

## AGREEMENT FOR CONSULTANT SERVICES

This Agreement for Consultant Services (“Agreement”) is entered into as of [Click here to enter a date.](#) (“Effective Date”) by and between Chabot-Las Positas Community College District (“District”) and WTC Consulting Inc. (“Consultant”). 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 consulting services, (“Consultant Services”) as more particularly described in this Agreement.

WHEREAS, Consultant is duly qualified and capable of providing and performing the Consultant Services.

WHEREAS, if the nature of Consultant Services requires the Consultant to be licensed, permitted or otherwise authorized by a Governmental Authority to complete the Consultant Services, Consultant is licensed, permitted or authorized to provide the Consultant Services.

WHEREAS, the Consultant submitted a proposal to complete the Consultant 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 Consultant agree as follows:

### AGREEMENT

#### 1 CONSULTANT SERVICES.

- 1.1 Scope of Consultant Services.** The Consultant Services are described in Attachment 1 to this Agreement. The Consultant shall, in Attachment 1, identify specific personnel who will be assigned Consultant Services along with a description of the Consultant Services to be performed or provided by personnel identified by the Consultant. Personnel identified by the Consultant for portions of the Consultant Services shall be subject to the District’s approval. The Consultant shall provide all labor, materials, equipment, tools and other items necessary to complete the Consultant Services and authorized Additional Consultant Services without adjustment of the Contract Price.
- 1.2 Consultant Services Schedule.** The Consultant shall complete the Consultant Services, and portions thereof, in accordance with the Consultant Services Schedule set forth in Attachment 1. The Consultant is liable to the District for costs, charges, losses and other damages arising out of or related to the failure of the Consultant to complete Consultant Services in accordance with the Consultant Services Schedule.
- 1.3 Consultant Work Product.** All materials generated by the Consultant or received by the Consultant in the course of completing the Consultant Services (“Consultant Work Product”) are property of the District. Consultant Work Product includes tangible and intangible items in any form, including calculations, drawings, written/graphic materials, digital/electronic files and samples. The Consultant shall provide the District access to Consultant Work Product during Consultant’s performance of Consultant Services for the District’s inspection, review and/or reproduction of Consultant Work Product.
- 1.4 Additional Consultant Services.** Services not included in the Consultant Services are Additional Consultant Services. Without invalidating this Agreement, the District may add to, delete from or modify the Consultant Services by written notice to the Consultant. If Additional Consultant Services authorized by the District do not result from the Consultant’s fault or neglect, the Consultant will be compensated for authorized Additional Consultant Services in accordance with this Agreement.
- 1.5 Consultant Standard of Care.** The Consultant Services and authorized Additional Consultant Services; if any, shall be performed and provided by Consultant: (i) using the Consultant’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 Consultant acknowledges that the Consultant Services may be provided and performed in conjunction with other services provided by other parties relating to the same subject matter. Accordingly, Consultant acknowledges and agrees that the Consultant 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 Consultant is liable to the District for losses, costs, changes and other consequences of its failure to provide perform and/or complete the Consultant Services or authorized Additional Consultant Services in a timely manner.

## **1.6 Consultant Independent Consultant.**

**1.6.1 Independent Consultant Status.** The Consultant is an independent Consultant to the District. This Agreement and the Consultant 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 Consultant. All persons providing any Consultant Services under this Agreement shall, at all times, remain an employee of Consultant. As an independent Consultant, Consultant is responsible for determining the means and methods for performing the Consultant Services.

**1.6.2 Consultant Tax and Employee Benefits Responsibilities.** The Consultant is solely responsible for deducting all federal, state and local income taxes, FICA withholdings and all other taxes, assessments or withholdings the Consultant is required to deduct from compensation due the Consultant's employees by operation of law.

**1.6.3 Consultant Employees and Agents Not District Employees.** The Consultant'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.

**1.6.4 No Consultant Authority to Contractually Bind District.** The Consultant 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 Consultant 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 Consultant default. In addition to rights and remedies of the District arising under this Agreement or by operation of law resulting from such Consultant default, the Consultant is liable to the District for all consequences of any agreement, contract or obligation purportedly entered into by the Consultant on behalf of the District.

