

## AGREEMENT FOR AUTOMATED TELLER MACHINE (ATM) SERVICES

This Agreement for Automated Teller Machine (ATM) Services (“Agreement”) is entered into as of February 19, 2020 by and between Chabot-Las Positas Community College District (“District”), Las Positas College and Chabot Federal Credit Union (“VENDOR”). This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein by this reference.

### RECITALS

WHEREAS, the District desires to obtain certain ATM services, (“AUTOMATED TELLER MACHINE”) as more particularly described in this Agreement.

WHEREAS, Vendor is duly qualified and capable of providing and performing the Automated Teller Machine (ATM) Services, through its relationships with third party servicers.

WHEREAS, if the nature of ATM Services requires the Vendor to be licensed, permitted or otherwise authorized by a Governmental Authority to complete the Automated Teller Machine Services, Vendor and/or its third party servicer is licensed, permitted or authorized to provide the Automated Teller Machine (ATM) Services.

WHEREAS, the Vendor submitted a proposal to complete the AUTOMATED TELLER MACHINE (ATM) Services (“Proposal”); the Proposal is attached hereto as Attachment 3 and incorporated herein by this reference.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the District and Vendor agree as follows:

### 1 AUTOMATED TELLER MACHINE (ATM) SERVICES.

- 1.1 Scope of Vendor Services.** The Automated Teller Machine (ATM) Services are described in Attachment 1 to this Agreement. The Vendor shall, in Attachment 1, identify specific third party servicers who will be assigned to the Automated Teller Machine along with a description of the Services to be performed or provided by personnel identified by the Vendor. Personnel identified by the Vendor for portions of the Automated Teller Machine (ATM) Services shall be subject to the District’s approval. The Vendor shall provide all labor, materials, equipment, tools and other items necessary to complete the Automated Teller Machine (ATM) Services and authorized Additional Services as deem necessary.
- 1.2 Automated Teller Machine (ATM) Services.** The Vendor shall complete the Automated Teller Machine (ATM) Services, and portions thereof, in accordance with the Automated Teller Machine (ATM) Services Schedule set forth in Attachment 1. The Vendor is liable to the District for costs, charges, losses and other damages arising out of or related to the failure of the Automated Teller Machine (ATM) in accordance with the Automated Teller Machine (ATM) Schedule.
- 1.3 Additional Automated Teller Machine Services.** Services not included in this Agreement are Additional Vendor Services. Without invalidating this Agreement, the District may add to, delete from or modify the Automated Teller Machine (ATM) Services by written notice to the Vendor. If Additional Automated Teller Machine (ATM) Services authorized by the District do not result from the Vendor’s fault or neglect, the Vendor will be compensated for authorized Additional Vendor Services in accordance with this Agreement.
- 1.4 Vendor Standard of Care.** The Automated Teller Machine (ATM) Services and authorized Additional Vendor Services; if any, shall be performed and provided by Vendor and third party servicer: (i) using the Vendor’s/third party’s best skill and attention; (ii) with due care and in accordance with applicable standard(s) of care; (iii) in accordance with applicable laws, rules and regulations; and (iv) in accordance with the terms of this Agreement. The Vendor acknowledges that the Automated Teller Machine (ATM) Services may be provided and performed in conjunction with other services provided by other parties relating to the same subject matter. Accordingly, Vendor acknowledges and agrees that the Automated Teller Machine (ATM) Services will be

provided and completed in a manner so as not to delay, hinder or interrupt the orderly and timely progression and completion of services under this Agreement and services of others relating to the subject matter of this Agreement. The Vendor is liable to the District for losses, costs, changes and other consequences of its failure to provide, perform and/or complete the Automated Teller Machine (ATM) Services or authorized Additional Automated Teller Machine (ATM) Services in a timely manner.

