provide all documents being requested as soon as practicably possible so as to enable City to timely respond to such request. Fees may be assessed for time, efforts and/or costs incurred in responding to Sunshine Requests or otherwise ensuring compliance with Sunshine Law requirements, but only to the extent such fees are expressly authorized by the Sunshine Law.

33. Conflicts: Provider presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services to be performed under the Agreement. In accepting the Agreement, Provider certifies all local, state, and federal laws and regulations related to conflicts of interest shall be followed, specifically Chapter 105, RSMo. (See **Exhibit D – Certification of No Conflict**).

34. Assignment: Provider shall neither assign nor transfer any interest in the Agreement, whether by assignment, sale, gift, novation or otherwise, without prior written consent of City; provided, however, that claims for money due or owing to Provider under the Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to City. Any such assignment is expressly subject to all rights and remedies of City under the Agreement, including the right to change or delete activities from the Agreement or to terminate the same as provided herein, and no such assignment shall require City to give any notice to any such assignee of any actions which City may take under the Agreement.

35. Severability Clause: A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part, of the Agreement shall not affect the validity of the remaining parts to the Agreement.

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IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

OWN, Inc. [Provider]

By: _____

 Printed Name

 Title

Date: _____

THE CITY OF REPUBLIC, MISSOURI

By: _____
 Karen Haynes, Community Development Director

Date: _____

Approved as to Form:

 Megan McCullough, City Attorney

Date: _____

Attest: _____
 Laura Burbridge, City Clerk

Date: _____