

## AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of financial consulting services ("Agreement") is made and entered in this 31<sup>st</sup> day of January, 2013 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and MV Cheng & Associates ("Consultant"). City and Consultant are sometimes individually referred to herein as a "Party" and, together, as the "Parties." In consideration of the mutual promises contained herein, City and Consultant agree as follows:

### ARTICLE 1 – ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant to provide financial consulting services for City relating to bank reconciliations (the "Services").
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional consultants in the industry providing like and similar types of Services.

### ARTICLE 2 – SERVICES OF CONSULTANT

- 2.1 The Services that Consultant shall perform are more particularly described in Exhibit "A," entitled "Proposal," which is attached hereto and incorporated herein by reference.
- 2.2 Consultant shall comply with applicable federal, state and local laws and regulations in the performance of the Services.

### ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 3.2 City designates Tina Kundig, City's Finance Director, as City's representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to performance of the Services.

### ARTICLE 4 – PERFORMANCE OF SERVICES

- 4.1 Consultant shall perform and complete the Services in a prompt and diligent manner on an as-needed basis established by City. The Services shall commence within four (4) business days of the Effective Date of this Agreement.
- 4.2 If Consultant's Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with City Council adopted policy for the same. It shall be the obligation of Consultant to obtain a copy of such policy from City Staff.

## ARTICLE 5 – PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of Five Thousand Dollars (\$5,000). City shall pay Consultant on a time and materials basis up to the not to exceed amount, in accordance with Consultant's hourly rates described in Exhibit "A."
- 5.1 Consultant shall submit monthly invoices to City describing the Services performed during the preceding month. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed, and the number of hours spent and by whom.
- 5.2 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City

Tina T. Kundig  
Finance Director  
P.O. Box 3005  
Redlands, CA 92373

Consultant

Misty V. Cheng  
2021 Oakdale Street  
Pasadena, CA 91107

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to whom notices and payments are to be given by giving notice pursuant to this section 5.2.

## ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 Insurance required by this Agreement shall be maintained by Consultant for the duration of its performance of the Services. Consultant shall not perform any Services unless and until the required insurance listed below is obtained by Consultant. Consultant shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. Insurance policies shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.
- 6.2 Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of its performance of the Services in accordance with the laws of the State of California, with an insurance carrier acceptable to City as described in Exhibit "B," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference.
- 6.3 Consultant shall secure and maintain comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. City shall be named as an additional insured and

such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.

- 6.4 Consultant shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made.
- 6.5 Consultant shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit bodily injury liability and property damage liability. This coverage shall include all Consultant owned vehicles used in connection with Consultant's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City.
- 6.6 Consultant shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by and negligent act, omission or failure to act by Consultant, its officers, employees and agents in performing the Services.

#### ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Consultant covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Consultant's Services. Consultant further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 7.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:
  - A. Does not make or participate in:
    - (i) the making of any City governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;
    - (ii) the issuance, denial, suspension or revocation of City permits, licenses, applications, certifications, approvals, orders or similar authorization or entitlements;
    - (iii) authoring City to enter into, modify or renew a contract;
    - (iv) granting City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
    - (v) granting City approval to a plan, design, report, study or similar item;
    - (vi) adopting, or granting City approval of policies, standards or guidelines for City or for any subdivision thereof.

- B. Does not serve in a staff capacity with City and in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of interest Code under Government Code section 87302.
- 7.3 In the event City officially determines that Consultant must disclose its financial interests, Consultant shall complete and file a Fair Political Practices Commission Form 700, State of Economic Interests with the City Clerks' office pursuant to the written instructions provided by the City Clerk.

#### ARTICLE 8 – GENERAL CONSIDERATIONS

- 8.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 8.2 Consultant shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms, and conditions of this Agreement.
- 8.3 Project related documents, records, drawings, designs, cost estimates, electronic data files, databases and any other documents developed by Consultant in connection with its performance of the Services, and any copyright interest in such documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.
- 8.4 Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor of its agents shall have control over the conduct of Consultant or Consultant's employees, except as herein set forth. Consultant shall supply necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Consultant are for its account only, and in no event shall Consultant or personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City. Consultant shall have no authority, express by City for the account of, or on behalf of City. Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind City to any obligation.
- 8.5 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City; provided, however this Agreement may be terminated by City, in its sole discretion, by providing thirty (30) days prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate. If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City

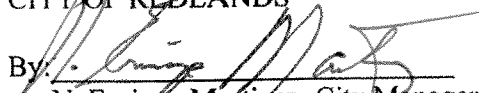
occasioned by any default by Consultant. Upon receipt of a termination notice, Consultant shall immediately discontinue its provision of the Services and, within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of project related data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services. Consultant shall be compensated on a pro-rata basis for Services completed up to the date of termination.

- 8.6 Consultant shall maintain books, ledgers, invoices, accounts and other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Consultant.
- 8.7 This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, an amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.
- 8.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.9 In connection with this Agreement, Consultant may have access to or be exposed to information of City that is not generally known to the public, such as information pertaining to software, data, reporting, pricing, and trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "Confidential Information"). Confidential Information may not be shared with third parties unless such disclosure is to Consultant's personnel, including employees, affiliates, agents, and subcontractors, on a "need-to-know" basis in connection with this Agreement, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein. Consultant agrees to take the necessary precautions to maintain the confidentiality of City's Confidential Information by using at least the same degree of care as such Party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that Consultant can show through written records (1) was known by it before its receipt from City; (2) is or becomes public knowledge through no fault of Consultant; or (3) is rightfully received by Consultant from a third party without a duty of confidentiality. If Consultant is required by a court or government agency to disclose Confidential Information, Consultant shall, subject to any specific lawful restrictions, provide advance notice to City before making such a disclosure. The obligations with respect to Confidential Information shall survive any termination of the Agreement and continue for five (5) years from the date of disclosure. All Confidential Information relating to City's technological and