**1.7 Consultant Warranties and Representations.** The Consultant warrants and represents to the District each of the following:

**1.7.1 Consultant Authority to Complete Consultant Services.** The Consultant warrants and represents that the Consultant and/or the Consultant's employees, as applicable, completing any of the Consultant Services possess all licenses, permits or other authorizations required by any Governmental Authority to complete the Consultant Services. The Consultant further warrants and represents that at all times while completing Consultant Services, the Consultant will maintain in full force and effect and in good standing all such licenses, permits or other authorizations.

**1.7.2 Capacity to Complete Consultant Services.** The Consultant warrants and represents that it possesses all necessary capacity to complete the Consultant 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 Consultant Services.

- 1.7.3 Conflicts of Interest.** Consultant warrants and represents that neither the Consultant or any employee of the Consultant 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.
- 1.7.4 Consultant Not Debarred.** The Consultant 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.
- 1.7.5 Breach of Warranties and Representations as Consultant Default.** If any of the foregoing warranties or representations are false or misleading or if the Consultant breaches any of the foregoing warranties or representations, the Consultant shall be deemed in default under this Agreement.
- 1.8 No Sub-Consultants.** Unless the Consultant requests District consent for completion of any portion of the Consultant Services by a Sub-Consultant to the Consultant and the District consents to such request, all Consultant Services shall be completed by the Consultant and its employees. If the Consultant requests consent of the District to complete any portion of the Consultant Services by a Sub-Consultant, the District may grant, condition or deny such consent in the sole and exclusive discretion of the District.

**2 CONTRACT PRICE.**

- 2.1 Contract Price for Consultant Services.** The Contract Price due Consultant for completing Consultant Services is a lump sum, fixed price of One Hundred Seventy-six Thousand Dollars (\$ 176,000 ). Except for authorized Additional Consultant Services allowable Reimbursable Expenses, if any, the Contract Price represents the full amount due from the District to the Consultant for Consultant’s completion of the Consultant Services, including the Consultant’s fee, personnel expenses (including all benefits and burdens), travel for the Consultant, its employees and others providing any part of the Consultant Services to and from their respective offices/homes and the Site and the District’s Administrative Offices, travel within the **Counties of Alameda**, profit and administrative and overhead costs (including without limitation insurance) arising out of or associated with this Agreement.
- 2.2 Additional Consultant Services.** If the District authorizes Additional Consultant Services, the District’s payment of such Additional Consultant Services shall be based upon a mutually agreed upon lump sum fixed price. If mutual agreement is not reached, authorized Additional Consultant Services will be compensated based upon the time reasonably necessary to complete the authorized Additional Consultant Services multiplied by the applicable personnel hourly rate set forth in Attachment 2 to this Agreement.
- 2.3 Reimbursable Expenses.** The Contract Price set forth above is inclusive of all expenses and costs incurred by the Consultant to complete the Consultant Services, except for expenses or costs for reimbursable items subject to the District’s advance written authorization.
- 2.4 Consultant Billings for Payment of Contract Price.** During the course of providing Consultant Services, Consultant shall submit monthly billing invoices to the District for payment of the Contract Price for Consultant Services, authorized Additional Consultant Services and allowable Reimbursable Expenses performed or incurred in the immediately prior month. Consultant’s billings shall be in such form and format along with such substantiating data as requested by District.
- 2.5 District Payment of Contract Price.** Within thirty (30) days of receipt of Consultant’s billing invoices, District will make payment to Consultant of undisputed amounts of the Contract Price due for Consultant Services, authorized Additional Consultant Services and authorized Reimbursable Expenses, if any. The District may withhold or deduct from amounts otherwise due Consultant

hereunder if Consultant fails to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Consultant has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom.

**2.6 Consultant’s Payments.** The Consultant shall promptly pay its employees, and others performing or providing Consultant Services or authorized Additional Consultant Services upon receipt of payments of the Contract Price from the District. If required by applicable law, rule or regulation, the Consultant’s payment to personnel providing or performing Consultant Services or authorized Additional Consultant Services shall be at least the prevailing wage rate established for the type of service provided. If prevailing wage rates apply to any personnel performing or providing Consultant Services or authorized Additional Services, the obligation for compliance rests solely with the Consultant, without adjustment of the Contract Price.

