

**SERVICE PROVIDER
AGREEMENT
BY AND BETWEEN
THE CITY OF CATHEDRAL CITY
AND
THE LEW EDWARDS GROUP**

SERVICE PROVIDER AGREEMENT, is made and entered into this 25th day of August 2016, by and between the City of Cathedral City, a municipal corporation located in the County of Riverside, State of California, hereinafter referred to as the "City", and The Lew Edwards Group, a California Corporation, hereinafter referred to as a "Service Provider".

RECITALS:

WHEREAS, the City desires to retain the services of a qualified service provider to provide voter education and communication development services.

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth herein.

Section 2. SCOPE OF SERVICES

Service Provider shall provide to the City those services as set forth in the Scope of Services, attached hereto as **Exhibit "A", "Scope of Services"**, and incorporated herein by this reference as though set forth at length.

Section 3. COMPENSATION

The City shall pay a total not-to-exceed amount of \$25,000 for services described in Exhibit "A", "Scope of Services"

Section 4. PAYMENT SCHEDULE

a. The City shall pay Service Provider as follows: for and in consideration of the faithful performance of the consulting services and duties set forth in this agreement, and service provider agrees to accept from the City, as and for compensation for the faithful performance of said services and duties, as approved by the City Manager, based on the scope of services and as set forth in **Exhibit "B", "Fee Schedule"** and incorporated herein by this reference.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage or other such compensation to any person employed by Service Provider to perform the services described in this Agreement.

(6) Service Provider shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City.

b. The City represents and acknowledges the following:

(1) Service Provider is not required to comply with daily instructions from City staff with respect to when, where or how Service Provider must perform the services set forth in this Agreement.

(2) Service Provider is solely responsible for determining who, under the supervision or direction of Service Provider, will perform the services set forth in this Agreement.

(3) The City will not hire, supervise or pay any assistants working for Service Provider pursuant to this Agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the Service Provider must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(5) It is the sole responsibility of Service Provider to set the hours in which Service Provider performs or plans to perform the services set forth in this Agreement.

(6) Service Provider is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(7) Unless deemed necessary under certain circumstances, Service Provider is not required to perform the services set forth in this Agreement at City Hall or on City-owned property.

(8) Other than attendance at required public meetings and public hearings and complying with procedural requirements set forth by law, Service Provider is not required to perform the services set forth in the Agreement in any particular order or sequence.

(9) Nothing in this Agreement shall be interpreted to preclude Service Provider from working for other persons or firms, provided that such work does not create a conflict of interest.

Section 9. NOT AGENT OF THE CITY

a. Nothing contained in this Agreement shall be deemed, construed or represented by the City or Service Provider or by any third person to create the relationship of principal and agent.

b. Service Provider shall have no authority, expressed or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Service Provider have any authority, expressed or implied, to bind the City to any obligation whatsoever.

Section 10. QUALIFICATIONS

Service Provider represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement.

Section 11. WARRANTY

Service Provider warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.

Section 12. FAMILIARITY WITH WORK

a. By executing this Agreement, Service Provider warrants that (1) it has thoroughly investigated and considered the work to be performed, (2) it has investigated the issues, regarding the scope of services to be provided, (3) it has carefully considered how the work should be performed, and (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

b. Should Service Provider discover any latent or unknown conditions materially differing from those inherent in the work or as represented by the City, it shall immediately inform the City of such fact and shall not proceed except at Service Provider's risk until written instructions are received from the City Manager or his or her designee.

Section 13. CONFLICTS OF INTEREST

Service Provider covenants that it does not have any interest, nor shall it acquire an interest, directly or indirectly, which would conflict in any manner with the performance of Service Provider's services under this Agreement. In the event the City officially determines that Service Provider must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Service Provider shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk.

Section 14. NONDISCRIMINATION

a. Service Provider shall comply with the City's employment related nondiscrimination policies as set forth in the City's Municipal Code, as it may be amended from time to time.

b. Service Provider acknowledges that the City's employment related nondiscrimination policies prohibit discrimination on the basis of an individual's sex, marital

status, race, color, religion, ancestry, national origin, physical handicap, sexual orientation, and domestic partnership status.

