

AGREEMENT NO. 19500-24-D0)X

**AGREEMENT BETWEEN
FIRST 5 SAN MATEO COUNTY
AND
INDEPENDENT CONTRACTOR
NAME OF CONTRACTOR
(Project Name & Services)**

This **Project Name & Services** Agreement (the "Agreement") is entered into **July 1, 202X**, by and between First 5 San Mateo County ("F5SMC" or the "Commission") and **Name of Contractor** (the "Contractor") (collectively, the "Parties").

W I T N E S S E T H :

WHEREAS, pursuant to Health & Safety Code Section 130100, *et seq.*, the Commission may contract with the independent contractor for the furnishing of such services to or for the Commission; and

WHEREAS, it is necessary and desirable that the Contractor be retained for the purpose of providing xxxxx

WHEREFORE, the Commission and the Contractor agree as follows:

1. **Exhibits and Attachments**

- Exhibit A – Scope of Work
- Exhibit B – Payments
- Exhibit C – Compliance with Section 504 of Rehabilitation Act of 1973, as amended
- Exhibit D – Intellectual property Protocol
- Attachment A1 – Detail Scope of Work with Timelines

2. **Services to be Performed**

In consideration of the payments set forth in Exhibit B, the Contractor, under the general direction of the Chairperson of the Commission, or his/her authorized representative, with respect to the product or the result of the Contractor's services, shall perform services as described in Exhibit A (the "Services").

The Contractor shall ensure compliance with all state, federal and local laws or rules applicable to performance of the Services required under this contract.

3. **Agreement Term and Termination**

The term of this Agreement shall be from **July 1, 202X - June 30, 202X**. The Contractor agrees that the requirements of this Agreement pertaining to Indemnity in Paragraph 9, Confidentiality in Paragraph 10, Records in Paragraph 14 and Governing Law in Paragraph 16 shall survive the termination of this Agreement.

The Executive Director, after consultation with the Chair of the Commission, may at any time from the execution of this Agreement, terminate this Agreement, with or without cause upon 30 days written notice specifying the effective date of such termination. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (collectively, "Materials") prepared by the Contractor under this Agreement shall become the property of the Commission and shall be promptly delivered to the Commission.

In the event of termination, the Contractor shall be paid for all Services satisfactorily performed until termination.

In the event that the Commission makes any advance payments, the Contractor agrees to refund any amounts in excess of the amount owed by the Commission if the Agreement is terminated at the time the Agreement is terminated. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed satisfactorily to the work/services required by the Agreement.

4. **Payments**

- A. **Maximum Amount:** In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit A, the Commission shall make payment to the Contractor in the manner specified herein and in Exhibit B. The Commission reserves the right to withhold payment if the Commission determines that the quantity or quality of the Services performed is unacceptable. In no event shall total payment for services under this Agreement exceed **XXXXXX THOUSAND DOLLARS (\$XXX,XX0)**.
- B. **Timeline for Submitting Expenditures:** Contractor expenditures will be paid on a reimbursement basis only. On a quarterly basis, the Contractor shall submit actual expenses in Persimmony (the "Report"). This Report shall be submitted within thirty (30) days after the end of each quarter being reported on for each funded fiscal year under this Agreement in accordance with the provisions of Exhibit B, except for Quarter 4th. The Reports are due in Persimmony on or before October 30, January 30, April 30, and July 15 of each fiscal year. The Contractor may refer to guidelines from the Grantee Handbook for the submittal of the Report and will be provided on request.

5. **Ownership of Intellectual Property**

All products, concepts, inventions, discoveries and improvements, however recorded, prepared or generated by the Contractor in the performance of this Agreement shall be the exclusive property of the Commission and the Commission reserves all rights, including but not limited to the copyrights. It is the Parties' intention that any product or concept created by the Contractor under this Agreement be work/services for hire. The phrase "products, concepts, inventions, discoveries and improvements" as used in the Agreement shall include, but will not be limited to, documentation, findings, designs, reports, forms, evaluations, analyses, methods of analysis, videos, images, diagrams, brochures, manuals, books, curricula, presentations, other writings, systems and software developed related to the Services under this Agreement.

It shall be further presumed that any product, concepts, inventions, discoveries and improvements recorded, prepared or generated by the Contractor during the term of this Agreement and related to this agreement were recorded, prepared or generated in the performance of this Agreement unless the Contractor is able to show by documented proof that such product, invention, discovery or improvement was developed solely with the Contractor's facilities or resources and is unrelated to this Agreement. If any product, invention, discovery or improvement related to this Agreement shall be determined to be the property of the Contractor, the Commission shall be granted a nonexclusive, irrevocable, royalty free license to use said product, invention, discovery or improvement.

