

RESOLUTION NO. 2016-82

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING AGREEMENT BETWEEN CITY OF MARINA AND THE LEW EDWARDS
GROUP FOR POTENTIAL NOVEMBER 8, 2016 BALLOT MEASURE(S) RELATED TO
THE UTILITY USERS TAX AND/OR BUSINESS LICENSE TAX

WHEREAS, During April and May 2016, the City of Marina City Council has been discussing potential revenue mechanisms, such as utility users tax and/or business license tax, to assist the long-term fiscal stability of the City and ensure all taxpayers are paying their fair share, and;

WHEREAS, the City desires to assess the viability of these potential measures, develop user-friendly balloting packages prior to the statutory August 12 2016 deadline, and provide factual, transparent public information to the community so Marina's constituents can make informed decisions, and;

WHEREAS, the Lew Edwards Group (LEG) is a past City of Marina consultant, having assisted the City with Measures E and F in 2014 and is a California leader in representing enacted revenue measures for local government, and;

WHEREAS, LEG offers nationally-recognized, award-winning informational communications approaches to the City of Marina in the past, and to its other public agency clients.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Marina do hereby:

1. Approve agreement between the City of Marina and The Lew Edwards Group for informational communications outreach services (**EXHIBIT "A"**), and
2. Authorize subsequent minor changes if necessary with City Attorney approval, and;
3. Authorize City Manager to execute agreement amendment on behalf of City subject to final review and approval by the City Attorney, and;
4. Authorize the Finance Director to make the necessary accounting and budgetary entries.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 7th day of June 2016 by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Delgado

NOES: COUNCILMEMBERS: Morton, O'Connell

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT A

CITY OF MARINA AGREEMENT FOR INFORMATIONAL COMMUNICATIONS OUTREACH CONSULTING SERVICES

This Agreement is made and entered into as of the 8TH day of June, 2016, by and between the City of Marina, a municipal corporation (“City”) and The Lew Edwards Group, a professional corporation (“Contractor”).

RECITALS

A. Contractor is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

B. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

C. City desires to retain Contractor to render professional services relative to potential City ballot measure(s) on the November 8, 2016 General Election as set forth in this Agreement.

AGREEMENT

1. Scope of Services (EXHIBIT A). Contractor shall perform assessment, preparation, advisory and informational outreach services set forth in EXHIBIT A and summarized in the Contractor’s proposal (Proposal) dated June 2, 2016 (EXHIBIT C). Should there be any inconsistency of terms between this Agreement and the Proposal, this Agreement shall control.

2. Time of Performance. The services of Contractor are to commence upon execution of this Agreement and shall be performed through October 31, 2016.

3. Compensation (EXHIBIT B). Compensation to be paid to Contractor shall be in accordance with the EXHIBIT B. In no event shall Contractor’s compensation exceed the amounts specified in the referenced document without prior written authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Contractor’s bills shall include a description of the services performed and the period for which the services were performed. Payment of the undisputed amount of the invoice shall be paid to Contractor no later than 30 days after approval of the invoice by City staff, or within ten (10) days if invoice is for direct mail production.

5. Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, “Extra Work” means any work which is determined by City to be necessary, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without prior written authorization from City.

6. Termination. This Agreement may be terminated by City with or without cause upon fifteen days' prior written notice of termination. This Agreement may be terminated by either party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party. Upon termination by the City without cause, Contractor shall deliver all work product and other documents, whether completed in progress and be entitled to compensation for services performed up to the effective date of termination. If termination for cause is effected by the City an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the Contractor at the time of termination may be adjusted to cover any additional costs to the City because of Contractor's default.

7. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except for working papers, notes, and internal documents and work drafts, shall become the property of the City, and the City shall have the sole right to use any materials paid for by the City in its discretion without further compensation to Contractor or to any other party. Contractor shall, at Contractor's expense, provide such reports, plans, studies, documents and other writings to City upon written request.

8. Contractor's Books and Records.

a. Contractor shall maintain any 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 City for a minimum period of five (5) years, or for any longer period required by law, from the date of the final period audited by Contractor.

b. Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers, except for the items excluded in paragraph 7 above. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that the records or documents addressed in this section may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

9. Independent Contractor. It is understood that Contractor, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Contractor shall obtain no rights to retirement

benefits which accrue to City's employees, and Contractor hereby expressly waives any claim it may have to any such rights.

10. Interest of Contractor. Contractor (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Contractor's services hereunder. Contractor further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Contractor is not a designated employee within the meaning of the Political Reform Act because Contractor:

a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

11. Professional Ability of Contractor. City has relied upon the professional training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Agreement. Contractor shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.

12. Compliance with Laws. Contractor shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

13. Licenses. Contractor represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which is legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Contractor to practice its profession. Contractor agrees, before commencing any work pursuant to this Agreement, to apply for, pay the fee for, and obtain a City of Marina business license.

