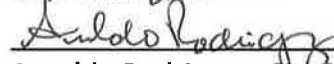


REPORT TO CITY COUNCIL

Approved by:



Department Director



Arnaldo Rodriguez, City Manager

Council Meeting of: February 6, 2019

Agenda Number: B-5

SUBJECT: Consideration of a resolution approving a \$2,600 contract with Nichols Consulting for the preparation and filing of the state mandated cost claims for the period from execution of contract until June 30, 2019 and authorizing the Mayor to sign the contract on behalf of the City.

RECOMMENDATION: Staff recommends that the City Council of the City of Madera (City) adopt the resolution approving a contract with Nichols Consulting for preparation and filing of State mandated cost claims and authorizing the Mayor to sign the Contract on behalf of the City.

SUMMARY: Each year, the City contracts with a consultant to prepare and submit its Senate Bill 90 State Mandated Cost Claims. The City has utilized Nichols Consulting for the past five years and has been satisfied with their pricing and service. Staff is recommending the City contract with them again to complete the claims related to Fiscal Year 2017/2018.

DISCUSSION: Section 6 of Article XIII B of the State Constitution requires that whenever the Legislature or any state agency mandates a new program or higher level of service on local government, the State must provide a subvention of funds to reimburse the associated costs, with certain exceptions. To implement section 6 of Article XIII B, the Legislature enacted Government Code Section 17500, under Chapter 1459, Statutes of 1984. Under Government Code section 17500, the State Controller's Office releases Claiming Instructions for SB90/State Mandated Cost Claims. Local Government Agencies have 120 days to file timely claims, and for up to a year after the deadline, a claim will be accepted as a "late" claim with a 10% penalty.

Nichols Consulting has prepared the State Mandated Cost Claims for the City for the past several years with excellent results. Nichols' proposed fee for the current agreement is a fixed fee of \$2,600 to prepare the claims, which is \$200 more than last year's contract, where the firm was able to recover over \$41,000 for the City. The Finance Department has reviewed this cost as well as considering what it would cost to have this work done by others, and finds the cost as proposed by Nichols Consulting to be both fair and reasonable. Staff would, therefore recommend approval of the resolution approving the contract with Nichols Consulting to prepare the State

Mandated Cost Claims related to Fiscal Year 2017/2018. The due date for the request to be filed is February 15, 2019.

The scope of services to be performed under this agreement includes the preparation of claims for eligible costs related to:

- Driving Under Influence (DUI) - Administrative License Suspension
- Domestic Violence Calls – Reimbursable programs include: Domestic Violence Arrest Policies and Standards, Domestic Violence Arrests and Victim Assistance
- Peace Officer Procedural Bill of Rights (POBOR) - Reimbursement is based on the number of Full-Time Sworn Officers employed by the City
- Local Government Employee Relations
- All other opportunities for which the City is able to claim eligible costs.

FINANCIAL IMPACT: The cost to prepare the claims is a fixed fee of \$2,600, and an appropriation has been set up in the Finance Departments budget under Contracted Services. These claims are expected to generate General Fund revenues of approximately \$25,000 for the City for Fiscal Year 2017/2018 expenditures as a result of these State Mandated Cost Claims. The City received \$18,657 in Fiscal Year 2016/2017 and \$41,834 in 2017/2018 through this State mandated cost reimbursement program.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN: Although approval of this item is not specifically addressed in the Vision or Action Plans, the requested action, resulting in financial gain to the City, will assist in achieving the Vision Statement of a Well-Planned City.

ALTERNATIVES: The City Council has the authority to approve or reject this contract with Nichols Consulting. Not approving the contract would result in the savings of approximately \$2,600 in contracted services, but would also result in the loss of budgeted revenue of approximately \$25,000 for State mandated cost claims.