**3 INSURANCE; INDEMNITY**

**3.1 Consultant Insurance.** At all times during performance of Consultant Services and authorized Additional Consultant Services, the Consultant 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 Consultant. 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 Consultant 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 Consultant’s professional liability insurance shall cover liabilities arising out of the performance of Consultant Services under this Agreement.

**3.6 Minimum Coverage Limits.** Minimum coverage limits for the Consultant’s 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: Two Million Dollars (\$2,000,000)
Automobile Liability (combined single limit)	One Million Dollars (\$1,000,000)
Workers Compensation	In accordance with the Laws
Employers Liability	One Million Dollars (\$1,000,000)

Professional Liability	Two Million Dollars (\$2,000,000) per claim/Two Million Dollars (\$2,000,000) Aggregate
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- 3.7 Certificates of Insurance.** The Consultant shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance with the minimum coverage limits required hereunder. The Consultant will not be permitted to perform any Consultant Services until Certificates of Insurance for all required policies of insurance have been delivered to the District. No payment will be made for any Consultant Services until the District has received Certificates of Insurance evidencing the Consultant’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 Consultant. 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 Consultant Insurance Primary.** If any policy of insurance required of the Consultant overlaps with any policy of insurance maintained by the District, the Consultant’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 Consultant 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 Consultant maintained policy of insurance issues a waiver of subrogation endorsement.
- 3.12 Insurer Qualifications.** Policies of insurance shall be issued by insurers who are: (i) authorized to issue insurance policies in the State of California; and (ii) 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 Consultant Indemnity of District.** The Consultant 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 Consultant’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 Consultant, or its employees, agents and representatives. The foregoing shall include without limitation, attorneys’ fees and shall survive the termination of this Agreement or Consultant’s completion of obligations hereunder until barred by the applicable Statute of Limitations.
- 3.14.2 District Indemnity of Consultant.** The District shall indemnify and hold harmless Consultant 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 Consultant's completion of Consultant Services.
- 4.2 Termination for Default.** Either the District or Consultant 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 it 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 Consultant if: (i) Consultant becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Consultant 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 Consultant or any of Consultant's property on account of Consultant's insolvency; or (ii) if Consultant disregards applicable laws, codes, ordinances, rules or regulations. If the District exercises the right of termination hereunder, the Contract Price due the Consultant, if any, shall be based upon Consultant Services, authorized Additional Consultant 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. Consultant 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 Consultant's default hereunder, to the extent that such losses, damages or other costs exceed any amount due Consultant hereunder for Consultant Services, Reimbursable Expenses or authorized Additional Consultant Services.
- 4.3 District Right to Suspend.** The District may, in its discretion, suspend all or any part of the Consultant Services hereunder; provided, however, that if the District directs suspension of Consultant Services for sixty (60) consecutive days or more and such suspension is not caused by the Consultant's default or the acts or omissions of Consultant, upon rescission of such suspension, the Contract Price will be subject to adjustment to reflect actual costs and expenses incurred by Consultant, if any, as a direct result of the suspension and resumption of Consultant Services hereunder.
- 4.4 District Termination For Convenience.** The District may, at any time, upon seven (7) days advance written notice to Consultant terminate this Agreement, in whole or in part, for the District's convenience and without fault, neglect or default on the part of Consultant. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to Consultant or such other time as the District and Consultant may mutually agree upon. In such event, the District shall make payment of the Contract Price to Consultant for Consultant Services, authorized Additional Consultant Services or allowable Reimbursable Expenses provided or incurred through the effective date of termination. Except as set forth above, the Consultant shall not be entitled to other compensation if the District exercises the right to terminate hereunder. The Consultant is not entitled to any portion of the Contract Price for Consultant Services terminated by the District pursuant to the foregoing.
- 4.5 Consultant Suspension of Consultant Services.** If the District fails to make payment of the undisputed portion of the Contract Price when due Consultant hereunder, Consultant may, upon

seven (7) days advance written notice to the District, suspend performance of Consultant Services until payment of the undisputed portion of the Contract Price is received by the Consultant. In such event, Consultant shall have no liability for any delays to completion of Consultant Services due to, or arising out of, such suspension. Except as expressly set forth herein, there is no other right of the Consultant to suspend performance of Consultant Services.

