

## **AGREEMENT**

**THIS AGREEMENT** made and entered into this 1st day of January, 2024, by and between the Board of County Commissioners of Johnson County, Kansas, hereinafter referred to as the "OWNER" and Wiedenmann, Inc., hereinafter referred to as the "CONTRACTOR".

### WITNESSETH:

**WHEREAS**, the OWNER desires to retain the services of the CONTRACTOR for services generally described in Request for Proposal No. 2023-045 for Wastewater Sewer Collection System Infrastructure Repairs; and

**WHEREAS**, the CONTRACTOR desires to provide such services to the OWNER in accordance with the terms and conditions of this AGREEMENT.

**NOW, THEREFORE**, in consideration of the above and foregoing recitals, the mutual promises, covenants and agreements hereinafter contained, and for other good and valuable consideration, the parties to these presents do hereby agree as follows:

### **ARTICLE 1 – OWNER’S REPRESENTATIVE**

The General Manager of Johnson County Wastewater (hereinafter "JCW") shall be the OWNER'S designated representative and is authorized to act on behalf of the OWNER with respect to all work tasks required of the PROJECT for which services are to be rendered by the CONTRACTOR. The General Manager will issue a PROJECT AUTHORIZATION and the Notice to Proceed to the CONTRACTOR for a specific scope of services for each authorized project (hereinafter the "AUTHORIZED PROJECT") to be completed under this AGREEMENT. The CONTRACTOR shall, upon receipt of a Notice to Proceed, furnish the services in relation to the scope of any AUTHORIZED PROJECT.

### **ARTICLE 2 - ENGINEER**

Any Engineering Firm who designs projects to be constructed under this AGREEMENT, who is hereinafter referred to as ENGINEER and who shall act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the performance completion of the Work in accordance with the Contract Documents.

### **ARTICLE 3 – SCOPE OF SERVICES**

The specific services the CONTRACTOR agrees to furnish are indicated in Attachment A "Scope of Services". Changes in the Scope of Services shall be subject to renegotiations and implemented through an Amendment to this AGREEMENT. The Wastewater Sewer Collection System Infrastructure Repairs Term and Supply Contract (Request for Proposal No. 2023-045 hereinafter referred to as "RFP No. 2023-045"), and all contractor AGREEMENTS resulting from this RFP, have a combined annual maximum dollar amount of PROJECT AUTHORIZATIONS that can be awarded, as established by the BOCC. The combined total amount of AUTHORIZED PROJECTS issued during the initial term of this AGREEMENT, or during any like renewal term thereof, shall not exceed **One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00)** without the prior approval of the BOCC. CONTRACTOR understands and acknowledges there is no guarantee minimum of quantity of services that would be purchased or required by OWNER from CONTRACTOR under this Agreement.

### **ARTICLE 4 – BASIS OF PAYMENT**

As a consideration for providing the services enumerated in Article 3, the OWNER shall pay the CONTRACTOR in the following manner:

4.1 Compensation of a Cost Not-to-Exceed. For services, as enumerated in Article 3, the OWNER shall pay the CONTRACTOR based upon the CONTRACTOR'S cost with an agreed maximum. Payments as described hereinafter shall represent full compensation to the CONTRACTOR for payroll costs, direct expenses, current overhead, profit and all other costs in connection with the performance of these services. Upon request, the CONTRACTOR shall provide documentation to the OWNER of all costs in connection with the performance of these services.

Total payment to the CONTRACTOR for the services, as enumerated in Article 3, shall not exceed a maximum cost, which shall be agreed to for each AUTHORIZED PROJECT. Each AUTHORIZED PROJECT maximum shall remain in effect unless changed by an ADDENDUM to the AUTHORIZED PROJECT. Personnel changes in CONTRACTOR'S staff or billing rates related to staff salary increases during the term of the AUTHORIZED PROJECT shall not be cause for an increase to the maximum cost.

The CONTRACTOR'S cost shall be calculated in accordance with the Measurement and Payment Section of the Contract Documents listed in Section 4.B.3 of RFP No. 2023-045. Attachment B to this AGREEMENT, "Schedule of Billing Rates and Percentage Markups", shall remain in effect for the duration of the initial term of this AGREEMENT, and for the duration of any AUTHORIZED PROJECT during the initial term.

4.2 Changes of Scope. In the event additional, related construction services are required through changes in the scope of an AUTHORIZED PROJECT, or other unusual or unforeseen circumstances are encountered, CONTRACTOR shall, upon written ADDENDUM by and between the parties to an AUTHORIZED PROJECT, perform the additional services.

