

AGREEMENT FOR CONTRACTOR SERVICES BETWEEN THE CITY OF HAYWARD AND CHABOT COLLEGE

THIS AGREEMENT for consulting services is made by and between CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT - CHABOT COLLEGE, ("Contractor") and the CITY OF HAYWARD, a municipal corporation ("City"), as of this 17th day of January, 2018 (the "Effective Date").

RECITALS:

WHEREAS, City has been awarded an outreach grant from the Davenport Institute for Public Engagement and Civic Leadership in partnership with Contractor; and,

WHEREAS, Contractor is specially trained, experienced, and competent to perform the special services which will be required by this agreement to fulfill the grant purpose; and,

WHEREAS, Contractor is willing to render such community outreach and engagement services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, Contractor and the City agree as follows:

1. Scope of Services. Contractor shall provide to City the services described in Exhibit A, attached hereto and incorporated herein, at the time and in the manner specified therein. Except as set forth in Exhibit A, Contractor shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement.
2. Compensation. City hereby agrees to pay Contractor: Total compensation for Contractor's services and expenses incurred pursuant to this agreement shall not exceed the sum of \$15,000.
3. Term. The term of this Agreement shall begin on the Effective Date and shall end no later than one year after the Effective Date. The continuation of the agreement beyond June 30, 2018 will be contingent upon lawful encumbrance or appropriation of funds.
4. Independent Contractor Status. It is expressly understood and agreed by both parties that Contractor, while engaged in carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and not an employee of the City. Contractor expressly warrants not to represent, at any time or in any manner, that Contractor is an employee of the City.
5. Billings. Contractor shall submit quarterly bills to the City describing its services and costs provided during the previous quarter. Except as specifically authorized by City, Contractor shall not bill City for duplicate services performed by more than one person. Contractor's monthly bills shall include the following information to which such services or costs pertain: a brief description of services performed, the date the services were performed, the number of hours spent and by whom, and a brief description of any costs incurred, and the Contractor's signature.
6. Advice and Status Reporting. Contractor shall provide the City with timely advice of all significant developments arising during performance of its services hereunder orally or in writing.

7. Designation of Primary Provider of Services. This agreement contemplates the services of Contractor. The primary point of contact for the services called for by this agreement shall be Julia Lang, who shall not be replaced without the written consent of City Manager.

8. Assignment of Personnel. Contractor shall assign only competent personnel to perform services pursuant to this agreement. In the event that City, in its sole discretion, at any time during the term of this agreement, desires the removal of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

9. Assignment and Subcontracting. It is recognized by the parties hereto that a substantial inducement to City for entering into this agreement was, and is, the reputation and competence of Contractor. Contractor shall not subcontract any portion of the performance contemplated and provided for herein.

10. Insurance. On or before beginning any of the services or work called for by any term of this agreement, Contractor, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the City. Contractor shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Contractor has also been obtained for the subcontractor.

a) Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Contractor shall be provided with limits not less than one million dollars. In the alternative, Contractor may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this agreement.

b) Commercial General and Automobile Liability. Contractor, at Contractor's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this agreement. If a 4 Commercial General Liability Insurance or an Automobile Liability 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. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto). Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- i. City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.
- ii. The insurance shall cover on an occurrence basis, and not on the basis of an accident or claims made.
- iii. The insurance must cover personal injuries as well as bodily injuries. Any exclusion of contractual liability in personal injury provisions of the policy or any endorsement to it must be eliminated.
- iv. The insurance must cover complete contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement.
- v. Any explosion, collapse, and underground property damage exclusion must be deleted.
- vi. An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.
- vii. The policy must contain a cross liability or severability of interests clause.
- viii. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- ix. Broad form property damage liability must be afforded. A deductible that does not exceed \$25,000 may be provided.
- x. Insurance is to be placed with California- admitted insurers with a Best's rating of no less than B:XI.
- xi. Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.

c) Professional Liability. Contractor, at Contractor's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than one million dollars covering the licensed professionals' errors and omissions, as follows:

- i. Any deductible shall not exceed \$100,000 per claim.
- ii. Notice of cancellation or non-renewal must be received by the City at least thirty days prior to such change.
- iii. If the professional liability coverages are written on an occurrence form, the policy must contain a cross liability or severability of interest clause.
- iv. The following provisions shall apply if the professional liability coverages are written on a claims made form:

1. The retroactive date of the policy must be shown and must be before the date of the agreement.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.
3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes 6 the date of this agreement, Contractor must provide extended reporting coverage for a minimum of five years after completion of the agreement or the work.
4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.