## **1.5 Vendor Independent Contractor**

- 1.5.1 Independent Contractor Status.** The Vendor is an Independent Contractor to the District. This Agreement and the Automated Teller Machine (ATM) Services hereunder are not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. Nothing in this Agreement shall be interpreted as creating or establishing a relationship of employer and employee between the District and any employee or agent of Vendor. All persons providing any Automated Teller Machine (ATM) Services under this Agreement shall, at all times, remain an employee of Vendor or contractor of the third party servicer. As an independent Contractor, Vendor is responsible for determining the means and methods for performing the Automated Teller Machine (ATM) Services.
- 1.5.2 Vendor Employees and Agents Not District Employees.** The Vendor's employees and agents are not employees of the District and shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other benefits as an employee of the District.
- 1.5.3 No Vendor Authority to Contractually Bind District.** The Vendor acknowledges and agrees that it is not authorized to: (i) enter into contracts on behalf of the District; or (ii) expressly or impliedly commit or bind the District to any contractual obligation. Any action of the Vendor to enter into or to purportedly enter into any agreement, contract or obligation on behalf of the District in violation of the preceding is an event of Vendor default. In addition to rights and remedies of the District arising under this Agreement or by operation of law resulting from such Vendor default, the Vendor is liable to the District for all consequences of any agreement, contract or obligation purportedly entered into by the Vendor on behalf of the District.
- 1.5.4 Vendor Authority to Complete Automated Teller Machine (ATM) Services.** The Vendor warrants and represents that the Vendor and/or the Vendor's employees and third party servicer, as applicable, completing any of the Vendor Services possess all licenses, permits or other authorizations required by any Governmental Authority to complete the Automated Teller Machine (ATM) Services. The Vendor further warrants and represents that at all times while completing Automated Teller Machine (ATM) Services, the Vendor will maintain in full force and effect and in good standing all such licenses, permits or other authorizations.
- 1.5.5 Capacity to Complete Automated Teller Machine (ATM Services).** The Vendor and/or third party servicer warrant and represent that they possess all necessary capacity to complete the Automated Teller Machine (ATM) Services, including without limitation, sufficient manpower resources with necessary skills, knowledge and experience, adequate financial resources and tools, machinery or other similar items necessary to complete the Automated Teller Machine (ATM) Services.
- 1.5.6 Conflicts of Interest.** Vendor warrants and represents that neither the Vendor or any employee of the Vendor employs or retains the services of any immediate family member of any District employees, nor has it furnished any financial compensation for the pursuit of business with the District. For purposes of this Agreement, an "immediate family member" is an adult who is a parent or step-parent, spouse, sibling or step-sibling, grandparent, uncle, aunt, or first cousin of a District employee.

- 1.5.7 **Vendor Not Debarred.** The Vendor warrants and represents that it has not been debarred by a Governmental Authority from bidding for, submitting proposals for, or award of a public contract.
- 1.5.8 **Breach of Warranties and Representations as Vendor Default.** If any of the foregoing warranties or representations are false or misleading or if the Vendor breaches any of the foregoing warranties or representations, the Vendor shall be deemed in default under this Agreement.

**2 Additional Vendor Services**

- 2.1 **Additional Vendor Services.** If the District authorizes Additional Vendor Services, the District’s payment of such Additional Vendor Services shall be mutually agreed upon.