4.3 Basis of Costs. Compensation is based on actual time and material (or other direct expense) costs, plus overhead and profit. However, at the discretion of the Owner, some costs such as sub-contract work not listed on Attachment B may be based on lump-sum bids.

#### **ARTICLE 5 - PAYMENT FOR SERVICES**

Payment to the CONTRACTOR, as prescribed in ARTICLE 4, shall be made as follows:

5.1 Payment for Services. Payment for services rendered shall be made to the CONTRACTOR at the end of each monthly billing cycle upon presentation of the CONTRACTOR 'S Application for Payment. The format of Applications for Payment shall conform to the OWNER'S standards and CONTRACTOR shall attach documents substantiating actual costs incurred and included in the Applications for Payment. OWNER shall make prompt payments in response to CONTRACTOR'S Applications for Payment. Total payment to CONTRACTOR shall not exceed the AUTHORIZED PROJECT amount except by ADDENDUM to the AUTHORIZED PROJECT.

5.2 Payment Procedures. OWNER shall pay the CONTRACTOR in the manner specified in the Contract Documents. Applications for Payment shall be submitted by the CONTRACTOR and processed in accordance with the Contract Documents.

5.2.1 Progress Payments. OWNER shall make progress payments on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER or OWNER'S AGENT. Upon ENGINEER's recommendation and OWNER's approval of CONTRACTOR's Application for Payment, OWNER will pay or cause to be paid an amount equal to the submitted actual expenses, plus overhead and profit and other expense markups allowed by the Contract Documents less a retained amount in accordance with the following schedule and subject to the applicable provisions of the Contract Documents.

5.2.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below:

1. Ninety five percent (95%) with five percent (5%) retained until the Work is

substantially complete.

2. OWNER shall release retainage, if any, on any undisputed payment due within thirty (30) days after substantial completion; provided, however, if any subcontractor is still performing work on the Project under its subcontract, OWNER may withhold that portion of the retainage attributable to such subcontract until thirty (30) days after such work is completed."

5.2.2 Final Payment. Upon final completion and acceptance of the Work, OWNER shall pay the remaining amount owed as recommended by ENGINEER in accordance with the applicable provisions of the Contract Documents.

#### **ARTICLE 6 – OBLIGATIONS OF THE CONTRACTOR**

6.1 Construction Cost Proposals. CONTRACTOR shall prepare itemized cost proposals, utilizing contract pricing, for each AUTHORIZED PROJECT assigned to CONTRACTOR. The final cost proposal accepted by OWNER for each AUTHORIZED PROJECT shall be a maximum not-to-exceed price for the Project that can only be increased by an Addendum to the PROJECT AUTHORIZATION.

6.2 Project Completion Time. For the services described in Article 3, the CONTRACTOR shall make every reasonable effort to schedule manpower and work elements in a diligent manner so as to complete said services within the agreed upon time schedule included for each AUTHORIZED PROJECT starting upon issuance of the Notice to Proceed. This time schedule applies only if any reviews, approvals, and information to be furnished and services to be performed by persons and agencies not under the control of the CONTRACTOR are furnished and/or completed in accordance with the schedule to be agreed upon between the OWNER and the CONTRACTOR.

#### **ARTICLE 7 – OBLIGATIONS OF THE OWNER**

7.1 Authorization of Work. The OWNER shall issue a PROJECT AUTHORIZATION for each construction project assigned to the CONTRACTOR. The PROJECT AUTHORIZATION shall reference this AGREEMENT, and shall include a description of the Work, the not-to-exceed maximum compensation for the PROJECT, and an agreed upon PROJECT COMPLETION TIME. The OWNER shall also notify the CONTRACTOR in writing to proceed with the construction services through issuance of a Notice to Proceed prior to the CONTRACTOR providing services listed under the PROJECT AUTHORIZATION.

7.2 Owner-Furnished Data. The OWNER shall provide to the CONTRACTOR a detailed set of plans and specifications for each project, unless it is agreed that informal drawings/sketches, specifications, and instructions are all that is required. OWNER shall also provide any technical data in the OWNER'S possession, including as-built drawings from previous projects, previous reports, maps, surveys, and any other information reasonably required by the CONTRACTOR to perform the construction services on the AUTHORIZED PROJECT. Such information shall include, but not be limited to, the OWNER'S requirements for the AUTHORIZED PROJECT, and any criteria or constraints. CONTRACTOR may rely upon the accuracy, timeliness, and completeness of the information provided by the OWNER in performing CONTRACTOR'S services to the OWNER.

