



City of Needles, California Request for City Council Action

☒ CITY COUNCIL ☐ NPUA ☐ SARDA

☒ Regular ☐ Special

Meeting Date: September 12, 2023

Title: Nichols Consulting

Background: Nichols Consulting has been gathering data and preparing claim forms for the City to receive reimbursements from the State-Mandated Cost reimbursement program. These are costs related to the Racial and Identity Profiling Act and Domestic Violence Arrest Policies and Standards program that are followed by the police department.

Nichols Consulting informed the City of this available reimbursement and was able to submit claims for the years FY19-FY22. A contingency fee of 20% was agreed to be paid for any funds collected. The City has received \$52,493 from the State of California for these claims and is still expecting approx \$8,642. The contingency fee due to Nichols Consulting is \$10,500 and 20% of any additional funds received.

Fiscal Impact: Increased revenue of \$52,493 less \$10,500 to Nichols Consulting resulting in net income to the City is \$41,993.

Recommendation: Ratify the agreement and continued use of Nichols Consulting and approve the payment of the 20% contingency fee and the associated increase to the General Fund revenue and expense budget as needed.

Submitted By: Barbara DiLeo, Finance Department

City Management Review: Rick

Date: 9/16/23

Approved: ☐

Not Approved: ☐

Tabled: ☐

Other: ☐

Agenda Item: 15

**CITY OF NEEDLES
PROFESSIONAL SERVICES AGREEMENT
CONSULTANT SERVICES**

1. PARTIES AND DATE.

This Agreement is made and entered into this April 4, 2022, by and between the CITY OF NEEDLES, a California Charter City, (hereinafter referred to as the "City") and NICHOLS CONSULTING (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain consultant services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional consulting services to the City as represented in the Request for Proposal.

2.2 Project.

The City desires to engage Consultant to prepare all Law Enforcement and Local Government Employee Relations Claims whose State-imposed timely and late deadlines, for reimbursement, fall between the time of execution of this Contract and June 30, 2023. Consultant shall collect, document and process from the San Bernardino County Sheriff's Department, all the documents, records and information necessary for Consultant to file the claims on behalf of the City.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 Professional Services. Consultant agrees to perform services and serve as Consultant ("Services"). All Services shall be subject to, and performed by Consultant in accordance with this Agreement, any exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. This Agreement shall become effective when executed and shall remain in effect until policy is complete.

3.2 Responsibilities of Consultant.

- 3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or by its employees under Consultant's supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for other clients during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of the City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall determine its own work hours and schedule; provide its own equipment; maintain its own offices; provide its own vehicles; insurance; cell phones and office phones; and consultant shall be solely responsible for managing and supervising its personnel and employees. Consultant shall further be responsible for all reports and obligations, including, but not limited to: social security taxes, income tax withholding, payroll taxes, unemployment insurance, disability insurance, and workers' compensation insurance.
- 3.2.2 Project Commencement. Consultant and City acknowledge and agree that any requested Project shall commence upon approval by both parties.
- 3.2.3 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the applicable standard of care. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of a Project, a threat to the safety of persons or

property, or any employee who fails or refuses to perform Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-assigned to perform any Services to City.

3.2.4 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of a Project or Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Project or the Services. If the Consultant performs any work contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the City, its officials, directors, officers, employees and agents harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.5 Qualification and License. All employees and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them and shall be licensed in California to practice in their respective professions.

3.2.6 Insurance.

3.2.7.1 Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.6.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *Automobile*

Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (2) Consultant shall comply with California requirements for worker's compensation and employer's liability insurance and shall not be insured under City's policy; and (3) Insurance Services Office Commercial General Liability Coverage (occurrence form CG0001) including insurance services form (CG0009 11/88). (4) provided Consultant does not have any employees, obtaining California workers compensation coverage for himself is optional and he has advised the City of his decision not to obtain workers compensation insurance for himself. Consultant will not be covered under the City's workers compensation coverage as he is not a City employee and Consultant has agreed to this. Consultant shall obtain workers compensation insurance if, at any time, he hires an employee.

- (B) Minimum Limits of Insurance. (1) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; (2) *General liability:* (including operations, product and completed operations, as applicable) \$1,000,000 per occurrences for bodily injury, personal injury and property damage
- (C) Professional Malpractice. Consultant shall maintain professional negligence malpractice (errors & omissions) insurance in the amount of \$1 million per occurrence.

3.2.6.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

- (A) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance

maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

- (B) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.
- (C) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.6.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of Insured's provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.6.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.6.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City.

