



REPORT TO CITY COUNCIL

Approved by:

Wendy Silva
Wendy Silva, Director of Human Resources

Council Meeting of: April 20, 2022

Agenda Number: B-6

Arnoldo Rodriguez
Arnoldo Rodriguez, City Manager

SUBJECT:

Professional Services Agreement with MV Cheng & Associates

RECOMMENDATION:

Adopt a resolution approving a Consulting Services Agreement with MV Cheng & Associates for Interim Director of Financial Services consulting services

SUMMARY:

The City currently has a critical vacancy for the position of Director of Financial Services. The City is in need of securing services to help bridge the gap until full time staff is hired through the normal recruitment and selection processes required in the City's Administrative Policies for at-will employees. The City has conducted two (2) open recruitments, however has not yet identified a candidate of choice. The City has been operating with an interim Director through an internal out-of-class assignment while backfilling with other temporary staff, however the City will not be able to continue this assignment without financial penalty under California Public Employees Retirement System (CalPERS) rules. Working collaboratively, the City Manager and Human Resources Department explored several options for filling the immediate needs, including:

- Contacting consulting firms;
- Contacting temporary staffing alternatives through a cooperative purchasing agreement;
- Direct contact with individuals who may be interested in part time employment; and
- Advertisement with the League of California Cities *Western City* magazine for direct, part time employment.

After reviewing candidates proposed under all four scenarios, the City was able to identify a highly qualified candidate for Interim Director of Financial Services through MV Cheng & Associates. The City Manager is recommending the City enter into an agreement with MV Cheng

& Associates to provide consulting services in the Director of Financial Services role, which is the action contemplated by this report.

DISCUSSION:

The City's Director of Financial Services position became vacant in September 2021. While the City has conducted two (2) open recruitments, a candidate of choice has not been identified for the position, necessitating a new recruitment. The City's Financial Services Manager has been serving as the City's Interim Director of Financial Services, however this interim assignment will run into conflict with CalPERS rules and result in financial penalty to the City should the assignment continue once the recruitment is re-opened. The City Manager and Human Resources Department have made contacts with financial consulting firms, temporary staffing firms, and individuals who may be interested in part time employment with the City in an effort to identify a qualified candidate to act as the City's Interim Director of Financial Services so that the recruitment efforts may continue. Many candidates were reviewed through a paper screening process and one candidate offered through MV Cheng & Associates was identified as the individual to best meet the City's current needs.

Based on the outcome of this process, the City Manager is recommending the City engage MV Cheng & Associates to provide services to fill the Director of Financial Services role. MV Cheng & Associates will provide a consultant to work on site providing needed guidance and assistance to finalize the close of the Fiscal Year 2020/21 books, assist in developing the 2022/23 operating budget, and begin the Fiscal Year 2021/22 audit. 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.

The City has previously utilized MV Cheng & Associates for assistance in filling positions within the City's Finance Department and was pleased with the specific candidates provided based on their professional experience and work product, specifically in the roles of Financial Services Manager and Procurement Services Manager.

FINANCIAL IMPACT:

The bill rate for the proposed services is \$160 per hour. The City anticipates utilizing these services for a period of several months while the recruitment and hiring process for a full time Director are 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 of vacancies in full time budgeted positions, salary savings exist to pay for the temporary staffing services within the adopted Fiscal Year 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 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 financial consulting services due to a vacancy in the Director of Financial Services position during the critical processes of closing the Fiscal Year 2020/21 books, preparing the 2022/23 operating budget, and beginning the Fiscal Year 2021/22 audit; and

WHEREAS, the City sought candidates available immediately through 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 financial 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 Director of Financial Services; 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 and incorporated herein, is approved.
3. This resolution is effective immediately upon adoption.

* * * * *

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made and entered into the 20th day of April, 2022, by and between MV Cheng and Associates (“Firm”) and the City of Madera (“City”).

RECITALS

- A. The City has an immediate need for professional finance and accounting services due to an ongoing vacancy in the City’s Finance Department for the position of Director of Financial Services.
- B. Firm has the professional competence, experience, and qualifications to provide professional finance and accounting 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. Exhibit A is attached and incorporated by reference.

4. Compensation. City shall compensate Firm for professional services at the rate of \$160 per hour for consulting services.

5. Assignment of Personnel. MV Cheng & Associates will provide a qualified individual to serve as Director of Financial Services 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: Wendy Silva
205 W. 4th Street
Madera, CA 93637
wsilva@madera.gov

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 April 20, 2022, 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

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
Wendy Silva, Director of Human Resources
wsilva@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. Exhibit B is attached and incorporated by reference.

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: 4-12, 2022

Date: _____, 2022

ATTEST

APPROVED AS TO FORM

Alicia Gonzales, City Clerk

Hilda Cantú Montoy, City Attorney

Date: _____, 2022

Date: _____, 2022

EXHIBIT A

SCOPE OF SERVICES

Firm will provide professional accounting and finance services to include:

1. Oversee and direct the operations and services of the Financial Services Department, which includes utility billing, business licensing, payroll, general accounting, expenditure control, purchasing, and grants administration.
2. Provide complex staff support to the City Manager and City Council.
3. Hold supervisory responsibility for originating, carrying out, reviewing, interpreting, and coordinating policies in the administration of a diversified accounting operation.
4. Assist in the preparation, implementation, and control of the City's annual operating and capital improvement budgets through the preparation of budget detail; forecast revenues, expenditures, and year-end balances. This includes the City acting as the Successor Agency to the former Redevelopment Agency.
5. Monitor and approve expenditures, advise appropriate department personnel on budget matters; make adjustments to the budget as necessary through appropriate action based on authority provided in the annual Budget Resolution.
6. Prepare and present financial and administrative reports and resolutions to the City Council.
7. Oversee internal and external audits of municipal funds and procedures; supervise inventory of City property.
8. Assist the City Manager in overseeing and managing the City's investment portfolio.
9. Serve as a resource for Finance department staff, City staff, and other organizations; coordinate pertinent information, resources, and work teams as necessary to support a positive and productive work environment.

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.
- **\$1,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Firm arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide 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.