**4.6 Consultant Obligations Upon Termination.** Upon the District's exercise of the right of termination hereunder, the Consultant shall take action as directed by the District relating to completed and in progress Consultant Services. The Consultant shall within five (5) days of the effective date of Termination, assemble and deliver to the District all Consultant 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 Consultant. 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 herefrom, 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 Consultant and the District. Neither Consultant 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 Consultant Personnel and Expense Records.** The Consultant shall maintain detailed billing records of personnel time and allowable Reimbursable Expenses to complete Consultant Services. Such records shall be maintained in accordance with generally accepted accounting principles applied in a consistent manner and shall be available to the District for inspection, review and/or reproduction upon request of the District. Consultant shall maintain billing records for at least three (3) years after completion of Consultant Services.

**5.5 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: Bruce Griffin

If to Consultant:

WTC Consulting, Inc.  
222 E. Huntington Drive  
Suite 204  
Monrovia, CA 91016

**5.6 Confidentiality.** All information and data provided by the District to the Consultant in connection with the Consultant Services are deemed confidential materials which shall not be disclosed by Consultant 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 Consultant is liable to the District and third parties for losses, costs or other damages arising out of or relating to Consultant's breach of the confidentiality obligations set forth herein.

**5.7 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 Consultant.

**5.8 Disputes.**

**5.8.1 Consultant Continuation of Services.** Except in the event of the District's failure to make undisputed payment of the Contract Price due Consultant, notwithstanding any disputes between District and Consultant hereunder, Consultant shall continue to provide and perform Consultant Services and authorized Additional Services pending a subsequent resolution of such disputes.

**5.8.2 Mandatory Mediation.** All claims, disputes and other matters in controversy between the Consultant and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the JAMS and the Commercial Mediation Rules of JAMS in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Consultant commencing arbitration proceedings pursuant to the following Paragraph.

**5.8.3 Arbitration.** All claims, disputes or other matters in controversy between Consultant and District arising out of or pertaining this Agreement which are not fully resolved through the mandatory mediation set forth above shall be settled and resolved by binding arbitration conducted under the auspices of the JAMS Commercial Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. The award rendered by the Arbitrator(s) ("Arbitration Award) shall be: (i) supported by law and substantial evidence pursuant to California Code of Civil Procedure §1296; and (ii) include findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. An Arbitration Award that does not conform to the foregoing shall be invalid and unenforceable. The District and the Consultant hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review of the Arbitration Award, the Court determines either that the Arbitration Award is not supported by substantial evidence or is based on an error of law. Any arbitration hereunder shall be conducted in the JAMS Regional Office closest to the District's administrative offices.

**5.8.4 Consultant Compliance with Government Code §900, et seq.** The foregoing dispute resolution procedures notwithstanding, neither the provisions of this Agreement issued hereunder, shall be deemed to waive, limit or modify any requirements under Government Code §900, et seq. relating to the Consultant's submission of claims to the District. The Consultant's strict compliance with all applicable provisions of Government Code §900, et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the Consultant's initiation of any other dispute resolution procedure or proceeding.

**5.8.5 Limitation on Arbitration.** The Superior Court for the State of California for the County in which the District is situated, shall have sole and exclusive jurisdiction, and an arbitrator shall have no authority, to hear and/or determine: (i) a challenge to the institution or maintenance of a proceeding in arbitration of a claim on the grounds that the claim is barred by the applicable statute of limitations, (ii) the claim is barred by a provision of the California Tort Claims Act, (iii) Consultant's failure to satisfy all conditions precedent to arbitration, (iv) the right to compel arbitration, and (v) grounds for the revocation of the arbitration agreement.

**5.8.6 Limitation on Special/Consequential Damages.** In the event of the District's breach or default of its obligations under this Agreement, the damages, if any, recoverable by the Consultant shall be limited to general damages which are directly caused by the breach or default of the District and shall exclude any and all special or consequential damages, if any. By executing the Agreement, the Consultant expressly acknowledges the foregoing limitation



to recovery of only general damages from the District if the District is in breach or default of its obligations under this Agreement; the Consultant expressly waives and relinquishes any recovery of special or consequential damages from the District.

