



## STAFF REPORT

**MEETING DATE:** June 14, 2023

**PRESENTER:** Josefina Alvarez, Finance Director

**SUBJECT:** Water, Wastewater and Storm Drain Rate Study Proposal and Selection of Consultant (JA)

**RECOMMENDATION:** Staff recommends Council adopt resolution approving consultant contract with Lechowicz and Tseng Municipal Consultants in the amount of \$49,500 for conducting the Water, Wastewater and Storm Drain Rate Study and authorize the City Manager to sign the Consultant Agreement.

### EXECUTIVE SUMMARY:

The City of Kerman completed a Water and Wastewater study in 2018 with rate schedules through December 31, 2023.

In order to obtain an updated rate schedule, staff issued an RFP (Request for Proposal) to six (6) consulting firms and also posted the RFP on the City Website. From the six RFP's issued, only one (1) responded to the RFP. Their proposal was received before the deadline of June 2, 2023, was opened and scored by the committee that consisted of the City Manager, City Clerk, and Finance Director on June 2, 2023, and June 5, 2023. The committee recommends a contract award to Lechowicz and Tseng Municipal Consultants based on the total tabulated scores. Scores were evaluated based on their qualifications, experiences, and approach to the scope of work and costs of services to be provided and submitted in their response to the RFP. Below is the schedule that reflects the total cost submitted by Lechowicz and Tseng Municipal Consultants.

Consultant	Total Bid
Lechowicz and Tseng Municipal Consultants	\$49,500

It is noted that this consultant firm conducted the last rate study for the City and the City was satisfied with their work.

### FISCAL IMPACT:

The project is included in the 2023/2024 budget for a total project costs of \$49,500.

### ATTACHMENT:

A. Resolution

Attachment 'A'

**RESOLUTION NO. 23-\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KERMAN APPROVING CONSULTANT SERVICES AGREEMENT WITH LECHOWICZ & TSENG MUNICIPAL CONSULTANTS TO CONDUCT THE WATER, WASTEWATER AND STORM DRAIN RATE STUDY IN THE AMOUNT OF \$49,500 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

WHEREAS, the City of Kerman requires a consultant to conduct a Water, Wastewater and Storm Drain Rate Study to obtain and update rate schedules and issued a Request for Proposals (RFP) for such services; and

WHEREAS, Lechowicz & Tseng Municipal Consultants (Consultant) has responded to the RFP and is qualified to provide the required services; and

WHEREAS, Consultant conducted the last Water and Wastewater Rate Study in 2018 and staff was satisfied with their work; and

WHEREAS, the City desires to hire Consultant for the rate study services.

NOW, THEREFORE, the City Council of the City of Kerman does resolve as follows:

1. The foregoing recitals are true and correct.
2. The City Council hereby approves the Rate Study Consultant Services Agreement with Lechowicz & Tseng Municipal Consultants in the amount of \$49,500 attached as Exhibit 'A' to this resolution and authorizes the City Manager to execute same.
3. This resolution shall be effective immediately.

The foregoing resolution was approved by the City Council to the City of Kerman at a regular meeting held on the 14<sup>th</sup> day of June 2023, and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

ATTEST:

\_\_\_\_\_  
Bill Nijjer  
Mayor Pro Tem

\_\_\_\_\_  
Marci Reyes  
City Clerk

Exhibit 'A'

**AGREEMENT BETWEEN THE CITY OF KERMAN AND  
LECHOWICZ & TSENG MUNICIPAL CONSULTANTS FOR RATE STUDY CONSULTANT SERVICES**

This Agreement is made and entered into effective on \_\_\_\_\_, by and between the City of Kerman, a California municipal corporation, (hereinafter referred to as "CITY") and Lechowicz & Tseng Municipal Consultants, (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY desires to obtain consultant services from a qualified utilities rate consultant to provide analysis and a suggested rate structure for water, waste water, and storm drain service which will comply with applicable law, including, but not limited to, Proposition 218, hereinafter referred to as the "Rate Studies for Water, Waste Water, and Storm Drain" and collectively as "Rate Studies; and

WHEREAS, CONSULTANT warrants that it is specially trained, experienced, expert, and competent to perform such services and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals which are part of this Agreement and the terms and conditions hereinafter contained, it is mutually agreed as follows:

- 1. Scope of Services**CONSULTANT shall perform to the satisfaction of CITY, services as requested by CITY as specifically set forth in Exhibit 'A', which is attached hereto and hereafter referred as the "Rate Studies for Water, Wastewater and Storm Drain."
- 2. Term of Agreement.** This Agreement shall be effective from June 14, 2023 to December 13, 2023 [Or This Agreement shall be effective from June 14, 2023 to the date of completion as set forth in the Schedule attached hereto as Exhibit 'B'] subject to any earlier termination in accordance with this Agreement.
- 3. Compensation**CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be at the rate and schedules attached hereto as Exhibit 'C' which shall not exceed \$49,500.00.

**4. Termination**(a) This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the CITY upon written notice to the CONSULTANT upon five (5) day's written notice. CONSULTANT may terminate this Agreement upon 30 days' written notice.

