


## REPORT TO CITY COUNCIL

**Approved by:**

  
\_\_\_\_\_  
Roger Sanchez, Director of Financial Services

  
\_\_\_\_\_  
Arnaldo Rodriguez, City Manager

**Council Meeting of:** January 20, 2021

**Agenda Number:** B-9

**SUBJECT:**

Agreement with MV Cheng & Associates for Interim Procurement Manager Consulting Services

**RECOMMENDATION:**

Adopt a Resolution approving the agreement for professional services with MV Cheng & Associates for Interim Procurement Manager Consulting Services

**SUMMARY:**

The City currently has a critical vacancy in its Finance Department, the Procurement Services Manager position. The position has been vacant for several months, and a recent recruitment to fill the vacancy was unsuccessful in finding a suitable and qualified candidate. The City is in need of securing immediate services to help bridge the gap until a full-time staff is hired through the normal recruitment and selection processes required in the City's Personnel Rules and Administrative Policies. Working collaboratively with the City Manager and Human Resources Department, Finance Department staff explored several options for filling the immediate needs, including:

- Contacting multiple consulting firms
- Contacting multiple temporary staffing firms
- Direct contact with individuals who may be interested in part time employment

After reviewing all of the potential options that were generated through the above contacts, staff is recommending the City enter into an agreement with MV Cheng & Associates to provide consulting services in the Procurement Services Manager capacity, which is the action contemplated by this report.

**DISCUSSION:**

The City's Procurement Services Manager position has been vacant for some time following the transfer of staff to a new position in 2017. Since that time, the position's duties have been assumed by both out-of-class assignments as well as internal staff performing multiple roles. The Director of Financial Services has identified this position as a critical need, and the position was included in the adopted Fiscal Year 2020-21 budget. A Civil Service recruitment was conducted to identify potential candidates and an Eligibility List was certified with two (2) candidates for consideration. Unfortunately, that recruitment process did not result in a candidate that was suitable for the City's needs.

In order to address current organization needs related to purchasing and procurement processes, staff explored multiple options to bring on temporary assistance while a new recruitment is conducted. Multiple consulting firms were contacted and temporary staffing firms were provided an opportunity to offer candidates for consideration. The City also explored the potential for a part time retired annuitant to perform the work on an interim basis. After evaluating these options, staff is recommending the City engage MV Cheng & Associates to provide services to fill the Procurement Services Manager role, until another recruitment process can be completed. It is anticipated that the recruitment process will take several months as this position requires a specialized skill set. MV Cheng & Associates will provide a consultant to provide needed guidance and assistance to conduct necessary purchasing duties and responsibilities. Per the proposed agreement, the individual consultant assigned is subject to the approval of the City Manager. A Professional Services Agreement has been prepared to engage the services of MV Cheng & Associates. The agreement is provided as Exhibit 1 to the proposed resolution.

A formal Request for Proposal (RFP) process was not conducted due to the urgency of securing these services, however all known avenues for obtaining these services were explored. Pursuant to the City's Purchasing Policy, a formal bidding process is not required when, in unusual or extraordinary circumstances, the City Council or the City Manager determines that the best interests of the City would not be served by securing competitive bids or issuing a request for proposal. The City Manager believes the agreement is in the best interests of the City and engagement of a consultant to provide these services is urgent for the continuation of City business. All efforts were made to solicit as many potential candidates and options for consideration as possible.

**FINANCIAL IMPACT:**

The bill rate for the proposed services is \$100 per hour. The City anticipates utilizing these services for a period of 2 to 4 months while a recruitment and hiring process for full time staff is completed. There may be a need for a brief overlap to allow for knowledge transfer; however the agreement and services are intended as a stop gap measure on an interim basis only. Because the vacancy is a full-time position, salary savings exist to pay for the temporary staffing services within the adopted Fiscal Year 2020/21 budget.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The information contained herein is not addressed by the Vision Madera 2025 plan, nor is the information in conflict with that plan.

**ALTERNATIVES:**

Council could direct staff to solicit additional proposals or applications for part time employment.