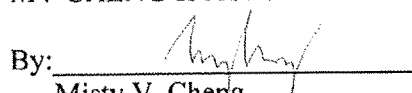
telecommunications systems that is provided by City to Consultant, or which Consultant obtains as a result of the performance of its Services, shall be held strictly confidential by Consultant and shall not be used for any purpose other than for Consultant's performance of the Services under this Agreement. Consultant hereby acknowledges and agrees that any disclosure or improper use by Consultant of Confidential Information could cause City substantial damages, and also irreparable injury for which there is not an adequate remedy at law. Therefore, in the event of any such action, City shall be entitled in addition to all other remedies which it may have hereunder or at law or in equity, to a temporary and/or permanent injunction with a decree for specific performance of the terms hereof without being required to furnish a bond or other security. Jurisdiction in any action for injunctive relief shall be a court of competent subject matter jurisdiction in California, with venue in San Bernardino, California.

IN WITNESS WHEREOF, duly authorizes representative of the City and Consultant have signed in confirmation of this Agreement.

CITY OF REDLANDS

By:   
N. Enrique Martinez, City Manager

MV CHENG & ASSOCIATES

By:   
Misty V. Cheng

ATTEST:

  
Sam Irwin, City Clerk

## Exhibit "A"

### PROPOSAL

January 31, 2013

Tina Kundig  
City of Redlands  
35 Cajon Street, Ste. 30  
Redlands, CA 92373

Dear Ms. Kundig:

It was a pleasure speaking with you in regards to your bank reconciliation problem. Please accept this letter as MV Cheng & Associates' proposal to your request for consulting services for the specific project on the bank reconciliation problem.

My firm, MV Cheng & Associates, is operated under a sole proprietorship with my associates being sub-contractors of my firm. Having over 16 years of experience in municipal auditing, accounting, and finance in several cities, large and small, has allowed me to be able to lend my expertise as a finance director to cities in need of financial help. I have served as Director of Finance and Director of Finance and Administrative Services for several cities. Currently, I serve as the Finance Director/Controller for the City of Wildomar and will be finishing up a long term contract as the Interim Director of Finance for the City of Perris. In addition to the cities I serve personally, my sub-contractors have worked in several cities on shorter term assignments ranging from Account Clerk to Senior Accountant, as well as serving on a long term basis as contract staff. I also have sub-contractors available for Interim Finance Director and Accounting Manager positions. Myself, as well as all of my sub-contractors are former employees of municipal government agencies. We bring a wealth of knowledge and expertise to our city clients, with a level of professionalism and understanding of the culture of the political and city office environments.

With respect to the bank reconciliation problem that you described, a seasoned, municipal accountant performing bank reconciliations on a monthly and current basis would be the best assistance I can offer the City. The rates are based on having to perform essentially a forensic audit/investigation of the bank reconciliation to determine the cause for the discrepancies. Due to the nature of the assignment, the rates are slightly higher than they normally would be for this type of work or position. Below are the rates for each sub-contractor as well as myself, their availability and a brief synopsis of their experience. For a more detailed description of each individual, please refer to the resumes attached.

- Misty V. Cheng-\$120 per hour (negotiable), available 2 days per week starting Feb. 11. Currently, Finance Director of the City of Wildomar, City of Perris, hands on experience with bank reconciliations, journal entries, familiar with positive pay
- Jim Raia-\$80 per hour, available every Friday (has full time job as accountant in Perris), hands on experience with bank reconciliations, journal entries for large city, had previously discovered fraud and errors on bank statement, familiar with positive pay
- Manfred Endres-\$70 per hour, available 3-5 days per week starting Feb. 6. Retired from Maximus, former Asst. Auditor-Controller for the County of Plumas, previous hands on experience with bank reconciliations, journal entries

- Stephen Compton-\$70 per hour, available immediately, full time, and is a Redlands resident. Former Finance Director for the City of Soledad, Indio, OMNITRANS, Ridgecrest

The City may choose to select any of the sub-contractors or myself. If a phone interview or face to face interview is desired, the City may contact the individual directly. However, if a sub-contractor of MV Cheng & Associates is chosen, then the contract would be with the City and Misty V. Cheng.

MV Cheng & Associates is a unique firm in that it employs only former city/special district employees to work as sub-contractors in various cities on either a temporary/interim basis to long term contract staff. We bring a wealth of municipal knowledge and expertise in financial accounting that only city employees possess, yet we are consultants that can fill a void or bring change and improvement to a city's finance department. Some of the sub-contractors are retired, some are in between full time positions. Should a sub-contractor find a potential full-time position with the City, no additional fee would be charged to convert the sub-contractor to be an employee of the City. The goal of MV Cheng & Associates is not to make a huge profit, but to help cities with their needs in the finance department at competitive rates. Thus, MV Cheng & Associates are Municipal Value Consultants!

Thank you for taking the time to consider my proposal for consulting services for the bank reconciliation problem. Should you have any further questions, please do not hesitate to contact me at (925) 963-9996 (no text) or email me at: [mvcheng@att.net](mailto:mvcheng@att.net)

Sincerely,

Misty V. Cheng



## **EXHIBIT "B"**

### **WORKERS' COMPENSATION INSURANCE CERTIFICATION TO PERFORM FINANCIAL CONSULTING SERVICES**

Every employer except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurer duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code §1861).

MV CHENG & ASSOCIATES

By: \_\_\_\_\_

Misty V. Cheng

1-31-13

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