Section 15. COMPLIANCE WITH LAWS

Service Provider shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of Service Provider and/or its employees, officers, or board members.

Section 16. INSURANCE REQUIREMENTS

Service Provider shall procure and maintain at its own expense, during the term of this Agreement, comprehensive general liability insurance of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage.

Section 17. WORKERS' COMPENSATION INSURANCE

a. Service Provider shall procure and maintain at its own expense, during the term of this Agreement, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law.

b. If any class of employees employed by the Service Provider pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Service Provider shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

Section 18. LIABILITY INSURANCE

Service Provider shall procure and maintain through the entire term of this Agreement errors and omissions, professional liability, or directors and officers insurance in an amount deemed acceptable by the City Manager.

Section 19. ERRORS AND OMISSIONS AND PROFESSIONAL LIABILITY

Service Provider shall procure and maintain through the entire term of this Agreement professional liability insurance in an amount acceptable by the Administrative Services Director of the City of Cathedral City.

Section 20. ADDITIONAL NAMED INSURED

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation, professional liability or directors and officers coverage, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers and agents and independent contractors, including without limitation, the City Manager, City Manager and City Attorney and the State of California, are named

as additional insured's.

Section 21. WAIVER OF SUBROGATION RIGHTS

Service Provider shall require the carriers of all required insurance policies to waive all rights of subrogation against the City and its officers, volunteers, employees, contractors and subcontractors.

Section 22. PROOF OF INSURANCE COVERAGE

a. Service Provider shall secure from a good and responsible company or companies authorized to do insurance business in the State of California the policies of insurance required by this Agreement and furnish to the City Clerk and the City Manager of the City certificates of said insurance on or before the commencement of the term of this Agreement.

b. The certificates of insurance shall bear an endorsement whereby it is provided that, in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective.

c. The certificates of insurance shall bear an endorsement whereby it is provided that the respective insurance policy shall not be terminated or expire without first providing thirty (30) days' written notice to the City of such termination or expiration.

d. The certificates of insurance shall indicate that the respective insurance policy will be maintained throughout the term of this Agreement.

e. Within thirty (30) days of the execution of this Agreement, Service Provider shall furnish certified copies of all required insurance policies and endorsements.

Section 23. TERMINATION OR SUSPENSION

a. This Agreement may be terminated or suspended without cause by either party at any time provided that the respective party provides the other party at least thirty (30) business days written notice of such termination or suspension.

b. This Agreement may be terminated or suspended with cause by either party at any time provided that the respective party provides the other party at least ten (10) business days' written notice of such termination or suspension.

c. In the event of a termination of this Agreement under this Section 23, "Termination or Suspension", Service Provider shall provide all documents, reports, data or other work product developed in performance of the Scope of Services of this Agreement to the City, within ten (10) calendar days of such termination and without additional charge to the City.

Section 24. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 25. INDEMNIFICATION

a. Service Provider shall defend, indemnify and hold harmless the City, its officers, employees, representatives and agents, from and against those actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys fees, for any personal injuries, deaths, property damage (including property owned by the City) which may arise solely out of Service Provider's negligent performance of the services described in this Agreement, unless such losses or damages are proven to be caused by the City's own negligence or that of its officers or employees.

b. The City does not, and shall not, waive any rights that it may have against Service Provider under this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions of this Section shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense described herein.

c. City will defend, hold harmless and indemnify Service Provider, its officers, directors, shareholders, employees, and agents from and against all liability, loss, cost, expense, including reasonable attorney's fees, resulting from any claim of injury to person, damages to property, or monetary damages arising solely out of City's negligence or intentional misconduct or failure to perform obligations under this Agreement, unless such losses or damages are proven to be caused by the Service Provider's own negligence or willful misconduct or that of its officers, directors, shareholders, employees or agents.