7.3 Access to Facilities and Property. Unless otherwise agreed upon, the OWNER shall make its wastewater facilities and properties available and accessible for inspection and work by CONTRACTOR during regular business hours and shall arrange for access to make all provisions for the CONTRACTOR to enter upon public property as may be reasonably required for the CONTRACTOR to perform its services.

7.4 Timely Review. The OWNER shall examine all studies, reports, proposals, certifications, and other documents presented by CONTRACTOR, obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as OWNER deems appropriate for such examination and, as necessary, render written decisions pertaining thereto in accordance with the schedule agreed upon between the OWNER and the CONTRACTOR so as not to delay the services of CONTRACTOR.

7.5 Prompt Notice. The OWNER shall give prompt written notice to CONTRACTOR whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR'S work, or any defect in the CONTRACTOR'S work.

#### **ARTICLE 8 – GENERAL PROVISIONS**

8.1 Acceptance of CONTRACTOR'S Services. Upon completion of the services required of the CONTRACTOR under this AGREEMENT, or of any phases of such services, the OWNER and/or ENGINEER will inspect the Work for conformance with the Contract Documents, including any plans and specifications and instructions issued with a PROJECT AUTHORIZATION. If OWNER or ENGINEER finds that such services do conform to the Contract Documents, the OWNER'S Representative shall accept such services and authorize payment therefore. If OWNER or ENGINEER finds that such services do not conform to the Contract Documents, the OWNER'S Representative shall immediately notify the CONTRACTOR, in writing, of all deficiencies and reasons for nonacceptance and shall permit the CONTRACTOR a reasonable time, not to exceed ninety (90) days, to complete or correct the services. If, after ninety (90) days, the services do not conform to the Contract Documents, and if the CONTRACTOR fails to demonstrate to the satisfaction of the OWNER that the delay is beyond the CONTRACTOR'S control, the CONTRACTOR will be deemed in default of this AGREEMENT.

8.2 No Assignment. CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of neither this Agreement nor any of its rights and obligations hereunder, without the prior written consent of OWNER, but in no event shall such consent relieve CONTRACTOR from its obligations under the terms of this Agreement.

8.3 Consumer Protection. The CONTRACTOR and the OWNER herein agree that the term "consumer" as construed in the Kansas Consumer Protection Act, K.S.A. 50-623 et seq. shall include the Board of County Commissioners of Johnson County, Kansas, acting as the Governing Body of Johnson County Wastewater.

8.4 Nondiscrimination. CONTRACTOR agrees to not discriminate on the basis of race, religion, color, sex, gender expression, disability, national origin, ancestry, or other circumstance prohibited by federal, state or local law, rule or regulation in its operation, management and employment practices and with respect to availability and accessibility of products and services to the public. CONTRACTOR agrees to comply with all applicable laws of the State of Kansas and of the United States of America, regarding such non-discrimination and equality of opportunity.

8.5 Force Majeure. This Agreement is subject to, and CONTRACTOR shall not be responsible or liable for, delay, directly or indirectly resulting from or contributed to by any foreign or domestic embargoes, seizures, acts of God, insurrections, war or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with or rendering more burdensome the videotaping, production, or delivery hereunder. In the event that any performance hereunder is suspended or delayed by reason of any one or more of the occurrences aforesaid, any and all performance so suspended or delayed shall be made after such disabilities have ceased to exist.

8.6 Hold Harmless. The CONTRACTOR agrees to protect, defend, indemnify and hold the OWNER, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of the error, omission or negligent act of the CONTRACTOR. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The CONTRACTOR further agrees to investigate, handle, respond to, provide

defense for and defend any such claims, etc., at his/her sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.

8.7 Insurance. CONTRACTOR shall, while performing the services required under and for the duration of this Agreement, comply with the insurance requirements of Special Condition No. 9.1 of RFP No. 2023-026.

8.8 Severability. All agreements, covenants and clauses contained herein are severable, and in the event any of them shall be deemed or held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable agreements, clauses and covenants were not contained herein.

8.9 Standards of Performance. The CONTRACTOR shall perform all services under this AGREEMENT in accordance with generally acceptable industry standards of the wastewater facility construction industry for projects similar in scope, size and complexity to the AUTHORIZED PROJECT, and the laws of the State of Kansas.