14. Insurance Requirements.

a. Contractor, at Contractor's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies, as applicable to the services performed under this agreement.

i. Workers' Compensation Coverage. Contractor shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies

must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Contractor for City.

ii. General Liability Coverage. Contractor shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Contractor shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

iv. Professional Liability Coverage. Contractor shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which arises out of or is in any way connected with the performance of work under this Agreement by Contractor or any of the Contractor's employees, agents or subconsultants insofar as such loss, damage or injury results from Contractor's negligent, reckless or willful act or omission. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single-limit per occurrence basis.

b. Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:

i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance. Contractor shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

15. Indemnification. Except as to the negligence, or willful misconduct of City, Contractor shall defend, indemnify and hold the City, its officers and employees, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorney's fees, which arises out of or is in any way connected with the performance of work under this Agreement by Contractor or any of the Contractor's employees, agents or subconsultants insofar as such loss, damage or injury results from Contractor's negligent, reckless or willful act or omission. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or of Contractor's employees, subconsultants or agents. This indemnification does not include claims that arise from any negligent, reckless, or willful act or omission of the City, its employees, or representatives. The City hereby indemnifies The Lew Edwards Group and its shareholders, principals and employees and holds them harmless from all claims, liabilities, losses and costs arising in circumstances where there has been a knowing misrepresentation by a member of the City's management, regardless of whether such person was acting in the City's interest.

16. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: Layne Long
 City Manager
 City of Marina
 211 Hillcrest Avenue
 Marina, CA 93933

If to Contractor: Lloyd A. Edwards
 Secretary-Treasurer
 The Lew Edwards Group
 5454 Broadway
 Oakland, CA 94618

17. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Contractor. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

18. Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

19. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Contractor. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express consent of the City. Contractor shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the City. If City consents to such subcontract, Contractor shall be fully responsible to City for all acts or omissions of the subcontractor. The City shall be an intended beneficiary of any work performed by a subcontractor for purposes of establishing a duty of care between the subcontractor and the City, however, nothing in this Agreement shall create any other contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law.

20. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provisions under this Agreement.

21. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

22. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

23. Authority to Enter Agreement. Contractor 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 to bind each respective party.

24. Prohibited Interests. Contractor 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 Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

25. Equal Opportunity Employment. Contractor 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 nondiscrimination shall include, but not be limited to, all activities related to initial employment upgrading, demolition, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

26. Attorney's Fees. In the event of any controversy, claim or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

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

CITY OF MARINA

THE LEW EDWARDS GROUP

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST: (Pursuant to Reso. 2016-82)

City Clerk

APPROVED AS TO FORM:

City Attorney

REVIEWED

Risk Manager

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 7, 2016

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2014-
APPROVING AGREEMENT BETWEEN CITY OF MARINA AND THE
LEW EDWARDS GROUP FOR POTENTIAL NOVEMBER 8, 2016
BALLOT MEASURE(S) RELATED TO THE UTILITY USERS TAX
AND/OR BUSINESS LICENSE TAX, AUTHORIZING SUBSEQUENT
MINOR CHANGES IF NECESSARY WITH CITY ATTORNEY
APPROVAL, AUTHORIZING CITY MANAGER TO EXECUTE
AGREEMENT ON BEHALF OF CITY AND AUTHORIZE THE
FINANCE DIRECTOR TO MAKE THE NECESSARY ACCOUNTING
AND BUDGETARY ENTRIES**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2016- approving agreement between City of Marina and The Lew Edwards Group for potential November 8, 2016 ballot measure(s) related to the Utility Users Tax and/or Business License Tax,
2. Authorize subsequent minor changes if necessary with City Attorney approval, and;
3. Authorize City Manager to execute agreement amendment on behalf of City, and;
4. Authorize the Finance Director to make the necessary accounting and budgetary entries.

BACKGROUND:

The City Council is currently considering the possibility of increasing the business license tax and/or approving a utility users tax. Either of these actions will require voter approval and are likely to be of intense interest to the City's residents and businesses. California local governments commonly engage outside consultants to assist them in (i) developing ballot measures that will meet community needs, (ii) seeking community input into proposed measures, and (iii) responding to the community's need for factual, public information regarding proposed measures. To this end, in 2014, the City utilized the services of the Lew Edwards Group ("LEG").

ANALYSIS:

LEG is a California leader in assisting local agencies on various ballot measures. They offer nationally-recognized, award-winning informational communications approaches to public agency clients. The LEG is familiar with the unique characteristics of our community. As a part of the scope of services, LEG will provide ongoing consulting to City staff on the assessment of the viability of these potential measures, preparation of potential ballot measure language(s) and development of the educational messages that effectively inform and respond to questions from the public. In 2014, the City sent two informational mailers. Should the City Council move forward with the ballot measure(s), Staff recommends utilizing mailers as an effective communication vehicle. This professional agreement is provided as **EXHIBT A**.

FISCAL IMPACT:

Should the City Council approve this agreement, the City shall pay the Lew Edwards Group an amount not to exceed \$40,000 for the following: strategic services (\$25,000) and two informational direct mailing (\$15,000).

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Lauren Lai, CPA
Finance Director
City of Marina

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina