



City of Needles, California Request for City Council Action

CITY COUNCIL NPUA HACN Regular Special

Meeting Date: October 10, 2023

Title: Visitor Center Services Agreement Amendment

Background: On April 27, 2021, the City of Needles entered into an agreement with the Needles Area Chamber of Commerce to take on the management responsibilities of the City of Needles Visitor's Center. The Chamber submitted a comprehensive proposal detailing their intended approach to overseeing the Visitor's Center.

In early August of 2021, the Chamber of Commerce convened a meeting with City Staff to conduct a thorough review of the scope of services that had been approved by the City Council. During this review, the Chamber identified specific tasks within the approved scope that were more closely aligned with the objectives of the Chamber of Commerce, rather than the core responsibilities of the Visitor's Center.

Subsequently, City Staff collaborated with the Visitor Center Subcommittee to propose amendments to the scope of services and tasks to be undertaken by the Chamber in managing the Visitor's Center. These proposed amendments are outlined in detail in the Attached Exhibit A and include:

- Removal of the requirement for quarterly reporting on the number of tours given and events scheduled in the El Garces.
- Elimination of event coordination and planning responsibilities.
- Establishment of new operational hours from 10:00 AM to 3:00 PM, Tuesday through Saturday.
- Removal of Holiday Hours provisions.
- Elimination of Billboard signage requirements.
- Abolishment of the summer hour schedule.
- Exclusion of any references to Chamber responsibilities, such as grand openings, ribbon-cutting ceremonies, meet and greets, community events, and attendance at Tri-state Area Mixers.
- Elimination of event-related requirements.

Recommended Action: Approve the proposed Amendments to the Services Agreement with the Needles Area Chamber of Commerce as outlined in the Attached Exhibit "A"

Submitted By: Patrick Martinez, Assistant City Manager

City Management Review: 

Date: 10-6-2023

Approved: <input type="checkbox"/>	Not Approved: <input type="checkbox"/>	Tabled: <input type="checkbox"/>	Other: <input type="checkbox"/>
			Agenda Item: <u>20</u>

Exhibit "A"

CITY OF NEEDLES SERVICES AGREEMENT [REVISED 04/26/21]

1. PARTIES AND DATE.

This Agreement is made and entered into this 27 day of April, 2021, between the CITY OF NEEDLES, a California Charter City, (hereinafter referred to as the "City") and NEEDLES AREA CHAMBER OF COMMERCE, a California non-profit mutual benefit corporation (hereinafter referred to as "Chamber"). City and Chamber are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Services.

The City solicited proposals to operate the City of Needles Visitor's Center pursuant to that certain Request for Proposals ("RFP"), which is attached hereto as **Exhibit "A."**

2.2 Proposal.

Chamber has made a proposal ("Proposal") and was submitted to the City on February 5, 2021 provide such Services, which Proposal is attached hereto as **Exhibit "B."** Which includes using available cash of approximately Ninety Thousand Dollars (\$90,000.00) and donations of cash and/or construction work totaling approximately Ninety Thousand Dollars (\$90,000.00) for an aggregate total of at least One Hundred and Eighty Thousand Dollars (\$176,000) to make tenant improvements to Visitor Center portion the El Garces. In addition, Chamber shall perform the following services:

- The Chamber will provide a quarterly report to the City on contacts with visitors such as:
 - Foot traffic at the VC
 - Email count
 - Phone call count
 - ~~Tours given~~
 - ~~Events scheduled in the El Garces~~
 - Other information as requested by council regarding operation of the VC

CHAMBER AGREES THAT IT SHALL COMPLETE THE TENANT IMPROVEMENTS FOR THE THE VISITOR CENTER AND THE CHAMBER OFFICES AND OPEN FOR FULL TIME REGULAR BUSINESS ON OR BEFORE DECEMBER 31, 2021. IF CHAMBER FAILS TO COMPLY WITH THE FORGOING OBLIGATIONS WITHIN THIRTY (30) DAYS AFTER WRITTEN NOTICE BY CITY, CITY MAY TERMINATE THIS AGREEMENT AND TAKE POSSESSION OF THE PREMISES IN ADDITION TO ANY OTHER RIGHTS AND REMEDIES IT MAY HAVE UNDER THIS AGREEMENT OR AT LAW.

2.3 Chamber.

City desires to retain Chamber to perform and assume responsibility for the provision of such services required by the City on the terms and conditions set forth in this Agreement. Chamber represents and warrants to City that Chamber possesses the necessary skills, licenses, certifications, qualifications, personnel, and equipment to provide such services.