Section 26. REPORTS

Service Provider shall periodically prepare and submit to the City Manager or designee such reports concerning Service Provider's performance of the services required by this Agreement on a monthly basis commencing one month after the effective date as set forth in the opening paragraph of this Agreement.

Section 27. RECORDS

a. Service Provider shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the City Manager or designee to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principals.

c. The City Manager or designee shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to service provider hereunder shall be retained by Service Provider and made available to the City Manager or designee for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

Section 28. OWNERSHIP OF DOCUMENTS

a. Upon completion of any document or report required to be provided by Service Provider in the course of performing any of the services described in this Agreement, or upon earlier termination of this Agreement, all completed original documents and reports and any designs, drawings, calculations, diskettes, computer files, notes, and other related materials prepared or produced in connection with such documents or reports ("Work Product") shall become the sole property of the City and may be used and reused on any other project by the City without the permission of Service Provider, provided that these products are paid for by City.

b. All computer files produced in connection with the services described in this Agreement shall be provided to the City in a form and format that is compatible with the City's existing computer equipment and software.

Section 29. CONFIDENTIALITY

a. Any and all documents and information obtained from the City or prepared by Service Provider for the City shall be kept strictly confidential unless otherwise provided by law.

b. The drawings, specifications, reports, records, documents and other materials prepared by Service Provider in the performance of services under this Agreement shall not be released publicly without the prior written approval of the City Manager or designee as required by law.

c. Service Provider shall not disclose to any other entity or person any information regarding the activities of the City, except as required by law or as authorized by the City.

d. City shall not disclose to any other entity or person any information regarding the activities of the Service Provider, except as required by law, including, but not limited to, the Freedom of Information Act, the California Public Records Act, and any applicable state, federal or local law or regulation, or as authorized by the Service Provider.

Section 30. PRINCIPAL REPRESENTATIVES

a. Catherine Lew, Esq. of The Lew Edwards Group will be designated, upon execution of this Agreement, as the principal representative of Service Provider for purposes of communicating with the City on any matter associated with the performance of the services set forth in this Agreement.

b. The City Manager and his designee shall be the principal representative of the City for purposes of communicating with Service Provider on any matter associated

with the performance of the services set forth in this Agreement.

c. Either party may designate in another individual as its principal representative by giving written notice of such designation to the other party.

d. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Service Provider and devoting sufficient time to personally supervise the services hereunder.

Section 31. MODIFICATIONS AND AMENDMENTS

This Agreement may be modified or amended only by a written instrument signed by both parties.

Section 32. ENTIRE AGREEMENT

a. This Agreement supersedes any and all other agreements, either oral or written, between the City and Service Provider with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

c. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Section 33. AMBIGUITIES

This Agreement is in all respects intended by each party hereto to be deemed and construed to have been jointly prepared by the parties and the parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Section 34. NOTICES

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the City:

**Charles P. McClendon
City Manager
City of Cathedral City
68700 Avenida Lalo Guerrero
Cathedral City, CA 92234**

To Service Provider:

**Catherine Lewis 
President and CEO
The Lew Edwards Group
P.O. Box 21205
Oakland, CA 94620**

b. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 35. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of the City shall be personally liable to Service Provider, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Service Provider or to its successor, or for any breach of any obligation of the terms of this Agreement.

Section 36. REVIEW BY ATTORNEYS

Each party hereto has had its attorneys review this Agreement and all related documents. Each party hereto has consulted with its attorneys and has negotiated the terms of this Agreement based on such consultation.

Section 37. WAIVER

a. No waiver shall be binding, unless executed in writing by the party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

Section 38. ASSIGNMENT

a. The experience, knowledge, capability and reputation of Service Provider, its principals and employees were a substantial inducement for the City to enter into this Agreement.

b. This Agreement shall not be assigned by either party without prior written consent of the other party.

Section 39. CARE OF WORK

The performance of services by Service Provider shall not relieve Service Provider from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the City, when such inaccuracies are due to the negligence of Service Provider.

Section 40. CAPTIONS AND HEADINGS

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 41. SUCCESSORS, HEIRS AND ASSIGNS

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the parties.

