

**SERVICE PROVIDER AGREEMENT BY AND BETWEEN THE
GREATER COACHELLA VALLEY CHAMBER OF COMMERCE AND THE CITY OF CATHEDRAL CITY
FY17/18**

THIS SERVICE PROVIDER AGREEMENT, is made and entered into this ____ day of _____, 2017, by and between the Greater Coachella Valley Chamber of Commerce, a California 501(c)(6) non-profit corporation (hereinafter referred to as the "Service Provider"), and the City of Cathedral City, a California municipal corporation (hereinafter referred to as the "City").

RECITALS:

WHEREAS, the Service Provider proposes to provide Visitor Center services, business retention and expansion, cooperative marketing programs, and general support for the City, as well as traditional functions of the Chamber; and

WHEREAS, the City can benefit from the services offered by the Service Provider, on an independent contractor's basis, as outlined in the Scope of Services, attached hereto as Exhibit "A"; and

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 AGREE AS FOLLOWS:

Section 1. RECITALS AND TERM OF AGREEMENT

The recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference as though set forth herein. This Agreement shall be for a term of twelve (12) months, commencing on July 1, 2017.

Section 2. SCOPE OF SERVICES

The Service Provider shall provide to the City those services as set forth in the "Scope of Services", attached hereto as Exhibit "A" and incorporated herein by this reference, as though set forth at length. The Service Provider shall at all times during the term of this Agreement perform the services described in this Agreement as an independent contractor. Service Provider acknowledges that Scope of Services is intended to increase its membership and maximize benefits to the City in exchange for the funds received from the City.

Section 3. COMPENSATION AND PAYMENT SCHEDULE

The City shall compensate the Service Provider a total amount of \$60,000 (sixty thousand dollars) for the services rendered by the Service Provider pursuant to Exhibit "B" attached to this Agreement. Payment shall be provided upon satisfactory submission by the Service Provider of the Quarterly Scope of Service Activity Report and Quarterly Budget Report, and completion of the City/Chamber Committee Quarterly Meeting, as required by Section 18 of this Agreement.

Section 4. REPRESENTATIONS AND ACKNOWLEDGMENTS REGARDING INDEPENDENT CONTRACTOR'S STATUS OF THE SERVICE PROVIDER

A. The Service Provider represents and acknowledges the following:

(1) The City is not required to provide any training or counsel to the Service Provider or its employees in order for the Service Provider to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City. Further, the services described in this Agreement can be performed without the use of City equipment, materials, tools or facilities.

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

(4) 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 the Service Provider to perform the services described in this Agreement.

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

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

(3) 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.

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

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

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

Section 5. NOT AGENT OF THE CITY

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

B. The 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 the Service Provider have any authority, expressed or implied, to bind the City to any obligation whatsoever.

Section 6. QUALIFICATIONS AND WARRANTY

The 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. The 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 7. FAMILIARITY WITH WORK

A. By executing this Agreement, the 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 to the performance of work under this agreement.

B. Should the 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 the Service Provider’s risk, until written instructions are received from the appropriate City representative.

Section 8. CONFLICTS OF INTEREST

The Service Provider covenants that neither its staff nor any officer has any interest, nor shall it acquire an interest, directly or indirectly, which would conflict in any manner with the performance of the Service Provider’s services under this Agreement.

Section 9. COMPLIANCE WITH LAWS

The Service Provider shall comply with all local, state and federal laws and regulations applicable to the services required hereunder.

Section 10. NONDISCRIMINATION

The Service Provider will comply with the City’s employment-related nondiscrimination policies as set forth in Chapter 11.88 of the Cathedral City Municipal Code, as it may be amended from time to time.

Section 11. WORKERS’ COMPENSATION INSURANCE

A. The 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, the Service Provider shall provide adequate insurance for the protection of such employees to the satisfaction of the legal counsel of the City.

Section 12. 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, shall bear an endorsement whereby it is provided that the City and its officers, employees, servants, volunteers, agents and independent contractors, including without limitation, the City Manager, Economic Development Director, Business Development Manager, Community Development Director, Administrative Services Director, Police Chief, Fire Chief, Communication and Events Manager, City Engineer, and City Legal Counsel are named as additional insureds.

Section 13. WAVIER OF SUBROGATION RIGHTS

The 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 14.

**COMPREHENSIVE GENERAL AND AUTOMOBILE LIABILITY INSURANCE,
AND PROOF OF INSURANCE COVERAGE**

The 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.

A. The Service Provider shall secure from a good and responsible company or companies authorized to perform insurance business in the State of California the policies of insurance required by this Agreement and furnish to the City certificates of 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, the Service Provider shall furnish certified copies of all required insurance policies and endorsements.

Section 15.

TERMINATION OR SUSPENSION

A. This Agreement may be terminated or suspended without cause by the City at any time provided that the City provides the Service Provider at least ten (10) business days' written notice of such termination or suspension.

B. This Agreement may be terminated or suspended with cause by the City at any time provided the City provides at least (3) business days' written notice of such termination or suspension.

C. This Agreement may be terminated by the Service Provider with cause at any time provided the Service Provider provides the City at least ten (10) business days' written notice of such termination.

Section 16.