**ATTACHMENTS:**

1. Resolution
  - a. Exhibit 1 to Resolution: Professional Services Agreement with MV Cheng & Associates

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AN  
AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF MADERA AND MV  
CHENG & ASSOCIATES**

**WHEREAS**, the City of Madera has a need to secure immediate expert purchasing consulting services due to a vacancy in the Finance Department while attempting to meet critical procurement needs and complete purchasing processes; and

**WHEREAS**, the City conducted a formal recruitment process which was unsuccessful, sought candidates available immediately through multiple consulting firms and temporary staffing agencies, as well as considered direct-hire part time employees; and

**WHEREAS**, due to the urgent nature of the City's need to secure competent purchasing consulting services in this capacity, it is not in the best interest of the City to conduct a formal bidding process; and

**WHEREAS**, after reviewing multiple options, the City Manager has determined that MV Cheng & Associates has the staffing and expertise to provide necessary immediate consulting services in the role of Procurement Services Manager; and

**WHEREAS**, an agreement has been prepared between the City of Madera and MV Cheng & Associates for professional consulting services that is in the best interests of both parties.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA** hereby resolves, finds, and orders as follows:

1. The above recitals are true and correct.
2. The Agreement for Professional Services between the City and MV Cheng & Associates, a copy of which is attached hereto as Exhibit 1, is approved.
3. This resolution is effective immediately upon adoption.

\* \* \* \* \*

## **PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) is made and entered into the 20<sup>th</sup> day of January, 2021, by and between MV Cheng and Associates (“Firm”) and the City of Madera (“City”).

### **RECITALS**

- A. The City has an immediate need for professional purchasing and procurement services due to a vacant position in the City’s Finance Department.
- B. Firm has the professional competence, experience, and qualifications to provide professional purchasing and procurement services required by City.
- C. City desires to retain Firm to provide said services.

### **AGREEMENT**

1. Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.

2. Services. The City hereby contracts with Firm to provide services herein set forth at the compensation and upon the terms and conditions herein expressed, and Firm hereby agrees to perform such services for said compensation, and upon said terms and conditions. City hereby authorizes Firm to commence work immediately upon approval of this agreement by the City Council at a scheduled meeting of said governing body.

3. Obligations, duties and responsibilities of Firm. It shall be the duty, obligation and responsibility of the Firm, in a skilled and professional manner, to perform the services in accordance with the Scope of Work identified in Exhibit A.

4. Compensation. City shall compensate Firm for professional services at the rate of \$100 per hour for consulting services.

5. Assignment of Personnel. MV Cheng & Associates will provide a qualified individual to serve as Procurement Services Manager Consultant to the City. Personnel assigned are subject to the approval of the City Manager.

6. Billings and Payments.

6.1 Firm shall submit a billing statement which will include services by Firm provided monthly in arrears, no later than the tenth of the month following the month service was rendered. The billing statement shall be submitted to the City’s designee.

6.2 Billings are to be made directly to the following address:

City of Madera

Attn: Roger Sanchez  
205 W. 4<sup>th</sup> Street  
Madera, CA 93637

6.3 The billing statements shall be prepared and organized in a manner that facilitates an efficient review of the services performed.

6.4 City shall make payments monthly based on a monthly itemized billing statement for the previous month. City shall make its best effort to process payments promptly and not later than 30 days after receiving Firm's monthly billing statement.

7. Term and Termination.

7.1 This Agreement shall be effective on January 20, 2021, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect unless otherwise terminated earlier by one of the parties. Firm may be contacted following termination of the Agreement for clarification and consultation on matters covered during performance of the scope of services. Any such contact will be billed in accordance with Section 4 of this Agreement.

7.2 City reserves the right to discharge Firm and terminate this Agreement at any time. In the event of such discharge or termination, the City shall compensate Firm for services rendered up to and including the date of termination. City shall terminate services and/or the Agreement by delivering to Firm a written notice specifying the extent to which services and/or the Agreement are terminated and the effective date of the termination. Notice of termination shall be emailed as follows:

MV Cheng & Associates  
Misty Cheng, President & CEO  
[mcheng@mvchengassociates.com](mailto:mcheng@mvchengassociates.com)

7.3 Firm may terminate this Agreement at any time by giving the City not less than fifteen (15) days prior written notice. Notices required under this section shall be emailed as follows:

City of Madera  
Roger Sanchez, Director of Financial Services  
[rsanchez@madera.gov](mailto:rsanchez@madera.gov)

8. Insurance and Indemnification.

8.1 During the term of this Agreement, Firm shall maintain, keep in force, and pay all premiums required to maintain and keep in force the policies and limits of such policies as required in Exhibit B of this Agreement.

8.2 To the furthest extent allowed by law, Firm shall indemnify, hold harmless, and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage), and from any and all claims, demands, and actions in law or equity (including reasonable attorney's fees and litigation expense) that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of Firm, its principals, officers, employees, agents, or volunteers in the performance of this Agreement. The obligations under this paragraph are in addition to, and are not limited by any insurance which Firm is otherwise required to maintain under this Agreement.