Section 42. GENDER

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

Section 43. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

Section 44. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Any claim or cause of action of either party with respect to the services provided hereunder must be instituted within one year after the claim or cause of action has arisen or be forever time barred.

Section 45. DEFAULT

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided

however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default of any party to this Agreement may remain uncured for more than fifteen (15) calendar days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Section 46. CUMULATIVE REMEDIES

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other party.

Section 47. VENUE

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

Section 48. ATTORNEY'S FEES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 49. EFFECTIVENESS OF AGREEMENT

This Agreement shall not be binding upon the City, until signed by the authorized

representative(s) of Service Provider, and approved by the City Council, approved as to form by the City Attorney, and executed by the City Manager.

Section 50. REPRESENTATIONS OF PARTIES AND PERSONS
EXECUTING AGREEMENT

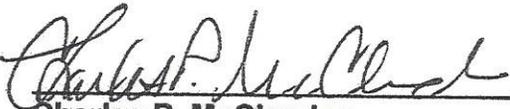
a. Each of the parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the parties hereto.

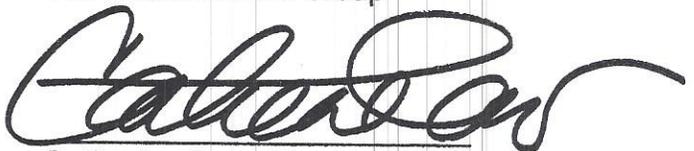
b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the parties each purports to represent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates written below.

City of Cathedral City

The Lew Edwards Group

By: 
Charles P. McClendon
City Manager

By: 
Catherine Lew, Esq
President and CEO
The Lew Edwards Group

ATTEST:

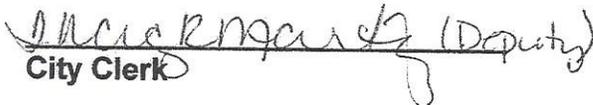
By:  (Deputy)
City Clerk

EXHIBIT "A" SCOPE OF SERVICES

The Lew Edwards Group (LEG) will perform the following communications and advisory services for the period effective August 25, 2016 through November 8, 2016:

- Identify City education & communication needs and issues
- Review current City background information
- Develop education communication messages and a recommended education communications deployment plan
- Work with the City to identify and maximize communications vehicles
- Work with the City to embed recommended communications messages in all city vehicles
- Conceive, write and/or produce informational materials, such as press releases, website copy, FAQs, speaker training materials and talking points, town hall meeting messages, or direct mail as City's budget permits
- Recommend strategies for ways to engage and inform community partners/stakeholders
- Assist and advise the City on any Rapid Response needs to expeditiously react to issues, problems, or misinformation
- Conduct Speaker Training for City staff, Council members, or members of the Public
- Lead and facilitate team planning meetings and teleconferences

The parties expressly acknowledge and agree that legal services or advice are not within Consultant's scope of services.

EXHIBIT "B"
FEE SCHEDULE
AND PROPOSAL TO PROVIDE SERVICES

Consultant's total contract shall not exceed Twenty-Five Thousand Dollars (\$25,000), of which Two Thousand, Five Hundred Dollars (\$2,500) is dedicated to reimbursable travel and other out-of-pocket costs.

The professional fee of Twenty-Five Thousand Dollars (\$25,000) shall be payable as follows:

- Two Thousand, Five Hundred Dollars (\$2,500) on September 8th , 2016; and
- Ten Thousand Dollars (\$10,000) per month payable in monthly increments due and payable by close of business on the last business day of each month commencing September 30, 2016 through October 31, 2016. Any remaining amounts due will be payable by November 30, 2016.

Invoices for out-of-pocket costs in an additional amount not to exceed Two Thousand, Five Hundred Dollars (\$2,500) over the course of the project period shall be remitted within thirty (30) days upon invoice by Consultant.

Graphics, printing, bulk postage and mailing expenses are not included within Consultant's fee. If City desires to incur these expenses, Consultant and City shall agree on a materials budget that is in addition to its professional fee.