8.10 Termination for Cause. Should CONTRACTOR be found in violation of any of the terms and conditions of this Agreement, it shall be deemed in breach of this Agreement. OWNER shall thereupon notify CONTRACTOR, in writing, of such violation, giving CONTRACTOR thirty (30) days to cure such breach. Should CONTRACTOR fail to cure such breach, OWNER shall then have the right to terminate this Agreement for cause by giving written notice to CONTRACTOR of such termination and specifying the effective date of such termination. In the event of termination for cause, CONTRACTOR shall be entitled to just and equitable compensation for services satisfactorily performed by CONTRACTOR through the date of termination specified by OWNER, less costs and damages incurred by OWNER as a result of CONTRACTOR's breach.

8.11 Termination for Lack of Funds. Should, for whatever reason, adequate funding not be made available to the OWNER to support or justify continuation of the level of services to be provided by the CONTRACTOR under this Agreement, the OWNER may terminate or reduce the amount of service to be provided by the CONTRACTORS under this Agreement. In such event, the OWNER shall notify the CONTRACTOR in writing at least fifteen (15) days in advance of such termination or reduction of services for lack of funds, in which case, the CONTRACTOR shall be reimbursed for all costs and expenses incurred prior to the date of such notice.

8.12 Termination for Convenience. OWNER reserves the right to terminate this Agreement, at any time, for the convenience of OWNER, without penalty or recourse, by giving ONTRACTOR written notice of such termination thirty (30) days prior to termination. CONTRACTOR shall be entitled to just and equitable compensation for services satisfactorily performed by CONTRACTOR through the date of termination specified by OWNER.

8.13 Termination for Lack of Payment. The CONTRACTOR reserve the right to terminate this Agreement for lack of payment by the OWNER for services performed by the CONTRACTOR under this Agreement and accepted by the OWNER.

8.14 Termination Compensation. In the event of termination, the CONTRACTOR shall be paid in full for all accepted services performed up to the termination date, unless such termination is for the convenience of the OWNER, then CONTRACTOR shall be paid in full for all accepted services performed up to the termination date, plus any reasonable termination expenses incurred by CONTRACTOR (including but not limited to cancellation or demobilization costs or fees as a result of such a termination).

If no termination is implemented, relationships and obligations created by this AGREEMENT shall terminate upon completion of all applicable requirements of this AGREEMENT.

8.15 Term of Contract. This Agreement is effective as of January 1<sup>st</sup>, 2024 ("Effective Date"). The term of this AGREEMENT shall be for a twelve (12) month period beginning on the Effective Date.

The CONTRACTOR agrees that the OWNER has the option to renew this AGREEMENT for four (4) additional twelve (12) month periods on the same terms and conditions as set forth herein or as amended. Billing rates established from OWNER'S Request for Proposal No. 2023-045 shall remain in effect with renewals, unless both parties agree to new, negotiated rate increases or decreases.

8.16 No Waiver. The waiver by the OWNER or CONTRACTOR of any breach of any covenant in this AGREEMENT shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant in this AGREEMENT, nor shall any custom or practice which may arise between the OWNER and CONTRACTOR in the administration of this AGREEMENT be construed to waive or lessen the right of the OWNER or CONTRACTOR to insist upon the performance by the OWNER or CONTRACTOR in strict accordance with this AGREEMENT.

8.17 Venue. In the event that the parties hereto are unable to resolve any controversy or claim arising out of, or relating to, this Agreement or the making, performance or interpretation of it without resort to the courts, the parties agree that exclusive jurisdiction and venue over such matter shall be in the District Court of Johnson County, Kansas.

8.18 Headings. The headings contained in this AGREEMENT are for reference purposes only and shall not affect the meaning or interpretation of this AGREEMENT.

8.19 Cooperative Procurement. CONTRACTOR agrees that pricing, terms, and conditions of this CONTRACT may be made available to any Municipality, County Public Utility, Hospital, Education Institution, or any other non-profit organization. There shall be no obligation under the cooperative procurement agreement for any organization to utilize the RFP or contract unless they are specifically named in the Request for Proposal.

All sales to other jurisdictions will be made on purchase orders issued by that jurisdiction. All deliveries shall be F.O.B. Destination. All receiving, inspection, payments, and other contract administration will be the responsibility of the ordering jurisdiction.

