

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF HAYWARD AND  
THE CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT FOR COMMUNITY  
ENGAGEMENT AND OUTREACH IN SOUTH HAYWARD

THIS AGREEMENT, dated for convenience this day of July 1, 2018, is by and between CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT - CHABOT COLLEGE, a public body of the State of California, ("Contractor"), and the CITY OF HAYWARD, a public body of the State of California ("City");

RECITALS:

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

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

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

AGREEMENT:

1. Scope of Service. Subject to the terms and conditions set forth in this agreement, Contractor shall provide to City the services described in Exhibits A and B. Contractor shall provide said services at the time, place, and in the manner specified in Exhibits A and B.

2. Compensation. City hereby agrees to pay Contractor two lump sums payable at the commencement or completion of the two Scopes of Work described in Exhibits A and B. Total compensation for Contractor's services and expenses incurred pursuant to this agreement shall not exceed \$25,000 for the Scope of Work described in Exhibit A, and \$40,000 for the Scope of Work described in Exhibit B, for a total sum not to exceed \$65,000. Contractor shall provide all deliverables required in Exhibits A and B at or before the time of invoicing for the respective lump sum amounts.

3. Effective Date and Term. The effective date of this agreement is July 1, 2018, and it shall terminate no later than June 30, 2019.

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 two bills to the City, one upon the completion of the Scope of Work described in Exhibit A, and another upon the completion of the Scope of Work

described in Exhibit B. In no event shall Contractor submit any billing for an amount in excess of the maximum amount of compensation provided in section (2).

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. 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.

8. 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. Neither this agreement nor any interest therein may be assigned by Contractor without the prior written approval of City's City Manager. Contractor shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's City Manager.

9. 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 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 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 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.

10. Indemnification - Contractor's Responsibility. It is understood and agreed that Contractor has the experience and knowledge 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.

11. Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of Contractor, its employees, agents, or subcontractors by federal or state law, Contractor warrants that such license has been obtained, is valid and in good standing, and shall keep in effect at all times during the term of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

12. Nondiscrimination: In the performance of this Agreement, Contractor agrees to comply with the requirements of Hayward Municipal Code, Chapter 2, Article 7, Nondiscriminatory Employment Practices by City Contractors, a summary of which is attached hereto as Exhibit C.

(a) Professional Services and Employment. Contractor shall not unlawfully discriminate in the provision of professional services, or against any employee or applicant for employment, because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.

(b) Compliance with Anti-Discrimination Laws. Contractor will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

13. Confidential Information:

(a) Disclosure of Confidential Information. In the performance of this Agreement, Contractor may receive information that is confidential under local, state, or federal law. Contractor hereby agrees to protect all confidential information in conformance with any and all applicable local, state, and federal confidentiality laws, regulations, policies, procedures, and standards.

(b) Continuing Compliance with Confidentiality Laws. The parties acknowledge that local, state, and federal laws, regulations and standards pertaining to confidentiality are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the requirements of any and all applicable local, state, and federal confidentiality laws, regulations, and/or standards.

14. Drug Free Workplace Certification of Compliance. By signing this Agreement, Contractor, hereby certifies, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code §8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code §8355(a)(1).

(b) Establish a Drug-Free Awareness Program, as required by Government Code §8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:

(i) The dangers of drug abuse in the workplace,

(ii) Contractor's policy of maintaining a drug-free workplace,

(iii) Any available counseling, rehabilitation, and employee assistance programs, and

(iv) Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

(c) Provide, as required by Government Code §8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Agreement:

(i) Will receive a copy of Contractor's drug-free policy statement, and

(ii) Will agree to abide by terms of Contractor's condition of employment, contract or subcontract.

15. Termination. This agreement may be cancelled at any time by City for its convenience upon written notification to Contractor. In the event of termination, the Contractor shall be entitled to a portion of compensation equivalent to the services performed to the effective date of termination; provided, however, that the City may condition payment of such compensation upon Contractor's delivery to the City of any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the City in connection with this agreement.

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

To Contractor: Ronald Gerhard, 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, 4<sup>th</sup> Floor  
Hayward, CA 94541-5007

Each party shall provide the other party with telephone and 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

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

25. 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 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.

26. 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 D and made a part hereof.

27. 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.

28. 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.

29. Whole Agreement. This agreement has twelve 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.

30. 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- Chabot-Las Positas Community] College District- Chabot College

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Ronald Gerhard

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 Bay Area Integrated Water Management Disadvantaged Community Involvement Program, consisting of 1 page
- Exhibit B Scope of Work for Tennyson Thrives Vision Plan, 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 BAY AREA INTEGRATED WATER MANAGEMENT DISADVANTAGED COMMUNITY INVOLVEMENT PROGRAM**

The City agrees to compensate Chabot College up to \$25,000 for the below work, not to exceed the amounts below for each item. This work will commence after July 1, 2018 and will be completed no later than June 30, 2019.

<b>Item</b>	<b>Amount</b>
Faculty Time	\$9,000
Student Time	\$12,000
Supplies	\$4,000

The faculty portions of this work will be performed by the following Chabot faculty members:

- Tom DeWit, Language Arts Faculty, tdewit@chabotcollege.edu
- Eric Helzel, Language Arts Faculty, ewheltzel@gmail.com
- Sean McFarland, Language Arts Faculty, smcfarland@chabotcollege.edu

### **Work Tasks:**

- Coordinate with Rising Sun's California Youth Energy Specialists (CYES) program to understand and handoff learnings from CYES's summer findings
- Plan and host at least three community workshops to brainstorm and test a range of solutions to address water-related issues that have been identified by the community
- Conduct at least twenty in-depth, follow-up interviews with community leaders
- Help implement a community knowledge fair and presentation to the Hayward City Council
- Participate in bi-weekly progress report phone calls with City of Hayward staff

### **Deliverables:**

- Electronic notes from workshops and interviews, including a summary and trends
- At least three (3) community workshops
- At least twenty (20) follow-up interviews
- Material for one community knowledge fair
- Photos and/or video footage of outreach activities
- End-of-project PowerPoint slides, including a list of recommendations for the City

## **EXHIBIT B: SCOPE OF WORK FOR TENNYSON THRIVES VISION PLAN**

The City agrees to compensate Chabot College up to \$40,000 for the below work, not to exceed the amounts below for each item. This work will commence after July 1, 2018 and will be completed no later than June 30, 2019.

<b>Item</b>	<b>Amount</b>
Faculty Time	\$15,000
Student Time	\$20,000
Supplies	\$5,000

The faculty portions of this work will be performed by the following Chabot faculty members:

- Tom DeWit, Language Arts Faculty, tdewit@chabotcollege.edu
- Eric Helzel, Language Arts Faculty, ewheltzel@gmail.com
- Sean McFarland, Language Arts Faculty, smcfarland@chabotcollege.edu

### **Work Tasks:**

- Design, advertise, and conduct a variety of outreach activities in the Tennyson Corridor
- Use data from empathy interviews to conduct visioning ideation sessions and charrettes
- Create and edit video footage of events and interviews
- Assist community groups to apply for at least two Neighborhood Improvement Program (NIP) grants and write case studies
- Serve as liaisons between the City and City-identified community stakeholders
- Design and create promotional and educational materials
- Serve as liaisons between the Tennyson Corridor and related classes at Chabot College

### **Tasks**

- At least three (3) visioning ideation sessions/charrettes
- At least one (1) large community event, such as a block party
- Photo and video gallery of outreach efforts and community assets
- At least two (2) case studies summarizing the experience of community groups applying for NIP grants
- Final edited video summarizing community input and ideas
- End-of-project PowerPoint slides, including a list of recommendations for the City