

**AGREEMENT BETWEEN THE CITY OF MERCED AND THE LEW
EDWARDS GROUP TO PROVIDE LEAD PROJECT, EVALUATION,
COMMUNICATIONS AND BALLOT MEASURE PREPARATION
SERVICES**

THIS AGREEMENT is made effective this 15th day of September 2017, by and between the City of Merced, a California Charter Municipal Corporation, (hereinafter referred to as “City”) and the Lew Edwards Group (hereinafter referred to as “LEG”).

WHEREAS, the LEG is an experienced professional firm providing lead project, evaluation, communications and ballot measure preparation services to California cities; and

WHEREAS, the City desires to obtain preparatory, strategic and communications services related to potential ballot financing options to support the construction and enhancement of public facilities within the City of Merced; and

WHEREAS, the LEG has the ability to support the City’s efforts on, and provide coordination with other professionals assigned to this project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. SCOPE OF SERVICES. Over the life of the project, LEG will provide services that include:

Step One

- a. Project-facilitate a coordinated strategy and timeline
- b. Add strategic value to opinion research efforts
- c. Independently evaluate opinion research and provide Strategic Recommendations, including an assessment of risks/opportunities, project timetable, and election viability/timing

Step Two

- d. Recommend methods to engage constituents, expand community awareness of policy, fiscal/service needs and solicit additional community input on potential funding or policy priorities
- e. Develop word text copy for informational materials
- f. Recommend local media and/or Internet media approaches
- g. Advise City on public responses to constituent inquiries

- h. Confer with City staff on ballot measure preparation and add value to related staff reports

2. **TIME OF PERFORMANCE.** The term of this Agreement shall commence upon mutual execution of Agreement and will be completed by October 31, 2018.

3. **COMPENSATION.** The City agrees to pay to LEG a monthly fee of Five Thousand Dollars (\$5,000) per month as detailed in Exhibit A, attached hereto and incorporated herein by this reference.

4. **RECORDS.** It is understood and agreed that all Final Work Product plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, record, files, reports, etc., in possession of the LEG relating to the matters covered by the Agreement shall be the property of the City, and LEG hereby agrees to deliver the same to the City upon termination of the Agreement. Consultant's notes and working drafts are specifically excluded from this provision. It is understood and agreed that the documents and other materials, including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

5. **CONSULTANT'S BOOKS AND RECORDS.** LEG shall maintain and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to LEG. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

6. **INDEPENDENT CONTRACTOR.** It is expressly understood that LEG is an independent contractor and that its employees shall not be employees of or have any contractual relations with the City. LEG shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should LEG desire any insurance protection, LEG is to acquire same at its expense.

In the event LEG or any employee, agent, or subcontractor of LEG providing services under this Agreement is determined by a court of competent jurisdiction or

the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an Employee of the City, LEG shall indemnify, protect, defend and hold harmless the City for the payment of any employee and/or employer contribution for PERS benefits on behalf of LEG or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

7. INDEMNITY. LEG shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state or municipal law or ordinance, to the extent caused in whole or in part, by the willful misconduct, negligent acts, or omissions of LEG's work, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of LEG to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve LEG from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of the Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, LEG acknowledges and agrees to the provisions of this section and that it is a material element of consideration.

8. INSURANCE. During the term of this Agreement, LEG shall maintain in full force and at its own cost and expense, the following insurance coverage:

- a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.
- b. Professional Liability Insurance. LEG shall carry professional liability insurance appropriate to LEG's profession in the minimum amount of One Million Dollars (\$1,000,000).

- c. **Qualifications of Insurer.** The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:
 - a. An insurance carrier admitted to do business in California and maintain an agent for service of process within this State; and
 - b. An insurance carrier with a current A.M. Best rating of A: VII or better (except for workers' compensation provided through the California State Compensation Fund).
- d. **Certificate of Insurance.** LEG shall compete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation – including cancellation for nonpayment of premium.
- e. Notwithstanding any language in the Agreement to the contrary, LEG shall be entitled to be paid pursuant to the terms of this Agreement until LEG has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if LEG's insurance policies are not current.

9. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by FM3 and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of LEG under this Agreement will be permitted only with the express written consent of the City.

10. **TERMINATION FOR CONVENIENCE OF CITY.** Either party may terminate this Agreement any time by mailing a notice in writing to the other that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by LEG. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactory completed at the time the notice of termination is received.

11. CONFORMANCE TO APPLICABLE LAWS. LEG shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by LEG in the employment of persons to work under this contract because of race, color national origin, ancestry, disability, sex or religion of such person.

LEG hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should LEG so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, LEG hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

12. WAIVER. In the event that either the City or LEG shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

13. ON CONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

14. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, and rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against

the party that drafted this Agreement is of no application and is hereby expressly waived.

15. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

16. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties.

17. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

18. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligation hereunder.

19. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivery unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

20. All notices, requests, demands or other communications under the Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- a. First Class Mail. When mailed first class to the last address of the recipient known to the Party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office of mailbox.
- b. Certified Mail. When mailed certified mail, return receipt requested, notice is effective upon receipt if delivery is confirmed by a return receipt.

- c. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Mailing and contact information for notice to the Parties of this Agreement at the time of endorsement of this Agreement is as follows:

City of Merced

678 W. 18th Street
Merced, CA 95340
(209) 385-6834

Attn: Steve Carrigan, City Manager

The Lew Edwards Group

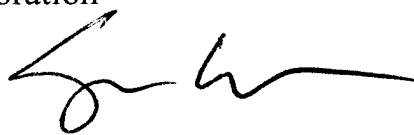
5454 Broadway
Oakland, CA 94618
(510) 594-0224

Attn: Lloyd Edwards, Secretary-Treasurer

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____



City Manager

ATTEST:

STEVE CARRIGAN, CITY CLERK

BY: [Signature]
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: [Signature] 9-21-17
City Attorney Date

300424 PO# 128504
ACCOUNT DATA:

BY: [Signature]
Verified by Finance Officer

✓ # 17888
Funds available 10/19/17 pkp
449-1001-627.65-00 116240
12,500.00 FL 10/20/17

THE LEW EDWARDS GROUP

By:

[Signature]
Lloyd A. Edwards, Secretary-Treasurer

Date: _____, 2017

Exhibit A:
Compensation for Step One Services

Consultant's contract for professional services for Step One services shall not exceed Twelve Thousand, Five Hundred Dollars (\$12,500) payable as follows:

- On September 2017, Two Thousand, Five Hundred Dollars (\$2,500); and
- Two payments of Five Thousand Dollars (\$5,000) per payment due and payable on October 31st and November 30th, 2017.

The parties may choose to extend this Agreement beyond November 30th for Step Two services. If so, such additional work shall be authorized by the City Council and additional fees shall apply.