**5.9 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.

**5.10 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.

**5.11 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.

**5.12 Entire Agreement.** The foregoing and the documents enumerated below constitute the entire agreement and understanding between the District and Consultant 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 Consultant. Documents forming a part of this Agreement are:

Attachment 1	Consultant Services Scope; Consultant Services Schedule and Consultant Personnel
Attachment 2	Personnel Rates
Attachment 3	Proposal

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

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

**“CONSULTANT”  
WTC Consulting, Inc**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT 1 TO AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT  
AND  
WTC Consulting, Inc**

1. **Consultant Services.** The Consultant Services subject to the Agreement for Consultant Services consists of the following: **Development of three four-year plans for Chabot College, Las Positas College and the District Service Center. These plans will address 1) infrastructure 2) services 3) how policies, directions and priorities are set 4) how information technology is protected 5) acquisition and life-cycle operating costs. To accomplish the above WTC Consulting, Inc will take the following steps: 1) Form Engagement Teams 2) Collect and Review Existing Documentation 3) Develop Planning Assumptions 4) Conduct Assessments 5) Develop Recommendations 6) Develop Methodology for Introducing New Technologies 7) Develop Four-year Technology Plans 8) Prepare a Final Report.**
2. **Consultant Services Schedule.** The Consultant Services shall be completed in accordance with the following schedule:

Consultant Service/Task	Completion Date
Development of three four-year plans for Chabot College, Las Positas College and the District Service Center and Final Project Report	Thursday, June 30, 2022

3. **Consultant Personnel.** Personnel of the Consultant assigned to complete Consultant Services are as follows. The Consultant acknowledges and agrees that the following are subject to District acceptance and upon the District’s acceptance of the Consultant’s proposed personnel to complete Consultant Services, such personnel shall not be changed or replaced.

Name	Title	Description of Assigned Consultant Services
Phillip Beidelman	President	Quality Assurance
Ann-Marie Lancaster	Engagement Manager	Lead Consultant
Ginny Schroeder	Practice Director	Engagement Continuity Quality Assurance
Albert Slater	Consultant	Assessment and Planning
Scott Foy	Consultant	Infrastructure Assessment

**[END OF ATTACHMENT 1]**

**ATTACHMENT 2 TO AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT  
AND  
WTC Consulting, Inc**

Billing rates for the Consultant's personnel providing Consultant Services are as set forth below. The following billing rates are not subject to adjustment during the Term of the Agreement.

<b>Title/Position and Name</b>	<b>Hourly Rate</b>
President, Phillip Beidelman	\$380
Engagement Manager, Ann-Marie Lancaster	\$275
Practice Director, Ginny Schroeder	\$330
Consultant, Albert Slater	\$275
Consultant, Scott Foy	\$275

**[END OF ATTACHMENT 2]**



## Attachment IV

### Exceptions to Agreement for Consultant Services

WTC Consulting, Inc. takes exception to the following sections of the Agreement for Consultant Services, which was provided in the RFQ. We have included our suggested language changes.

**Section 1.3 Consultant Work Product.** We request adding the following statement at the end of this paragraph.

*Notwithstanding the foregoing, Consultants proprietary methodology, proprietary software tools and their derivative (collectively, "Proprietary Materials") used to create items such as but not limited to the Port Models, Telecommunications Room Surveys, outside plant segment analyses, and Capital and Life Cycle Operating Budget Models (collectively, "Models") are the intellectual property of Consultant. Except for the Work Material of the District contained within the Models, which shall remain the property of the District, the Models and their derivatives are the intellectual property of Consultant. The District shall own all right, title, and interest in and to the values-only electronic output of the Models.*

**Section 5.4 Consultant Personnel and Expense Records.** We request to strike this section as we are proposing a fixed cost that includes fees and expenses.

**Section 5.6 Confidentiality.** We request adding the following wording to the last sentence in this paragraph ...to the extent that Consultant is at fault, with a monetary limit equal to the contracted dollar amount of this Contract.

**Attachment 2 to Agreement for Consulting Services.** We request to strike this attachment since we are proposing a fixed cost that includes fees and expenses.