

City of Los Alamitos

Agenda Report Consent Calendar

April 21, 2014
Item No: 8H

To: Mayor Gerri L. Graham-Mejia & Members of the City Council

From: Bret M. Plumlee, City Manager

Subject: Approval of Amendments to Professional Service Agreements for Interim Finance Services

Summary: Interim Finance Director Linda Magnuson's last day was March 6, 2014. City Manager Plumlee entered into Professional Service contracts for interim help with Glenn Steinbrink and MV Cheng & Associates for financial services not to exceed \$9,950.00. Staff is recommending City Council authorize amendments to both contracts.

Recommendation:

1. Authorize City Manager to execute Amendment 1 for Interim Administrative Services Director, Glenn L. Steinbrink; and,
2. Authorize City Manager to execute Amendment 1 for financial consulting services with MV Cheng & Associates.

Background

Ms. Linda Magnuson completed her temporary assignment as Interim Finance Director on March 6, 2014. Recruiting for a new Finance Director will require a series of actions by Staff including advertising and interviewing qualified candidates. It is expected the entire process will take several months. The City Manager entered into interim agreements to assist the department with the recruitment. Municipal Code Section 2.60.130, gives the City Manager purchasing authority up to \$10,000. It was anticipated a full time Administrative Services Director would be appointed before the consultant service fees exceeded the City Manager's spending authority. Unfortunately, the recruitment is still underway and it is now necessary to extend the professional services contracts.

Discussion

Upon the departure of Ms. Magnuson, City Manager Plumlee began to solicit proposals for interim finance assistance. The proposals are outlined below. After careful review of the experience needed, the hours available to work, and the hourly rate, City Manager Plumlee entered into contracts with two firms.

Company	Rate
Governmental Financial Services (Julie Matsumoto)	\$120.00/hour
RGS (Gina M. Schuchard)	\$85.00/hour
MV Cheng & Associates (Pam Parisien)	\$60.00/hour
MV Cheng & Associates (4 various Consultants)	\$35-80.00/hour, depending on the level of supervision needed
Glenn L. Steinbrink	\$67.00/hour

On March 10, 2014, Glenn L. Steinbrink was hired as a part-time temporary employee to serve as the Interim Administrative Services Director. Mr. Steinbrink is under the day to day supervision of the City Manager. His original agreement was approved by the City Manager with the following terms: rate of \$67.00/hour; total compensation not to exceed \$9,950; and, shall not work more than 960 hours for any CalPERS agency in any fiscal year. Staff has been satisfied with Mr. Steinbrink's performance to date and is currently assisting the City in its preparation of the 2014-15 Budget.

On March 5, 2014, the City Manager entered into a Professional Services agreement with MV Cheng & Associates for interim accounting assistance. Her original agreement was approved by the City Manager at a rate of \$60.00/hour and total compensation not to exceed \$9,950. Pam Parisien works part-time in the Administrative Services Department and assists Mr. Steinbrink with the day to day operations and preparation of the budget.

Fiscal Impact

The fiscal impact is unknown due to the inexact number of hours of service that will be required to complete the tasks assigned until a permanent Administrative Services Director is hired. The total cost will not exceed current budgeted amounts for the position.

Submitted & Approved By:



Bret M. Plumlee
City Manager

Fiscal Impact Reviewed By:



Glenn L. Steinbrink
Interim Administrative Services Director

Attachments:

1. Amendment 1 – Glenn L. Steinbrink
2. Amendment 1 – MV Cheng & Associates
3. Temporary Employee Agreement – Glenn L. Steinbrink
4. Professional Services Agreement – MV Cheng and Associates

AMENDMENT No. 1 TO PROFESSIONAL SERVICES AGREEMENT
(City of Los Alamitos and Glenn L. Steinbrink)

This Amendment No. 1 (“Amendment”) to Professional Services Agreement (“Agreement”) is made on this 22nd day of April, 2014, at Los Alamitos, California, by and between the City of Los Alamitos, a municipal corporation, 3191 Katella Ave., Los Alamitos, California 90720 (“City”) and Glenn L. Steinbrink (“Contractor”).