**3 INSURANCE; INDEMNITY**

- 3.1 **Vendor Insurance.** At all times during performance of Automated Teller Machine (ATM) Services and authorized Additional Automated Teller Machine (ATM) Services, the Vendor and/or its third party servicer shall maintain policies of insurance with at least the minimum coverage amounts set forth in this Agreement.
- 3.2 **Workers Compensation and Employers Liability Insurance.** The Workers’ Compensation Insurance shall cover claims under workers’ or workmen’s compensation, disability benefit and other similar employee benefit acts. The Employer’s Liability Insurance shall cover bodily injury (including death) by accident or disease to any employee which arises out of the employee’s employment by the Vendor and/or its third party servicer. The Employer’s Liability Insurance may be obtained as a separate policy of insurance or as an additional coverage under the Workers’ Compensation Insurance policy.
- 3.3 **Commercial General Liability Insurance.** The Commercial General Liability and Property Insurance shall cover the types of claims set forth below for which the Vendor and/or its third party servicer may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of their employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than their employees; (iii) claims for damages insured by usual personal injury liability coverage; (iv) claims for damages, arising out of injury to or destruction of tangible property, including loss of use resulting therefrom; (v) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (vi) contractual liability insurance applicable to obligations under this Agreement.
- 3.4 **Automobile Liability Insurance.** The Automobile Liability Insurance shall insure risk of loss for bodily injury, death and property damage arising out of the operation of any owned, non-owner or hired motor vehicle.
- 3.5 **Professional Liability Insurance.** If required by this Agreement, the Vendor and/or its third party servicer’s professional liability insurance shall cover liabilities arising out of the performance of Vendor Services under this Agreement.
- 3.6 **Minimum Coverage Limits.** Minimum coverage limits for the policies of insurance shall be as follows:

Policy of Insurance	Minimum Coverage Limits
Commercial General Liability Insurance	Per Occurrence: One Million Dollars (\$1,000,000)
	Aggregate: One Million Dollars (\$1,000,000)
Automobile Liability (combined single limit)	One Million Dollars (\$1,000,000)
Workers Compensation	In accordance with applicable laws

Employers Liability	One Million Dollars (\$1,000,000)
Professional Liability	One Million Dollars (\$1,000,000) per claim/One Million Dollars (\$1,000,000) Aggregate

**3.7 Certificates of Insurance.** The Vendor and/or its third party servicer shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance with the minimum coverage limits required hereunder. The Vendor and its third party servicer will not be permitted to perform any Vendor Services until Certificates of Insurance for all required policies of insurance have been delivered to the District. No payment will be made for any Vendor Services until the District has received Certificates of Insurance evidencing the Vendor’s and/or its third party servicer’s policies of insurance in accordance with requirements of this Agreement.

**3.8 Additional Insured.** The District shall be an Additional Insured to the General Liability and Automobile Liability policies of insurance of the Vendor and/or its third party servicer. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. The additional insured endorsement shall be the then current form of endorsement for ISO CG 20 10 (04/13), or SO CG 20 38 (04/13).

**3.9 Vendor Insurance Primary.** If any policy of insurance required of the Vendor or third party servicer overlaps with any policy of insurance maintained by the District, the Vendor’s and its third party servicer’s policy(ies) of insurance is/are primary and non-contributing with any policy of insurance maintained by the District.

**3.10 No Cancellation or Material Modification.** Each policy of insurance required by this Agreement shall be endorsed to state that coverage thereunder shall not be cancelled or materially modified except upon thirty (30) days’ advance written notice to the District. Written notice of cancellation or material modification shall be from the insurer issuing the policy of insurance to the District.

**3.11 Waiver of Subrogation.** Policies of insurance required by this Agreement shall include waivers of rights of recovery by subrogation against the District and its officers, employees, agents and representatives. The Vendor and its third party servicer shall obtain any endorsement that may be necessary to effectuate the foregoing waiver of subrogation and that this provision is applicable and enforceable regardless of whether or not the insurer for any Vendor or third party servicer maintained policy of insurance issues a waiver of subrogation endorsement.

**3.12 Insurer Qualifications.** Policies of insurance shall be issued by insurers who are: AM Best rated at least A/VII.

**3.13 District General Liability Insurance.** The District will maintain General Liability Insurance covering the District for claims of bodily injury or death of persons and property damage. The District may at its sole election obtain such liability insurance from a commercially available source, a Joint Powers Authority or by self-insurance.

**3.14 Indemnity.**

**3.14.1 Vendor Indemnity of District.** The Vendor and its third party servicer shall indemnify, defend and hold harmless the District and its employees, officers, Trustees, agents and representatives from any and all claims, demands, losses, responsibilities or liabilities for: (i) injury or death of Vendor’s employees arising out of this Agreement; (ii) injury or death of persons; (iii) damage to property; or (iii) other costs, charges, damages or losses which arise out of or attributable, in whole or in part, to the negligent, grossly negligent or willful conduct of Vendor, its third party servicer, or their employees, agents and representatives. The foregoing shall include without limitation, attorneys’ fees and shall survive the termination of this Agreement or Vendor’s / third party servicer’s completion of obligations hereunder until barred by the applicable Statute of Limitations.

**3.14.2 District Indemnity of Vendor.** The District shall indemnify and hold harmless Vendor and third party servicer from claims arising out of bodily injury (including death) and physical damage which arise out of the negligent, grossly negligent or willful conduct of the District.

#### **4 TERM; TERMINATION; SUSPENSION**

**4.1 Term.** The Term of this Agreement commences as of the Effective Date set forth above. The foregoing notwithstanding, if this Agreement is subject to approval or ratification by the District's Board of Trustees, the Effective Date of this Agreement is deemed the date of Board of Trustees action approving or ratifying this Agreement. Unless earlier terminated pursuant to the terms of this Agreement, the Term of this Agreement expires upon the Vendor's completion of Vendor Services.

**4.2 Termination for Default.** Either the District or Vendor may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice commences to cure its default(s) and diligently thereafter prosecutes such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Vendor if: (i) Vendor becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Vendor or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Vendor or any of Vendor's property on account of Vendor's insolvency; or (ii) if Vendor disregards applicable laws, codes, ordinances, rules or regulations. If the District exercises the right of termination hereunder, the Contract Price due the Vendor, if any, shall be based upon Vendor Services, authorized Additional Vendor Services and Reimbursable Expenses incurred or provided prior the effective date of the District's termination of this Agreement, reduced by the District's prior payments of the Contract Price and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Vendor shall remain responsible and liable to District for all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Vendor's default hereunder, to the extent that such losses, damages or other costs exceed any amount due Vendor hereunder for Vendor Services, Reimbursable Expenses or authorized Additional Vendor Services.

**4.3 District Right to Suspend.** The District may, in its discretion, suspend all or any part of the Automated Teller Machine (ATM) Services hereunder; provided, however, that if the District directs suspension of Automated Teller Machine (ATM) Services for sixty (60) consecutive days or more and such suspension is not caused by the Vendor's default or the acts or omissions of Vendor, upon rescission of such suspension.

**4.4 District Termination For Convenience.** The District may, at any time, upon seven (7) days advance written notice to Vendor terminate this Agreement, in whole or in part, for the District's convenience and without fault, neglect or default on the part of Vendor. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to Vendor or such other time as the District and Vendor may mutually agree upon.

**4.5 Vendor Obligations Upon Termination.** Upon the District's exercise of the right of termination hereunder, the Vendor shall take action as directed by the District relating to completed and in progress Automated Teller Machine (ATM) Services. The Vendor shall within thirty (30) days of the effective date of Termination, disassemble all Vendor Work Product.