(d) Deductibles and Self-Insured Retentions. During the period covered by this agreement, upon express written authorization of City's City Attorney, Contractor may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Contractor may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Contractor procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

(e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the agreement is reduced, limited, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than five days after Contractor is notified of the change in coverage.

(f) In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

- i. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- ii. Order Contractor to stop work under this Agreement or withhold any payment which becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof;
- iii. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Contractor's failure to maintain insurance or secure appropriate endorsements.

11. Indemnification - Contractor's Responsibility. It is understood and agreed that Contractor has the experience necessary to perform the work agreed to be performed under this agreement, that

City relies upon the skills of Contractor to do and perform Contractor's work in a skillful manner, and Contractor thus agrees to so perform the work.

Acceptance by City of the work performed under this agreement does not operate as a release of said Contractor from responsibility for the work performed. It is further understood and agreed that Contractor is apprised of the scope of the work to be performed under this agreement and Contractor agrees that said work can and shall be performed in a fully competent manner.

Contractor shall indemnify, defend, and hold City, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Contractor, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising solely out of the active negligence, sole negligence, or willful misconduct of the City, its officers, employees, agents, or volunteers. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

12. Nondiscriminatory Employment Practices. Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis. All nondiscrimination rules or regulation required by law to be included in the Agreement are incorporated by this reference.

13. Termination. This agreement may be terminated by the City immediately for cause or upon thirty days written notice without cause.

14. Notices. Notices required by this agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Contractor: Lorenzo Legaspi, Vice Chancellor of Business Services
Chabot-Las Positas Community College District
Business Services Office
7600 Dublin Blvd., 3rd Floor
Dublin, CA 94568

To the City: City Manager
777 B Street, 4th Floor
Hayward, CA 94541

Each party shall provide the other party with written notice of any change in address as soon as practicable.

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

15. Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Contractor pursuant to this agreement shall be the property of the City at the moment of their completed preparation.

16. Amendments. This agreement may be modified or amended only by a written document executed by both Contractor and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this agreement.

17. Abandonment by Contractor. In the event the Contractor ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Contractor shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment.

18. Waiver. The waiver by either party of a breach by the other of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this agreement.

19. No Third-party Rights. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this agreement or of any duty, covenant, obligation, or undertaking established herein.

20. Severability. Should any part of this agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

21. Compliance with Laws. In the performance of this agreement, Contractor shall abide by and conform to any and all applicable laws of the United States, the State of California, and the City Charter and Ordinances of City.

Contractor warrants that all work done under this agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including but not limited to Cal/OSHA regulations.

22. Controlling Law. This agreement and all matters relating to it shall be governed by the laws of the State of California.

23. Conflict of Interest. Contractor warrants and covenants that the provider of services presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this agreement a violation of any applicable state, local, or federal law. If any provider of services is a "Contractor" for the purposes 10 of the Fair Political Practices Act (Gov. Code ' 81000 et seq.), each such person shall comply with Form 721 Statement of Economic Interests filing requirements in accordance with the City's local Conflict of Interest Code. In addition, if any other conflict of interest should nevertheless hereinafter arise, provider of services shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this agreement.

24. Nuclear Free Hayward. Contractor agrees to comply with the requirements imposed by Ordinance No. 87-024 C.S., establishing a "Nuclear Free Hayward." An executed copy of the Affirmation of Non-Involvement in the Development or Production of Nuclear Weapons is attached hereto as Exhibit B and made a part hereof.

25. Copyright. Upon City's request, Contractor shall execute appropriate documents to assign to the City the copyright to work created pursuant to this agreement. The issuance of a patent or copyright to Contractor or any other person shall not affect City's rights to the materials and records prepared or obtained in the performance of this agreement. City reserves a license to use such materials and records without restriction or limitation consistent with the intent of the original design, and City shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by City shall continue for a period of fifty years from the date of execution of this agreement unless extended by operation of law or otherwise.