3. TERMS.

3.1 Scope of Services and Term.

- 3.1.1 Services. Chamber agrees to perform the services described herein and in **Exhibit "A" and Exhibit "B"** ("Services"). All Services shall be performed in the manner and according to the timeframe set forth in the Proposal and the RFP. Chamber designates their President as Chamber's professional responsible for overseeing the Services provided by Chamber.
- 3.1.2 Term. This Agreement shall remain in effect for a period of five years, commencing on the Commencement Date as defined in Section 11 of the Lease Agreement between the parties of even date ("Term"). The Term shall be subject to eight (8) mutually agreeable options to extend for three (3) years each. However, either party may terminate the option by providing the other party with written notice at least 90 days in advance of the end of the then applicable Term.
- 3.1.3 Conflict. In the event that the terms of the Proposal shall conflict with the terms of this Agreement or contain additional terms binding on the City other than the Services to be rendered, the schedule and the price for the Services, the terms of this Agreement shall govern and said additional or conflicting terms shall be of no force or effect.

3.2 Responsibilities of Chamber.

- 3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Chamber or by its employees and volunteers under Chamber's supervision. Chamber will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. The City retains Chamber on an independent contractor basis and not as an employee. Chamber 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 Chamber shall also not be employees of the City and shall at all times be under Chamber's exclusive direction and control. Chamber 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. Chamber 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 Chamber shall be solely responsible for managing and supervising its personnel and employees. Chamber 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 Standard of Care; Performance of Employees. Chamber shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by person in the same industry in the State of California. Chamber represents and maintains that it is skilled in the professional calling necessary to perform the Services. Chamber warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Chamber 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, Chamber 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 Chamber's failure to comply with the applicable standard of care. Any employee of the Chamber or its sub-contractors 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 Chamber and shall not be re-assigned to perform any Services to City.

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

- 3.2.4 Employment Eligibility. Chamber shall be solely responsible for obtaining Employment Eligibility Verification information from Chamber's employees, in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a), and shall ensure that Chamber's employees are eligible to work in the United States.
- 3.2.5 CalPers. In the event that Chamber employs, contracts with, or otherwise utilizes any CalPers retirees in completing any of the Services performed hereunder, such instances shall be disclosed in advance to the City and shall be subject to the City's advance written approval.
- 3.2.6 Drug-free Workplace Certification. By signing this Agreement, the Chamber hereby certifies under penalty of perjury under the laws of the State of California that the Chamber will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.) and will provide a drug-free workplace.
- 3.2.7 Safety. Chamber shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Chamber 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 Chamber's employees, appropriate to the nature of the work and the conditions under which the work is to be performed.

4. Indemnification; Insurance.

4.1 Insurance. Chamber shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in **Exhibit "C"** attached to and made a part of this Agreement.

4.2 Indemnity. To the fullest extent permitted by law, Chamber shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by any negligent or wrongful act, error or omission of Chamber, its officers, agents, employees or subcontractors (or any agency or individual that Chamber shall bear the legal liability thereof) in the performance of Services under this Agreement.

5. Responsibilities of City.

5.1 Requests. The City agrees to comply with all reasonable requests of Chamber 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 Chamber's duties under this Agreement. In order to facilitate Chamber's conformance with the performance schedule, the City shall respond to Chamber's submittals in a timely manner.

5.2 City Representative. The City designates the City Manager or his designee 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.

6. Fees and Payments.

6.1 Compensation. City agrees to pay the Chamber the fixed sum of Two Thousand Dollars (\$2,000.00) per month as Chamber's sole and only compensation under this Agreement. No other compensation shall be due to the Chamber for performance of the Services. Compensation for partial months shall be subject to proration based on the number of days of Service provided divided by the number of days in the month. The provisions of the "Management Services Cost Proposal" of the Proposal are void and of no effect concerning the payment of compensation and as to Tenant Improvements.

6.2 Invoices. Chamber shall submit to the City a monthly itemized statement which clearly sets forth work completed, hours of Services rendered with detail regarding fulfillment of goals and metrics contained in this Agreement, the Proposal and other Visitor Center projects. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall have the right to review and audit all invoices prior to or after payment to Chamber. This review and audit may include, but not be limited to City's:

a. Determination that each all Services have been rendered in accordance with this Agreement.

6.3 Payment. If the work is reasonably satisfactorily completed, City shall pay such invoice within thirty (30) days of its receipt.

6.4 Reimbursement for Expenses. Chamber shall not be reimbursed for any expenses unless authorized in writing by the City Manager.

6.5 Additional Services. In the event Chamber performs additional or different services than those described herein without the prior written approval of the City Manager and/or City Council of City, Chamber shall not be compensated for such services. Chamber expressly waives any right to be compensated for services and materials not covered by the scope of this Agreement or authorized by the City in writing.

6.6 Prevailing Wages. Chamber 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, Chamber agrees to fully comply with such Prevailing Wage Laws. The City shall provide Chamber with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Chamber 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 Chamber's principal place of business and at the project site. Chamber 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.