TIME OF THE ESSENCE

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

Section 17.

INDEMNIFICATION

A. The Service Provider shall defend, indemnify and hold harmless the City, its officers, employees, representatives and agents, from against those actions, suits, proceedings, claims, demands, losses, costs and expenses, including reasonable legal costs and attorneys' fees, for any personal injuries, deaths, property damage (including property owned by the City) and for acts committed by the Service Provider, its officers, employees, independent contractors and agents, which may arise out of the Service Provider's negligence in performing 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 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 reasonable legal costs and attorney's fees that may arise out of Service Provider's actions in the discipline, suspension and/or termination against or involving any of Service Provider's employees, independent contractors, officers and agents.

C. The City does not, and shall not, waive any rights that it may have against the 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.

Section 18. REPORTS AND MEETINGS

A. The Service Provider shall prepare and submit to the City's Business Development Manager on a quarterly basis: (1) a detailed Scope of Service Activity Report concerning the Service Provider's performance of the services required by this Agreement; (2) a Budget Report for the four categories of services identified in Exhibit "A", Scope of Services; and (3) a Membership Report showing an increase or decrease in Chamber membership and specifying which are Cathedral City-based businesses. A City/Chamber Committee comprised of the City Manager, City Business Development Manager, City Council representative(s) and Chamber Executive Board representatives shall also meet at these same quarterly intervals to discuss the submitted reports.

B. The Service Provider shall submit to the City Business Development Manager by August 1, 2017, the Chamber's staffing structure for Cathedral City.

Section 19. BUSINESS DISTRICT APPOINTMENTS TO SERVICE PROVIDER BOARD

The Board of Directors for the Cathedral City Business District shall appoint three members to the Service Provider's Board of Directors who are representative of the Cathedral City business community. These appointments are for staggered one-, two-, and three-year terms.

Section 20. RECORDS

The Service Provider shall keep such books and records as necessary to perform the services required by this Agreement and enable the Executive Officer to evaluate the cost and performance of such services. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles. 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.

Section 21. OWNERSHIP OF DOCUMENTS

A. Upon completion of any document or report required to be provided by the 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/or reports and any designs, drawings, calculations, diskettes, computer files, notes, and other related materials prepared or produced in connection with such documents or reports shall be considered the joint property of both the City and the Service Provider and may be used and/or reused on any other project by the City or Service Provider without the permission of either the City or Service Provider.

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 22. CONFIDENTIALITY

The Service Provider and the City shall work together in identifying certain drafts/documents/reports prepared by the Service Provider for the City, which shall be kept strictly confidential until such time the City authorizes the release of said information. The 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. All financial reports provided by the Service Provider to the City shall be deemed confidential and shall not be released publicly without prior written approval of the Service Provider or as required by law.

Section 23. PRINCIPAL REPRESENTATIVES

A. The Executive Officer or Chairman of the Board are designated as the principal representatives of the Service Provider for purposes of communicating with the City on any matter associated with the performance of the services set forth in this Agreement. The Business Development Manager shall be the principal representative of the City for purposes of communicating with the Service Provider on any matter associated with the performance of the services set forth in this Agreement.

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

C. 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 the Service Provider and devoting sufficient time to personally supervise the services hereunder.

Section 24. MODIFICATIONS AND AMENDMENTS

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

Section 25. ENTIRE AGREEMENT

A. This Agreement supersedes any and all other agreements, either oral or written, between the City and the 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 26. 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: Business Development Manager
City of Cathedral City
68-700 Avenida Lalo Guerrero
Cathedral City, CA 92234

To Service Provider: President/Chief Executive Officer
Greater Coachella Valley Chamber of Commerce
82-921 Indio Boulevard
Indio, CA 92201

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 27. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of the City shall be personally liable to the 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 the Service Provider or to its successor, or for any breach of any obligation of the terms of this Agreement.

Section 28. INTERPRETATION

This Agreement shall not be interpreted against either party on the grounds that one of the parties was solely responsible for preparing it or caused it to be prepared as both parties were involved in drafting it.

Section 29. 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 30. ASSIGNMENT

The experience, knowledge, capability and reputation of the Service Provider, its principals and employees were a substantial inducement for the City to enter into this Agreement. This Agreement shall not be assigned by either party without prior written consent of the other party.

Section 31. CARE OF WORK

The Service Provider shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work performed by the Service Provider and the equipment, materials, papers and other components thereof to prevent losses or damages, and shall be responsible for all such damages to persons or property until acceptance of the work by the City, except such losses or damages as may be caused by the City's own negligence.

The performance of services by the Service Provider shall not relieve the 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 the Service Provider.

Section 32. 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 the Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

Section 33. 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.

Section 34. RIGHTS AND 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 or any other default by the other party.

Section 35. 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 36. 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 37. AUTHORITY

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

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

“City”

“Chamber”

CITY of CATHEDRAL CITY, a California municipal corporation

Greater Coachella Valley Chamber of Commerce, a California non-profit corporation

By: _____
Charles P. McClendon, City Manager

By: _____
Josh Bonner
President/Chief Executive Officer

ATTEST:

By: _____
Gary Howell, City Clerk

APPROVED AS TO FORM:

By: _____
Eric S. Vail
City Attorney