#### **5 MISCELLEANOUS**

- 5.1 Governing Law; Interpretation.** This Agreement shall be governed and interpreted in pursuant to the laws of the State of California and in accordance with its fair meaning and not strictly for or against the District or Vendor. If any provision of this Agreement is deemed illegal, invalid, unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted here from, but all remaining provisions will remain and continue in full force and effect.
- 5.2 Time.** Time is of the essence to this Agreement. The time for performance of any obligation hereunder by either Party shall be extended if performance of such obligation is delayed or prevented by conduct of the other Party, acts of God, or other unforeseeable events.
- 5.3 Successors; Non-Assignability.** This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Vendor and the District. Neither Vendor nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.
- 5.4 Notices.** Notices under this Agreement shall be addressed and delivered as follows:
- If to District:  
Chabot-Las Positas Community College District  
7600 Dublin Boulevard  
Dublin, CA 94568  
Attn: Doug Roberts, Acting Vice Chancellor of Business Services
- If to Vendor:  
Chabot Federal Credit Union  
7080 Donlon Way Suite 100  
Dublin, CA 94568  
Attn: Christine L. Petro, Chief Executive Officer
- 5.5 Confidentiality.** All information and data provided by the District to the Vendor in connection with the Automated Teller Machine (ATM) Services are deemed confidential materials which shall not be disclosed by Vendor or its employees to any third party without the prior consent of the District, which may be granted, conditioned or denied in the sole discretion of the District. The Vendor is liable to the District and third parties for losses, costs or other damages arising out of or relating to Vendor's breach of the confidentiality obligations set forth herein.
- 5.6 Cumulative Rights; No Waiver.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default of the Vendor.
- 5.7 No Third-Party Beneficiaries.** This Agreement shall not be construed to create any duty, standard of care, or liability to anyone other than the Parties to this Agreement. There are no third-party beneficiaries to this Agreement, other than the third party servicer.
- 5.8 Captions.** Captions of the provisions of this Agreement are used for convenience of reference only. The Parties that such captions are not to be used to interpret or construe the intent or context of this Agreement.
- 5.9 Counterparts.** This Agreement may be executed in counterparts. Each counterpart copy hereof shall be deemed a duplicate original. The Parties acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in PDF format shall be legal and binding, with the same full force and effect as if an originally executed copy of this Agreement had been delivered. The Parties (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that each Party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

**5.10 Entire Agreement.** The foregoing and the documents enumerated below constitute the entire agreement and understanding between the District and Vendor concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and Vendor. Documents forming a part of this Agreement are:

- |              |  |
|--------------|--|
| Attachment 1 | Automated Teller Machine (ATM) Services Scope; Automated Teller Machine (ATM) Services Schedule and Vendor Personnel |
| Attachment 2 | Proposal   |

IN WITNESS WHEREOF, the District and Vendor have executed this Agreement as of the date set forth above.

**“DISTRICT”**  
**CHABOT-LAS POSITAS COMMUNITY**  
**COLLEGE DISTRICT**

By: \_\_\_\_\_  
Doug Roberts

Title: Acting Vice Chancellor Business Services

**“VENDOR”**  
**CHABOT FEDERAL CREDIT UNION**

By: \_\_\_\_\_  
Christine L. Petro

Title: Chief Executive Officer

**ATTACHMENT 1  
TO AGREEMENT FOR AUTOMATED TELLER MACHINE (ATM) SERVICES  
BETWEEN CHABOT-LASPOSITAS COMMUNITY COLLEGE DISTRICT, LAS POSITAS COLLEGE  
AND**

**CHABOT FEDERAL CREDIT UNION**

**Automated Teller Machine (ATM) Services.** The Vendor Services subject to the Agreement for Automated Teller Machine (ATM) Services consists of the following:

**Provide ATM (Automated Teller Machine) cash withdrawal and deposit services to Las Positas College students, staff, and the public.**

**Automated Teller Machine (ATM) Services Schedule.** The Automated Teller Machine (ATM) Services shall be completed in accordance with the following schedule:

Vendor will ensure that no ATM is inoperable for more than 2% of the time in any given month. Services shall be completed during open college business hours: Monday through Thursday, 7:00 am to 10:00 pm, and Friday 7:00 am to 6:00 pm excluding holidays.

**Vendor Personnel.** Personnel of the Vendor and third party servicer assigned to complete Automated Teller Machine (ATM) Services are as follows.

Name	Title	Description of Assigned ATM Services
Christine L. Petro	President and Chief Executive Officer	Manage relationship and contract with third party servicer

**[END OF ATTACHMENT 1]**



**ATTACHMENT 2  
TO AGREEMENT FOR AUTOMATED TELLER MACHINE (ATM) SERVICES  
BETWEEN CHABOT-LASPOSITAS COMMUNITY COLLEGE DISTRICT, LAS POSITAS COLLEGE  
AND  
CHABOT FEDERAL CREDIT UNION**

**SEE ATTACHED – REQUEST FOR INFORMATION (RFI) SUBMITTED BY CHABOT FEDERAL  
CREDIT UNION**