3.2.6.7 Verification of Coverage. Consultant shall furnish the City Manager with original certificates of insurance and endorsements

effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City Manager before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.6.8 Indemnification. Within the limits of Consultant's insurance coverage, Consultant agrees to defend and indemnify City, its officials, officers, employees, consultants, contractors, directors, agents, and volunteers from any claim that arises out of, is caused by or allegedly caused by the negligence, gross negligence or acts of Consultant or his employees, contractors, subcontractors or agents.

3.2.7 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees, City personnel and third parties appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Responsibilities of City.

3.3.1 The City agrees to comply with all reasonable requests of Consultant and provide reasonable access to documents including objectives and constraints, space, capacity, and performance requirements, flexibility, and expandability, and any budgetary limitations, reasonably necessary to the performance of Consultant's duties under this Agreement. In order to facilitate Consultant's conformance with the Schedule, the City shall respond to Consultant's submittals in a timely manner.

3.3.2 The City designates the City Manager as City representative ("City Representative") with respect to the work to be performed under this Agreement. The City Representative shall have complete authority to transmit instructions, receive information, and interpret and define the City's policy and decisions with respect to materials, equipment, elements, and systems pertinent to the Services covered by this Agreement.

3.4 Fees and Payments.

3.4.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement, See Exhibit A.

3.4.2 Payment of Compensation. Consultant shall submit to the City an invoice for payment of contingent fee of 20% of the claims paid by the State of California with a Not-to-Exceed of \$3,200 for claims prepared on behalf of the City by the Consultant for the period beginning with the time of execution of this Contract and ending on June 30, 2023. The City's payment terms are net 30.

3.4.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by the City.

3.4.4 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 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 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. The City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.5 Accounting Records.

3.5.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.6 General Provisions.

3.6.1 Termination of Agreement.

3.6.1.1 Grounds for Termination. The City or Consultant may, by written notice to the other party, terminate this Agreement at any time and without cause by giving written notice to the other party of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been actually and adequately rendered to the City, and Consultant shall be entitled to no further compensation.

3.6.1.2 Effect of Termination. If this Agreement is terminated as provided herein, Consultant shall provide all finished or unfinished Documents and Data, programming source code, plans reports and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.6.1.3 Services. In the event this Agreement is terminated in whole or in part as provided herein, the City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

To Consultant: **Nichols Consulting**
1857 44th Street
Sacramento, CA 95819
Attention: F. Andy Nichols

To City: **City of Needles**
817 Third Street
Needles, CA 92363
Attention: Director of Finance

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1 City Ownership. All documents and data ("Documents & Data"), including data on electric, digital or magnetic media, prepared by Consultant under this Agreement shall be the property of the City, except that Consultant shall have the right to retain copies of all Documents & Data for its records. The City shall not be limited in any way in its use of the Documents & Data at any time. Should Consultant, either during or following termination of this Agreement, desire to use any Documents & Data prepared in connection with this Agreement, Consultant shall first obtain the written approval of the City Manager.

3.6.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of the City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper,

newspaper, television or radio production or other similar medium without the prior written consent of the City.

- 3.6.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.
- 3.6.5 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.
- 3.6.6 Governing Law. This Agreement is entered into and shall be performed in Needles, California and shall be governed by the laws of the State of California. Venue in any litigation between the parties hereto shall be in San Bernardino County.
- 3.6.7 Time of Essence. Time is of the essence for each and every provision of this Agreement.
- 3.6.8 City's Right to Employ Other Consultants. The City reserves the right to employ other consultants at any time for any purpose.
- 3.6.9 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior signed written consent of the City Manager. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.
- 3.6.10 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to the City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

- 3.6.11 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.6.12 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 3.6.13 No Third Party Beneficiaries. The Needles Public Utility Authority and other City entities shall be intended beneficiaries of this Agreement. Otherwise, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- 3.6.14 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 3.6.15 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 3.6.16 Conflict of Interest. For the term of this Agreement, no member, officer, or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.
- 3.6.17 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer, and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. Consultant shall also

comply with all relevant provisions of any City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.6.18 Warranties. Consultant shall provide Services competently and in accordance with generally accepted professional practices and standards.

3.6.19 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.6.20 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7 Subcontracting.

3.7.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of the City Manager. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date and year set forth above.

OWNER: (City of Needles)

BY: Sylvia Mikdi

TITLE: DIRECTOR OF FINANCE

DATE: 4/4/22

ATTEST:
BY: Paula Dale

TITLE: Sc. Accountant

DATE: 4/4/22

CONSULTANT: (F. Andy Nichols)

BY: F. Andy Nichols

DATE: April 1, 2022

ATTEST:
BY: _____

TITLE: _____

DATE: _____