ATTACHMENTS:

1. Resolution
2. Nichols Consulting Contract for Professional Services

RESOLUTION NO. 19-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA, APPROVING A \$2,600 SPECIAL SERVICES AGREEMENT
BETWEEN THE CITY OF MADERA AND NICHOLS CONSULTING AND
AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT**

WHEREAS, the City of Madera (City) is eligible to be reimbursed for certain State mandated costs in accordance with Senate Bill 90 (SB90); and

WHEREAS, the City has not submitted claims for such reimbursements for Fiscal Year 2017/2018; and

WHEREAS, the City would like to obtain consulting services for the completion and filing of SB90 State mandated cost reimbursement claims related to Fiscal Year 2017/2018; and

WHEREAS, City staff has worked with Nichols Consulting since 2013 on prior year claim filings, and Nichols Consulting has a good working knowledge of the City's eligible claims; and

WHEREAS, City staff has determined that Nichols Consulting's pricing for these services in the amount of \$2,600.00 is very reasonable; and

WHEREAS, a contract has been prepared for such services that is in the best interests of both the City and Nichols Consulting.

NOW THEREFORE, THE COUNCIL OF THE CITY OF MADERA does hereby resolve, find and order as follows:

1. The above recitals are true and correct.
2. The Contract for Professional Services between the City of Madera and Nichols Consulting in an amount not to exceed \$2,600, a copy of which is on file in the office of the City Clerk and referred to for particulars, is hereby approved.
3. The Mayor is hereby authorized to execute the Contract with Nichols Consulting.
4. The resolution is effective immediately upon adoption.

Nichols Consulting

CONTRACT FOR PROFESSIONAL SERVICES

This Contract is made and entered into this _____ day of _____ 2019, by and between the **City of Madera**, a city under the laws of the State of California (hereinafter referred to as "City") and Nichols Consulting, a sole-proprietor (hereinafter referred to as "Consultant").

RECITALS

- A. City has the authority to seek reimbursement for certain costs from the State of California pursuant to California Government Code Section 17550 et seq.
- B. City has the authority to contract for the preparation of said Claims through a designated individual or entity.
- C. Consultant is qualified to provide the service of preparing said Claims in consideration for the fees, expenses, and costs stipulated in this Contract.

Therefore, the parties to this Contract agree as follows:

I. CONSULTANT'S RESPONSIBILITIES

- A. Consultant shall review all eligible claiming opportunities and prepare all Claims whose State-imposed timely and late deadlines, for reimbursement, fall between the time of execution of this Contract and June 30, 2019. Consultant shall collect, document and process the information necessary for Consultant to file the claims on behalf of the City.
- B. Consultant will provide City with a copy of Claims and supporting documentation prepared pursuant to this Contract. The copy will be provided following the state imposed deadline for said Claims.
- C. Consultant shall implement a Claims monitoring and documentation process in the course of Consultant's duties.
- D. Consultant agrees not to exceed the amount of the fee proposal set forth in Appendix A to this Contract without prior written authorization of the City.

Fixed Fee - \$2,600

- E. Consultant will make good faith effort to file Claims in accordance with existing laws, regulations and applicable written guidelines but does not warrant the reimbursable nature or likelihood of success of reimbursement of any particular Claim.
- F. Consultant shall advise City of all official action which is necessary under applicable federal and state constitutional provisions, state statutes and regulations, and any other applicable provisions, in order that City may fulfill its responsibilities as set forth in Section II, paragraph C of this Contract for Services.

II. CITY'S RESPONSIBILITIES

- A. City will provide Consultant with all the documents, records and information necessary to prepare Claims in a timely manner.
- B. City agrees to pay Consultant, a fee of \$2,600 for services rendered. Consultant's fee is due and payable on March 31, 2019. Consultant's fee is not-to-exceed \$2,600.00, unless approved by City in writing. The payment of Consultant fee is not dependent on the amount of Claims ultimately reimbursed by the State of California.
- C. City agrees to take that official action which is necessary under applicable federal and state constitutional provisions, state statutes and regulations, and any other applicable provisions, to perform its obligations under this Contract in a timely manner.

III. MODIFICATIONS

This Contract may be modified only by a written amendment to this Contract, executed by both parties.

IV. TERMINATION OF CONTRACT

This Contract may be terminated by mutual written consent or by either party, provided that the terminating party gives ninety (90) days written notice to the other party, without cause. Upon receipt of a Notification of Termination, Consultant shall promptly discontinue all services affected. Consultant shall provide the City with all work products completed up to the date of termination. In the event of termination, City shall reimburse Consultant for all direct service hours on work-in-process at \$125.00 per hour. However, in no event shall City be obligated to pay more than the total amount of the Contract.