This “Amendment” modifies the original “Agreement” between the “City” and the “Contractor” dated March 5, 2014 in the following fashion:

- A. “City” and “Contractor” desire to amend the “Agreement” by modifying the total compensation and costs payable to “Consultant” under this “Agreement” to a not-to-exceed sum of current budgeted amounts for the position of Administrative Services Director.

[SIGNATURES ON THE NEXT PAGE]

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

“City”
City of Los Alamitos

By: _____
Bret M. Plumlee, City Manager

Date: _____

“Consultant”
Glenn L. Steinbrink

By: Glenn L. Steinbrink
Glenn L. Steinbrink

Date: _____

Attest:

By: _____
Windmera Quintanar, CMC, City Clerk

Date: _____

Approved as to form:

By: _____
Cary S. Reisman, City Attorney

AMENDMENT No. 1 TO PROFESSIONAL SERVICES AGREEMENT
(City of Los Alamitos and MV Cheng & Associates)

This Amendment No. 1 (“Amendment”) to Professional Services Agreement (“Agreement”) is made on this 22nd day of April, 2014, at Los Alamitos, California, by and between the City of Los Alamitos, a municipal corporation, 3191 Katella Ave., Los Alamitos, California 90720 (“City”) and MV Cheng & Associates, 2021 Oakdale St., Pasadena CA 91107 (“Contractor”).

This “Amendment” modifies the original “Agreement” between the “City” and the “Contractor” dated March 5, 2014 in the following fashion:

- A. “City” and “Contractor” desire to amend the “Agreement” by modifying the total compensation and costs payable to “Consultant” under this “Agreement” to a not-to-exceed sum of current budgeted amounts for the position of Administrative Services Director.

[SIGNATURES ON THE NEXT PAGE]

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

“City”
City of Los Alamitos

“Consultant”
MV Cheng & Associates

By: _____
Bret M. Plumlee, City Manager

By: _____
Misty V. Cheng, Principal

Date: _____

Date: 7-14-14

Attest:

By: _____
Windmera Quintanar, CMC, City Clerk

Date: _____

Approved as to form:

By: _____
Cary S. Reisman, City Attorney

CITY OF LOS ALAMITOS
TEMPORARY EMPLOYMENT AGREEMENT
FOR
INTERIM ADMINISTRATIVE SERVICES DIRECTOR

1. PARTIES AND DATE.

This Agreement (hereinafter referred to as the "Agreement") is made and entered into this 10th day of March 2014 by and between the CITY OF LOS ALAMITOS, a municipal corporation (hereinafter referred to as "City") and GLEN STEINBRINK (hereinafter referred to as "Temporary Employee"), in order to provide in writing the terms and conditions of employment for Interim Administrative Services Director services. City and Employee are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Interim Administrative Services Director Services

City desires to employ the services of Temporary Employee to fill the vacant position of Administrative Services Director on an interim basis in order to prevent a stoppage of the public's business; Temporary Employee desires to accept employment to provide these services. It is the desire of the Parties through this Agreement to establish conditions of employment, and to set working conditions for Temporary Employee.

3. TERMS.

3.1 Duties.

3.1.1 Designated Duties. City hereby agrees to employ Temporary Employee to provide Interim Administrative Services Director for the City to perform the functions and duties in accordance with applicable state law, the City's Charter and Municipal Code, as well as the approved City job description for the position. Temporary Employee shall also perform other legally permissible and proper duties and functions as the City Manager shall from time-to-time assign.

3.1.2 Control and Supervision. Temporary Employee shall be under the day-to-day supervision and direction of the City Manager.