6.7 Accounting Records.

6.7.1 Maintenance and Inspection. Chamber shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Chamber 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. Chamber 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. Notwithstanding the foregoing, the City's right to inspect, copy and audit shall not extend to percentage mark-ups or multipliers.

7. General Provisions.

7.1 Termination of Agreement.

7.1.1 Grounds for Termination. The City or Chamber may, by written notice to the other party, terminate this Agreement at any time in the event of a breach of this Agreement or the Lease Agreement by giving written notice to the other party of such termination, and specifying the effective date thereof. Upon termination, Chamber shall be compensated only for those Services which have been actually and adequately rendered to the City, and Chamber shall be entitled to no further compensation. Either party may terminate this Agreement without cause by providing ninety days' written notice to the other party.

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

7.1.3 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.

7.2 **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 Chamber: **Needles Chamber of Commerce**
119 F Street
Needles CA 92363
Attention: Chamber President

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

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.

7.3 Ownership of Materials and Confidentiality.

7.3.1 City Ownership. All documents and data ("Documents & Data"), including data on electric, digital, or magnetic media, prepared by Chamber under this Agreement shall be the property of the City, except that Chamber 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 Chamber, either during or following termination of this Agreement, desire to use any Documents & Data prepared in connection with this Agreement, Chamber shall first obtain the written approval of the City Manager.

7.3.2 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 Chamber in connection with the performance of this Agreement shall be held confidential by Chamber. Such materials shall not, without the prior written consent of the City, be used by Chamber 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 Chamber which is otherwise known to Chamber or is generally known, or has become known, to the industry or is disclosed pursuant to the requirements of a governmental authority or judicial order, shall be deemed confidential. Chamber 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.

7.4 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.

7.5 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.

7.6 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. Any claims arising under this Agreement shall be brought in the state or federal courts located in San Bernardino County.

7.7 Time of Essence. Time is of the essence for each and every provision of this Agreement.

7.8 Assignment; Sublease; Transfer. Chamber shall not assign, sublease, 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.

7.10 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 Chamber include all personnel, employees, agents, and subcontractors of Chamber, except as otherwise specified in this Agreement. All references to the City include its elected officials, officers, and employees 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.

7.11 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

7.12 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.

7.13 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.

7.14 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.

7.15 Improper Payment. Chamber maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Chamber, to solicit or secure this Agreement. Further, Chamber 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 Chamber, 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.

7.16 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 therefrom. Chamber has read and is aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflicts of interest of public officers and employees. Chamber agrees that they are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the City may immediately terminate this Agreement by giving notice thereof. Chamber shall comply with the requirements of Government Code section 87100 et seq. and section 1090 in the performance of and during the term of this Agreement.

7.17 Equal Opportunity Employment. Chamber 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.

7.18 Labor Certification. By its signature hereunder, Chamber 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.

7.19 Authority to Enter Agreement. Chamber 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.

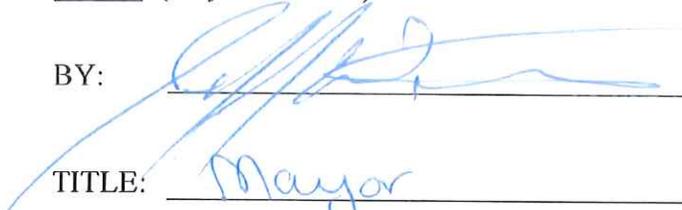
7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

7.22 Contents of Request for Proposal and Proposal. Chamber is bound by the contents of City's Request for Proposal and the Proposal. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Proposal. The incorporation of the Proposal shall be for the Services to be rendered only, and any other terms and conditions included in the Proposal shall have no force and effect on this Agreement or the relationship between Chamber and/or City, unless expressly agreed to in writing.

7.23 Limitation of Liability. The total amount of all claims the City may have against the Chamber or that Chamber may have against City under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation, and breach of contract, shall be strictly limited to the compensation received by Chamber. As the City's and Chamber's sole and exclusive remedy under this Agreement any claim, demand or suit shall be directed and/or asserted only against the Chamber or City, as the case may be, and not against any of the City's or Chamber's employees, officials, officers or directors. Neither the City nor the Chamber shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this Agreement or the performance of the services on this Project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

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

CITY: (City of Needles)

BY:  _____

TITLE: Mayor _____

DATE: 4-27-2021 _____

ATTEST:
BY: Dale Jones _____

TITLE : city clerk _____

DATE : 4-27-2021 _____

CHAMBER:

Needles Area Chamber of Commerce,
a California nonprofit mutual benefit corporation

BY: George De Leon

TITLE: President

DATE: 4-27-2021