V. ATTORNEY'S FEES AND COSTS

In any litigation, arbitration or other proceeding by which one party either seeks to enforce its rights under this Contract (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Contract, each party shall bear its own attorney fees, together with any costs and expenses to resolve the dispute and to enforce the final judgment.

VI. SEVERABILITY

If any term of this contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of this Contract shall remain in full force and effect and shall not be affected.

VII. NOTICES

All notices that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope postage prepaid and deposited with an overnight delivery service or with a United States Post Office for delivery by first class and certified mail addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party.

**City of Madera
Attn: Financial Services Manager
205 West Fourth Street
Madera, CA 93637**

**Nichols Consulting
1857 44th Street
Sacramento, CA 95819**

VIII. AUTHORITY

The individuals executing this Contract represent and warrant that they have the legal power and authority to this contract and to contractually bind their respective entities.

IX. GOVERNING LAW

The validity of this Contract and each of its terms and provisions, as well as the rights and duties of the parties under this Contract, shall be construed pursuant to and in accordance with the laws of the State of California.

X. INDEMNITY

Contractor shall indemnify, defend, and hold harmless the City, and its officers, employees, and agents ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Contractor's performance of its obligations under this agreement or out of the operations conducted by Contractor, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Contractor's performance of this agreement, the Contractor shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

XI. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Consultant shall maintain limits no less than:

\$1,000,000 General Liability (including operations, products and completed operations) per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.

\$1,000,000 Automobile Liability combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.

Worker's Compensation as required by the State of California and \$1,000,000 Employer's Liability per accident for bodily injury or disease. Consultant shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

Fixed Fee - \$2,600

□ \$1,000,000 Professional Liability (Errors & Omissions) per claim and in the aggregate. Consultant shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement. The cost of such insurance shall be included in Consultant's bid.

Maintenance of Coverage

Consultant shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

Consultant shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

Enforcement of Contract Provisions (non estoppel)

Consultant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Consultant.

Notice of Cancellation

Consultant agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

Timely Notice of Claims

Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

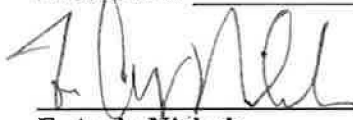
Additional Insurance

Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

XII. ENTIRE AGREEMENT

This Contract, which includes the "Proposal for Contract for Professional Services" set forth as Appendix A, supersedes any and all other agreements, whether oral or in writing, between the parties with respect to the subject of this Contract. This Contract contains all of the covenants and agreements between the parties with respect to the subject of this Contract, and each party acknowledges that no representatives, inducements, promises, or agreements embodied in this Contract. No agreement, statement, or promise not contained in this Contract shall be valid or binding on the parties with respect to the subject of this Contract.

Executed at _____, California, on the day and year set forth above.


_____, President
F. Andy Nichols

Nichols Consulting
1857 44th Street
Sacramento, CA 95819

_____, Title _____

_____ **Print Name**

City of Madera
205 West Fourth Street
Madera, CA 93637

APPENDIX A

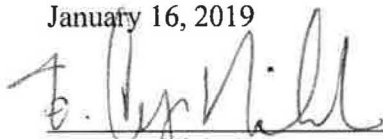
PROPOSAL FOR CONTRACT FOR SERVICES

This proposal for the **City of Madera** is to provide the services set forth under Paragraph I of the Contract for Professional Services relating to the preparation of Claims for reimbursement pursuant to California Government Code Section 17550 et seq.

Consultant's fee shall be \$2,600.00, for claims prepared on behalf of the City beginning with the time of execution of this Contract and ending June 30, 2019. Consultant's fee is due and payable on March 31, 2019

This Proposal is **valid until February 7, 2019** unless extended in writing by Consultant.

January 16, 2019

 _____, President
F. Andy Nichols

Nichols Consulting
1857 44th Street
Sacramento, CA 95819