

# **PROFESSIONAL SERVICES AGREEMENT**

Heber Public Utility District / LT Municipal Consultants  
Water and Sanitary Sewer Rate Study Services

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is entered into by and between Heber Public Utility District, a California Special District ("District") and LT Municipal Consultants a California ("Consultant").

## **RECITALS**

**WHEREAS** the District has determined that it requires the following professional services from a Consultant: Water and Sewer Rate Study, Professional Services.

**WHEREAS** the consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees.

**WHEREAS** the consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, District and Consultant agree as follows:

### **1. DEFINITIONS**

- 1.1. "Scope of Services": Such professional services as are set forth in Consultant's revised proposal to District attached hereto as Exhibit A and incorporated herein by this reference.
- 1.2. "Approved Fee and Insurance Schedules": Such compensation rates as are set forth in Consultant's revised fee schedule to District attached hereto as Exhibit B and incorporated herein by this reference
- 1.3. "Commencement Date": February 19, 2026
- 1.4. "Expiration Date": Upon Adoption of the Final Report by Board of Directors

### **2. TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section **15** ("Termination") below.

### **3. CONSULTANT'S SERVICES**

- 3.1. Consultant shall perform the services identified in the Scope of Services. District shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of forty-two thousand six hundred and sixty dollars (\$42,660) unless specifically approved in advance and in writing by District.
- 3.2. Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to District. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.).
- 3.3. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. The General Manager, shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without District's prior written consent.

#### **4. COMPENSATION**

- 4.1. District agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule, and Section 3.1 of this Agreement.
- 4.2. Consultant shall submit to District an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, District shall notify Consultant in writing of any disputed amounts included on the invoice. Within forty-five calendar days of receipt of each invoice, District shall pay all undisputed amounts included on the invoice. District shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.
- 4.3. Payments for any services requested by District and not included in the Scope of Services shall be made to Consultant by District on a time-and-materials basis using Consultant's standard fee schedule.

**5. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products") developed by Consultant in the performance of this Agreement shall be and remain the property of District without restriction or limitation upon its use or dissemination by District. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

**6. RELATIONSHIP OF PARTIES**

Consultant is, and shall at all times remain as to District, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of District or otherwise to act on behalf of District as an agent. Neither District nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of District.

**7. CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by District. District shall grant such consent if disclosure is legally required. Upon request, all District data shall be returned to District upon the termination or expiration of this Agreement.

**8. INDEMNIFICATION**

- 8.1. To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend District, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of District's choice.
- 8.2. District shall have the right to offset against the amount of any compensation due Consultant under this Agreement any amount due District from Consultant as a result of Consultant's failure to pay District promptly any indemnification arising under this Section 8 and related to Consultant's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

- 8.3. The obligations of Consultant under this Section 8 will not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives any statutory immunity under such statutes or laws as to District, its officers, agents, employees and volunteers
- 8.4. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 8 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend District, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of District's choice.
- 8.5. District does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by District, or the deposit with District, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

## 9. INSURANCE

- 9.1. During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
  - 9.1.1. Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000), per occurrence and in the aggregate, including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
  - 9.1.2. Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$ 1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.

- 9.1.3. Worker's Compensation insurance as required by the laws of the State of California.
    - 9.1.4. Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 9.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 9.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 9.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, District may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Consultant's expense, the premium thereon.
- 9.5 At all times during the term of this Agreement, Consultant shall maintain on file with District a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the District and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with District such certificate(s).
- 9.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 9.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming District and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to District. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 9.8 The insurance provided by Consultant shall be primary to any coverage available to District. Any insurance or self-insurance maintained by District and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 9.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of

subrogation against the District.

9.10 Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of District, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to District, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

9.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 8 of this Agreement.

## **10. MUTUAL COOPERATION**

10.1. District shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

10.2. In the event any claim or action is brought against District relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that District may require.

## **11. RECORDS AND INSPECTIONS**

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. District shall have the right to access and examine such records, without charge, during normal business hours. District shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

## **12. PERMITS AND APPROVALS**

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement. This includes, but shall not be limited to, encroachment permits and building and safety permits and inspections.

## **13. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and District's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to District:  
Madeline Dessert  
Heber Public Utility District  
1078 Dogwood Rd., Suite 103  
Heber, CA 92249  
Telephone: (760) 482-2240

If to Consultant:  
Alison Lechowicz  
LT Municipal Consultants  
909 Marina Village Parkway #135  
Alameda, CA 94501  
Telephone: (510) 545-3182

**14. SURVIVING COVENANTS**

The parties agree that the covenants contained in Section 7, Section 8, Paragraph 10.2 and Section 11 of this Agreement shall survive the expiration or termination of this Agreement.

**15. TERMINATION**

15.1. District shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All District data, documents, objects, materials or other tangible things shall be returned to District upon the termination or expiration of this Agreement.

15.2. If District terminates this Agreement for any reason other than fault, or breach of this Agreement, or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement

**16. GENERAL PROVISIONS**

16.1. Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without District's prior written consent, and any attempt to do so shall be void and of no effect. District shall not be obligated or liable under this Agreement to any party other than Consultant.

16.2. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.

16.3. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph

thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement.

- 16.4. The waiver by District or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by District or Consultant unless in writing.
- 16.5. Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in District's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 16.6. Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Stanislaus County, California.
- 16.7. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 16.8. This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 16.9. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between District and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the

parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by District and Consultant.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**Heber Public Utility District**

By: \_\_\_\_\_  
Madeline Dessert, General Manager

Date: \_\_\_\_\_

**LT Municipal Consultants**

By: \_\_\_\_\_  
Alison Lechowicz, Principal

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Jacob Bermudez, Clerk of the Board

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Steven M. Walker, General Counsel

Date: \_\_\_\_\_