26. Time is of the Essence. Contractor agrees to diligently prosecute the services to be provided under this agreement to completion and in accordance with any schedules specified herein. In the performance of this agreement, time is of the essence.

27. Whole Agreement. This agreement has eight pages excluding the exhibits described on its signature page. This agreement constitutes the entire understanding and agreement of the parties. This agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

28. Multiple Copies of Agreement. Multiple copies of this agreement may be executed but the parties agree that the agreement on file in the office of City's City Clerk is the version of the agreement that shall take precedence should any differences exist among counterparts of the document.

IN WITNESS WHEREOF, Contractor has executed this agreement, and the City, by its City Manager, who is authorized to do so, has executed this agreement.

CONTRACTOR

Dated: _____

By _____

Its Vice Chancellor of Business Services

CITY OF HAYWARD

Dated: _____

By _____

City Manager

Attest: _____

City Clerk

Approved as to form and procedure:

City Attorney

Attachments:

- Exhibit A Scope of Work for this Agreement, consisting of 1 page
- Exhibit B Scope of Work between the Davenport Institute and Chabot College, for reference only, consisting of 1 page
- Exhibit C Nondiscriminatory Employment Practices by City Contractors, consisting of 3 pages
- Exhibit D Affirmation of Non-Involvement in the Development or Production of Nuclear Weapons, consisting of 1 page

Exhibit A: Scope of Work for this Agreement

This scope of work supplements the scope of work between the Davenport Institute and Chabot College, which is included as Exhibit B.

The City agrees to compensate Chabot College a flat fee of \$15,000 for the below work. This work will be completed over thirty (30) working weeks, starting January 22, 2017. The working weeks may or may not be consecutive, to account for breaks and holidays. This work will be performed by the following Chabot faculty members:

Sean McFarland, Language Arts Faculty
Chabot College
25555 Hesperian Blvd.
Hayward, CA 94545
(510) 723-7427
smcfarland@chabotcollege.edu

Work Tasks:

- Strategic planning and project management
- Day-to-day supervision of student workers, including monitoring hours worked
- Bi-weekly progress report phone calls with City of Hayward staff
- Collaboration and communication with City staff on organizing outreach activities and implementation of project activities
- Coordination and leadership: ensuring that all Student Work Tasks and Deliverables in Exhibit B are completed

Deliverables:

- Oversight of all student deliverables listed in Exhibit B
- Quarterly presentations to City of Hayward staff team on findings
- Quarterly transfer of photos and/or video footage of events and activities that can be used for City publications and social media
- End-of-project written report summarizing findings and recommendations

Exhibit B: Scope of Work between the Davenport Institute and Chabot College

The Davenport Institute agrees to compensate Chabot College for the below work. This work will be completed over thirty (30) working weeks, starting January 22, 2017. The working weeks may or may not be consecutive, to account for breaks and holidays.

The Davenport Institute will reimburse the College up to \$24,000 for the work hours of five (5) to seven (7) students at a rate of approximately \$11.00 per hour.

	Option 1	Option 2
# of Students	5	7
Hourly Rate	\$11	\$11
≈ Hours/Week	15	10
# of Weeks	30	30
Total Cost	\$24,000	\$24,000

In addition, the Davenport Institute will reimburse the College for up to \$6,000 for supplies needed for the below deliverables.

Student Work Tasks:

- Design, advertise, and conduct a variety of outreach activities in the Tennyson Corridor
- Create and administer surveys and other data collection tools
- Plan and execute events and projects to increase community engagement and data collection
- Serve as liaisons between the City and City-identified community stakeholders
- Shoot and edit video where needed
- Create multimedia presentations
- Design and create promotional and educational materials
- Serve as liaisons between the Tennyson Corridor and related classes at Chabot College
- Attend trainings and other meetings facilitated by Davenport and City of Hayward

Deliverables:

- Electronic results from empathy interviews with at least 200 community members – these interviews can be individual or in a focus group setting
- At least four (4) stakeholder meetings
- At least two (2) community events that include themes of asset mapping and/or local history
- Photos and/or video footage of outreach activities
- An end-of-project list of recommendations for the City