#### **ARTICLE 9 - CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 9.1 This Agreement (pages A-1 to A-7, inclusive).
- 9.2 OWNER'S Request for Proposal No. 2023-045 (hereinafter "RFP No. 2023-045") and RFP Addenda numbers 1 and 2; and
- 9.3 CONTRACTOR'S written Response to RFP No. 2023-045, signed and duly submitted to the OWNER (hereinafter "CONTRACTOR'S Response"); and
- 9.4 OWNER-issued Notice of Award of term and supply contract; and
- 9.5 OWNER-issued PROJECT AUTHORIZATIONS, complete with scope descriptions, plans and specifications, instructions, additional bonds and insurance, Additional Supplementary Conditions, Supplementary Division 01000 specifications, and/or other documents as required for each assigned project; and
- 9.6 OWNER-issued Notice to Proceed with each PROJECT AUTHORIZATION; and
- 9.7 General Conditions (pages 1 to 43, inclusive).
- 9.8 Supplementary Conditions (pages SC-1 to SC-17, inclusive).
- 9.9 Executed and filed Bonds; and
- 9.10 Certificate of Insurance; and
- 9.11 Other documents, if any, listed below:  
  
Additional Supplementary Conditions (pages ASC-1 to ASC-8, inclusive)
- 9.12 The documents listed in paragraphs 9.2 et. seq. above, whether or not attached to this Agreement, are hereby incorporated by reference as if set forth fully herein and shall be made binding on OWNER and CONTRACTOR.

**ARTICLE 10 – ENTIRE AGREEMENT**

This AGREEMENT represents the entire agreement between the OWNER and the CONTRACTOR with respect to the provision of services required of CONTRACTOR and OWNER under this Agreement, and supersedes all prior understandings or promises, whether oral or written, between the parties pertaining to or in connection with this Agreement.

IN WITNESS WHEREOF, CONTRACTOR and OWNER have caused this Agreement to be executed in multiple counterparts by their duly authorized representatives and made effective on the day and year first above written.

**CONTRACTOR**

**JOHNSON COUNTY, KANSAS**

By *Jerry Wiedenmann*  
Jerry Wiedenmann (Jan 17, 2024 16:07 CST)  
Jerry Wiedenmann  
President

By *Robin Lynes*  
Robin Lynes (Jan 17, 2024 17:09 CST)  
Robin Lynes  
Purchasing Manager

APPROVED AS TO FORM:

*Ryan Haga*  
Ryan Haga (Jan 17, 2024 16:11 CST)  
Ryan Haga  
Assistant County Counselor

**ATTACHMENT A**  
to  
**Agreement for Construction Services**  
**RFP No. 2023-045**

**Scope of Services**

The CONTRACTOR shall perform some or all of the services described below. The extent and complexity of each construction project will vary. However, these basic services listed below may be required. Each CONTRACTOR selected by the OWNER, together with approved subcontractors, shall be capable and qualified to perform the following:

1. **PROJECT DEVELOPMENT AND CONSTRUCTION ADMINISTRATION/MANAGEMENT**

- a. Assist OWNER and ENGINEER when requested with project development, including constructability assessments and cost-saving alternatives.
- b. Prepare detailed cost proposals for assigned construction projects and change order work.
- c. Plan, schedule, direct and supervise construction projects from Notice to Proceed to final completion.
- d. Coordinate work with JCW operation and maintenance staff in order to keep essential wastewater treatment processes in service and meet regulatory permit requirements.
- e. Conduct work in compliance with all federal, state, and local regulations. Obtain all required permits for the Work.
- f. Conduct work in a safe manner and in compliance with all federal, state, and local safety regulations. Consider and act upon safety concerns of JCW's Safety Manager and other JCW staff.
- g. Meet the Administrative Requirements of the Division 01000 General Construction Requirements

2. **GENERAL CONSTRUCTION REQUIREMENTS**

CONTRACTOR shall perform the services included in the Division 01000 General Construction Requirements for all assigned projects unless OWNER deems any requirements as unnecessary for a project. These requirements generally include:

- a. SITE REQUIREMENTS
- b. EQUIPMENT REQUIREMENTS
- c. SAFETY AND SECURITY REQUIREMENTS
- d. COMMUNICATION AND COORDINATION REQUIREMENTS
- e. GENERAL CONSTRUCTION REQUIREMENTS
- f. SUPPLEMENTARY DIVISION 01000 REQUIREMENTS



3. TYPES OF CONSTRUCTION

CONTRACTOR shall perform the following types of construction at OWNER'S wastewater facilities, as authorized:

- a. Gravity Sewer Piping and Manhole Repair
- b. Sanitary Force Main and Air Release Valve Repair/Replacement/Maintenance
- c. Sanitary Stream Crossing Repairs/Replacement and Stream Restoration
- d. Low Pressure Sewer Pipeline and Valve Repair/Maintenance
- e. Civil Site Work – earthwork, trenching, pavement, modification or replacement of landscaping, fencing, traffic control, etc.
- f. And all other projects as requested

Note: Work may include bypass pumping, confined space work, handling of wastewater and wastewater residuals/solids, coordination with property owners, and restoration of private property.

*(End of Scope of Services)*