(b) If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

(c) Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

(d) In the event termination is without cause, Consultant shall be entitled to any compensation owing it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination. Notice of termination shall be mailed as follows:

To the City:  
City of Kerman  
850 S. Madera Avenue  
Kerman, CA 93630

To the Consultant:  
Lechowicz & Tseng Municipal Consultants  
909 Marina Village Parkway #135  
Alameda, CA 94501

**5. Indemnification**To the furthest extent allowed by law, CONSULTANT agrees to indemnify, including the cost to defend, City and each of its officers, officials, employees, agents, and volunteers from and against all claims, demands, costs, or liability, and expenses including attorneys' fees arising out of the performance of the work described in this Agreement, caused in whole or in part by the sole negligence, recklessness, or willful misconduct of CONSULTANT, its principals, officers, employees, agents, or volunteers in the performance of this Agreement or anyone for whose acts any of them may be liable excluding, however, such claims, demands, loss, damages, or arising from City's sole negligence or willful acts.

**6. Insurance**(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in Exhibit 'D' or as may be authorized, and any additional insurance as may be required, in writing by City Manager or his or her designee at any time and in her sole discretion.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore

have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. This phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

**7. Nondiscrimination** To the extent required by controlling federal, state, and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era.

**8. Independent Contractor.**

In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venture, partner, or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

**9. Notices.**

Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

**10. Assignment** This agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights of obligations under this Agreement without the prior written approval of the City Manager or her designee.

**11. Compliance with Law**In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California, and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

**12. Waiver**The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

**13. Governing Law and Venue**This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

**14. Headings**The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

**15. Severability**The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

**16. Interpretation**The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but by construing the terms in accordance with their generally accepted meaning.

**17. Attorneys' Fees**If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

**18. Exhibits** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

**19. Precedence of Documents** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

**22. Cumulative Remedies** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**21. No Third Party Beneficiaries** The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

[Signatures on separate page]

CITY OF KERMAN  
A municipal corporation

CONSULTANT  
Lechowicz & Tseng Municipal Consultants

\_\_\_\_\_  
John Jansons, City Manager  
Date: \_\_\_\_\_, 2023

\_\_\_\_\_  
  
\_\_\_\_\_  
Alison Lechowicz, Project Manager, Lead  
Financial Analyst  
Date: \_\_\_\_\_, 2023

**ATTEST:**

\_\_\_\_\_  
Marci Reyes, City Clerk  
  
Date: \_\_\_\_\_, 2023

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Hilda Cantú Montoy, City Attorney  
  
Date: \_\_\_\_\_, 2023



## Exhibit 'A'

### **Services to Be Provided by Consultant**

1. Conduct detailed reviews and analyses of existing water, wastewater and storm drain rates and related financial factors, and become familiar with the City's billing system.
2. Confer with City Staff as needed, through the Finance Director.
3. Prepare preliminary study reports and rate structures as appropriate, for preliminary review by City Staff. All Project reports and recommendations shall include comparable rates for several other generally comparable cities.
4. Prepare and submit by September 15, 2023, (first presentation) the Near-Final reports and proposed rate structures for near-final review by City Staff. Staff will return comments for input into the Final Report to be presented to the City Council at a regular meeting on or about October 25, 2023 (second presentation). At least one week before the first presentation, the Consultant shall provide twelve (12) bound copies and a reproducible unbound copy of the Next-to-Final Report, plus similar amounts of any other materials (such as a PowerPoint presentation) that will be presented at the workshops or meetings.
5. The Final Report must incorporate comments from the first presentation. Consultant shall provide twelve (12) copies and a reproducible copy of the Final Report, plus a copy on a thumb drive of the report in MS Word Format, and the easy-to-use computer-based rate model and related spreadsheets in MS Excel all within ten days following the above Next-to-Final presentation.
6. As part of the Proposition 218 Public Hearing, the Consultant shall make a presentation on the Final Report (third presentation), tentatively scheduled for December 13, 2023, including a PowerPoint presentation (similar amounts and types of copies of which will be provided in advance).
7. Consultant will assist with issuance of 45-day hearing notices.

Exhibit 'B'

<b>Schedule</b>	<b>Date</b>
1. Proposals Received by the City	06/02/23
2. Award of Professional Services Agreement	06/14/23
3. Draft Report Deadline	09/15/23
4. Draft Report submitted to Council	09/27/23
5. Edits from consultant if any based on Council comments	10/09/23
6. Final Report to Council for resolution to report & authorize the initiation of Prop 218 Process	10/25/23
7. Prop 218 Notices Mailed Out	10/27/23
8. Rate Study Workshop	11/08/23
9. Public Hearing on Proposed New Rates	12/13/23
10. Proposed Rate Change Effective Date	02/01/24

Exhibit 'C'

Consultant	Cost for Services
Lechowicz and Tseng Municipal Consultants	\$49,500

Exhibit 'D'

**INSURANCE REQUIREMENTS**

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

***(Not required if CONSULTANT provides written verification it has no employees)***

- 4 **Professional Liability** (Errors and Omissions) Insurance appropriate to the CONSULTANT's profession, with limit no less than **\$1,000,000** per occurrence or claim, \$2,000,000 aggregate.

If the CONSULTANT maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

**Other Insurance Provisions**

**The insurance policies are to contain, or be endorsed to contain, the following provisions:**

***Additional Insured Status***

The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the

form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

***Primary Coverage***

For any claims related to this contract, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

***Notice of Cancellation***

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the Entity.**

***Waiver of Subrogation***

CONSULTANT hereby grants to CITY a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require the CONSULTANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

***Claims Made Policies***

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the CONSULTANT must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of contract work.

***Verification of Coverage***

CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

***Subcontractors***

CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONSULTANT shall ensure that CITY is an additional insured on insurance required from subcontractors.

***Special Risks or Circumstances***

CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.