9. Independent Contractor. In performance of the work, duties and obligations assumed by Firm under this Agreement, it is mutually understood and agreed that Firm, including any and all of Firm's officers, agents, and employees, will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as servant, employee, agent, partner, or associate of City. Because of its status as an independent contractor, Firm and its employees shall have absolutely no right to employment rights and benefits available to City employees. Firm shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Firm shall be solely responsible and hold City harmless from all matters related to payment of Firm's employees, including compliance with social security, withholding, and all other regulations governing such matters.

10. Hiring of Consultant's Associates and/or Subcontractors. City agrees that each of Consultant's associates and/or subcontractors will only be able to obtain a direct contract or professional services agreement with the City, only after the expiration of the contract or professional services agreement with Consultant AND only after 2 years from the expiration date of the contract or professional services agreement with Consultant. City agrees to hire one of Consultant's associates and/or subcontractors as a full time, permanent, fully benefited employee of the City, only after City has performed a recruitment AND the associate and/or subcontractor has billed 960 hours to the City. If City employs Consultant's associates and/or subcontractors through another temporary service or staffing agency, City agrees to pay a fee of 10% of the associate and/or subcontractor's annualized wages based on the hourly rate charged, to Consultant.

11. Compliance with Law. Firm shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, and directives, and all provisions required to be included are incorporated by reference.

12. Miscellaneous.

12.1 Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

12.2 Governing Law. The parties agree that this Agreement shall be governed and constructed by and in accordance with the Laws of the State of California.

12.3 Required License and Professional Credentials. Firm and personnel providing services shall maintain all licenses and professional credentials necessary for the provision of such services. Firm shall promptly notify City of changes of status or events that might impact the provision of professional services to City.

12.4 Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.

12.5 Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

12.6 Incorporation of Documents. All documents constituting the Agreement documents described in Section 3 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.

12.7 Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties. There are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.

12.8 Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.

12.9 Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

12.10 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.

12.11 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

12.12 Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Madera or in the United States District Court for the Eastern District of California.



12.13 Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

13. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Firm and the City.

**MV CHENG & ASSOCIATES**

**CITY OF MADERA**

\_\_\_\_\_  
Misty Cheng  
President & CEO

\_\_\_\_\_  
Santos Garcia, Mayor

Date: \_\_\_\_\_, 2021

Date: \_\_\_\_\_, 2021

**ATTEST**

\_\_\_\_\_  
Alicia Gonzales, City Clerk

Date: \_\_\_\_\_, 2021

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Firm will provide professional purchasing and procurement services to include:

#### **QUALIFICATIONS**

1. Coordinating the activities of a variety of purchasing and procurement services including planning and administering centralized purchasing activities.
2. Oversee and perform complex competitive bid procedures, including RFPs, and negotiate purchases.
3. Review and recommend improvements to purchasing procedures; implement new procedures in consultation with the City Manager; establish system controls for procurement systems and develop procedures to improve existing systems.
4. Oversee acquisition of supplies, materials, equipment and non-professional services. Analyze the purchasing and procurement information needs of City programs and develop systems to fulfill those needs; evaluate the effectiveness of current systems and procedures
5. Prepare or supervise the preparation of reports and analyses for the City Manager and departments related to purchasing processes; respond to requests for information and advise City departments, governmental agencies and the public of the City on purchasing and procurement policies, including federal and state guidelines.
6. Ensure compliance with all laws and regulations governing public sector purchases.
7. Provide staff assistance and technical support to assigned program activities and other City departments; conduct organizational and operational service delivery studies; make recommendations to address and resolve identified service delivery issues.

## EXHIBIT B

### INSURANCE REQUIREMENTS

#### **Insurance Requirements.**

Without limiting Firm's indemnification of City, and prior to commencement of Work, Firm shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Sub-consultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

#### ***Minimum Scope and Limits of Insurance:***

Firm shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products, and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage should be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Workers' Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Firm shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim in the aggregate. Firm shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Firm agrees to maintain continuous coverage through a period of no less than three years after completion of services required by this Agreement.

#### **Maintenance of Coverage.**

Firm 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 Firm, its agents, representatives, employees, subcontractors, or sub-consultants as specified in this Agreement.

**Proof of Insurance.**

Firm shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Acceptable Insurers.**

All insurance policies shall be issued by an insurance company currently authorized by the insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

**Waiver of Subrogation.**

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Firm, or others providing insurance evidence in compliance with these specifications, to waive their right to recovery prior to a loss. Firm hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its sub-consultants or subcontractors.

**Enforcement of Contract Provisions (non estoppel).**

Firm acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Firm of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

**Specifications not Limiting.**

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Firm maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Firm.

**Notice of Cancellation.**

Firm agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

**Self-insured Retentions.**

Any self-insured retentions must be declared to and approved by City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

**Timely Notice of Claims.**

Firm shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Firm's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional Insurance.**

Firm shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.