3.1.3 City Documents. All data, studies, reports and other documents prepared by Temporary Employee while performing his/her duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer

program data, input record data, written information, and other materials either created by or provided to Temporary Employee in connection with the performance of this Agreement shall be held confidential by Temporary Employee. Such materials shall not, without the prior written consent of the City Manager, be used by Temporary Employee for any purposes other than the performance of his/her duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

3.2 Term; Termination

3.2.1 Term. This Agreement shall become effective on the 10th day of March, 2014 ("Effective Date"), and shall continue until such time as City is able to retain a qualified full-time replacement, but unless this Agreement is amended or extended, the total amount of compensation to Temporary Employee shall not exceed the sum of \$9,950.00. Temporary Employee shall not work more than 960 hours for any CalPERS agency in any fiscal year.

3.2.2 Termination. The Parties understand and agree that the temporary employment relationship created by this Agreement is "at-will" and that the Temporary Employee may be terminated at any time, without notice or severance and with or without cause, but subject to the terms of this Agreement.

3.2.3 Automatic Termination. This Agreement, and Temporary Employee's employment, shall automatically terminate and Temporary Employee shall not be entitled to any severance payment upon the happening of any of the following events:

- (1) Upon mutual agreement in writing by both Parties to terminate this Agreement.
- (2) Upon thirty days notice of resignation by Temporary Employee.
- (3) Upon the death of Temporary Employee.
- (4) Upon the natural expiration of the Term of this Agreement, as provided for herein.

3.3 Salary

City shall compensate Temporary Employee for the services provided under this Agreement, and the salary shall be payable at the rate of \$67.00/hour, payable bi-weekly at the same time as other employees of City are paid. The pay rate is established at an amount sufficient to render it exempt from overtime premiums.

4 Notices.

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage pre-paid, addressed as follows:

CITY:

City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90720
ATTN: City Manager

TEMPORARY EMPLOYEE:

Glen Steinbrink

With copy to:

Cary S. Reisman, City Attorney
Wallin, Kress, Reisman & Kranitz, LLP
2800 28th Street, Suite 315
Santa Monica, CA 90405-6201 Telephone: (310) 450-9582
Facsimile: (320) 450-0506

5. CALPERS.

Temporary Employee is a CALPERS retiree and is therefore subject to the requirements of law regarding re-employment of CALPERS retirees as contained in Government Code section 21221. Temporary Employee represents that he has not collected unemployment insurance benefits within the preceding 12 months.

6 General Provisions.

6.1 Entire Agreement. The text herein shall constitute the entire agreement between the Parties.

6.2 Severability. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

6.3 Bonding. If applicable, the City shall bear the full cost of any fidelity or other bonds required of Employee in the performance of his/her duties as Interim Finance Director.

6.4 Modification. Any modification of this Agreement will be effective only if it is in writing and signed by both Parties.

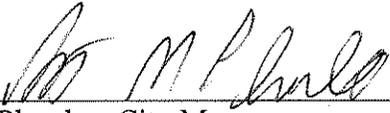
6.5 Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

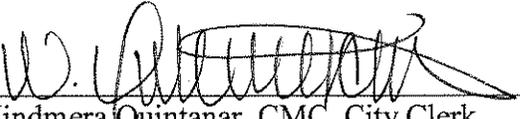
6.6 Law Governing Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Orange County, California.

6.7 No Presumption of Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

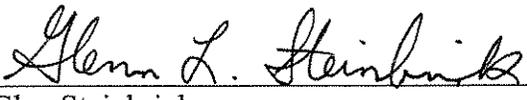
[SIGNATURES ON NEXT PAGE]

CITY OF LOS ALAMITOS

By: 
Bret M. Plumlee, City Manager

Attest: 
Windmera Quintanar, CMC, City Clerk

TEMPORARY EMPLOYEE

By: 
Glen Steinbrink

APPROVED AS TO FORM:


Cary S. Reisman, City Attorney

**PROFESSIONAL SERVICES AGREEMENT FOR
FINANCIAL CONSULTING SERVICES
(City of Los Alamitos)**

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Los Alamitos, a California municipal corporation ("City"), and MV Cheng & Associates (hereinafter referred to as "Consultant"), in order to provide in writing the terms and conditions of employment for financial consultant services. City and Employee are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS

- 2.1 City desires to employ the services of Consultant to provide financial consulting services to the City of Los Alamitos, and Consultant desires to provide such services. It is the desire of the Parties through this Agreement to establish conditions of the relationship, and to set working conditions for Consultant.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principal and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

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

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are requested by the City Manager including interim accounting assistance, budget assistance, and related financial matters.
- 3.2 "Commencement Date": March 5, 2014.
- 3.3 "Expiration Date": Thirty days after notice from City to Consultant.

4. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services above. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of nine thousand nine hundred fifty dollars (\$9,950.00) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.4 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Pam Parisien shall be Consultant's primary employee on the Project; Misty Cheng shall be Consultant's Project Administrator, and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's primary employee or project administrator without City's prior written consent.

5. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment at the rate of \$60.00 per hour.
- 6.2 Consultant shall submit to City an invoice, on a semi-monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant unless otherwise required by law.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis at the same rate, or as negotiated between Consultant and City Manager. Fees shall be paid to Consultant no later than thirty (30) days of the date Consultant issues an invoice to City for such services

6. OWNERSHIP OF WRITTEN PRODUCTS

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

7. RELATIONSHIP OF PARTIES

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

Under no circumstances shall Consultant or its principals or employees look to the City as their employer. Consultant and its agents shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's, its principal or its employees' previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

8. CONFIDENTIALITY

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

9. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not

the policies required by this Agreement are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.

- 11.6 Consultant shall provide proof to the City's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

11. MUTUAL COOPERATION

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

enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and expenses of litigation.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation statute or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies apply to the claim, demand, damage, liability, loss, cost or expense.

10. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate for any personal injury, death, loss or damage, covering Consultant, its principal and its employees.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance if and as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that

12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

12. RECORDS AND INSPECTIONS

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

13. PERMITS AND APPROVALS

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

14. NOTICES

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

If to City:
City of Los Alamitos
3191 Katella Ave.
Los Alamitos, CA 90720
Attn: City Manager
Telephone: (562) 431-3538
Facsimile: (562) 493-1255
With courtesy copy to:

If to Consultant:
Misty V. Cheng
MV Cheng & Associates
2021 Oakdale Street
Pasadena, CA 91107

Cary S. Reisman, City Attorney
Wallin, Kress, Reisman & Kranitz, LLP
2800 28th Street, Suite 315
Santa Monica, CA 90405-6201
Telephone: (310) 450-9582
Facsimile: (320) 450-0506

15. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

16. TERMINATION

- 17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on sixty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph at the head of which it appears, the section or paragraph, and not such heading, shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term.

covenant or condition of this Agreement. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in a writing signed by one authorized to bind the party asserted to have consented to the waiver.

- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees incurred in such action. The venue for any litigation shall be Orange County, California and Consultant hereby consents to jurisdiction in Orange County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations

herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

19

PREVAILING WAGE LAW

19.1 Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services under this Agreement are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

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

"City"

City of Los Alamitos

By

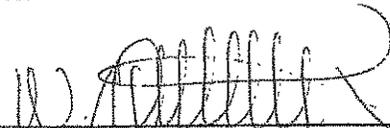

Bret M. Plumlee, City Manager

Date:

3/12/14

Attest:

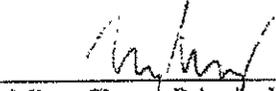
By


Windmeja Quintanar, CMC, City Clerk

"Consultant"

MV Cheng & Associates

By


Misty Cheng, Principal

Date:

2-28-14

Approved As To Form:

By


Cary S. Reisman, City Attorney