This Agreement shall preclude the Contractor from using or marketing products developed or originated for the Commission hereunder commercially or in any manner that generates revenue unless and until the Parties execute a marketing agreement. Failure to comply with the obligations of this provision shall constitute a Material Breach of the Agreement. Because the Contractor and the Commission agree that damages for violation of this provision would likely be difficult to ascertain and calculate, the Contractor agrees to pay the Commission liquidated damages in the amount of \$15,000 for each violation of this provision. In addition,

the Contractor and the Commission agree that a violation of this provision would result in irreparable harm to the Commission.

6. **Relationship of Parties**

The Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of the Commission or the County of San Mateo and that the Contractor acquires none of the rights, privileges, powers or advantages of Commission or County employees.

7. **Availability of Funds**

The County/Commission may terminate this Agreement or a portion of the services referenced in the Exhibits and Attachments based upon unavailability of Federal, State, or County/Commission funds, by providing written notice to Contractor as soon as is reasonably possible after the County/Commission learns of said unavailability funding.

8. **Insurance**

The Contractor shall not commence Services or be required to commence Services under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by the Executive Director of the Commission. The Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the Commission with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Commission of any pending change in the limits of liability or of any cancellation or modification of the policy.

A. Worker's Compensation and Employer's Liability Insurance. The Contractor shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the Services of this Agreement.

B. Liability Insurance. The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing Services covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from the Contractor's operations under this Agreement, whether such operations be by himself/herself or by any person or entity performing or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---------------------------------------|-------------|
| (1) Comprehensive General Liability | \$1,000,000 |
| (2) Motor Vehicle Liability Insurance | \$1,000,000 |

The Commission shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the Commission shall be primary insurance to the full limits of liability of the policy, and that if the Commission has other insurance against the loss covered by such a policy, and that such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the Commission at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further Services pursuant to this Agreement.

9. **Indemnity**

The Contractor shall indemnify and hold harmless the Commission, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, on account of: (A) injuries to or death of any person, including the Contractor, or (B) damage to any property of any kind whatsoever and to whomever belonging, or (C) any sanctions, penalties, or claims of damages resulting from the Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any loss or cost, including but not limited to that caused by the concurrent active or passive negligence of the Commission, its officers, agents, employees, or servants resulting from the performance of any Services required of the Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the Commission has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in section 2778 of the California Civil Code.

10. **Confidentiality**

All data produced or compiled by the Contractor shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of Commission. All financial, statistical, personal, technical, and other data and information relating to the Commission's operations which is made available to the Contractor in order to carry out this Agreement shall be presumed to be confidential. The Contractor shall protect said data and information from unauthorized use and disclosure by the observance of the same or more effective procedures as the Commission requires of its own personnel. The Contractor shall not, however, be required by this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the Agreement or for which disclosure is otherwise required by law.

11. **Non-Assignability**

The Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of the Commission, and any attempted assignment without such prior written consent in violation of this section shall automatically terminate this Agreement.

12. **Payment of Permits/Licenses**

It shall be the Contractor's responsibility to obtain any license, permit or approval required from any agency for work/services to be performed at his/her own expenses, prior to commencement

of said work/services or forfeit any right to compensation under this Agreement.

13 **Non-Discrimination**

The Contractor shall comply with the non-discrimination requirements described below:

Section 504 of the Rehabilitation Act of 1973

1. Pursuant to Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112), as amended ("Section 504"), the Contractor agrees that no otherwise qualified disabled individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
2. Compliance with Section 504 requires that all benefits, aids and services are made available to disabled persons on an equivalent basis with those received by non-disabled persons. The Contractor shall agree to be in compliance with Section 504 requirements by signing the Letter of Assurance, attached and incorporated herein as Exhibit C.

Non-Discrimination - General

No person shall, on the grounds of age, ancestry, creed, color, disability, marital status, medical conditions, national origin, political or religious affiliation, race, sex, sexual orientation or any non-job-related criteria be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the Executive Director after consultation with the Chair of the Commission, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a Commission or County of San Mateo Agreement for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; and/or iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the Executive Director, on behalf of the Commission.

To effectuate the provisions of this paragraph, the Executive Director shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) offset all or any portion of the amount described in this paragraph against amounts due to the Contractor under the Agreement or any other Agreement between the Contractor and the Commission or the County of San Mateo. The Contractor shall report to the Executive Director the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Department of Fair Employment and Housing or any other entity charged with the investigation of allegations within 30 days of the Contractor's receipt of such filing, provided that within such 30 days such entity has not notified the Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. The Contractor shall provide the Commission with a copy of its response to the Complaint when filed.

Non-Discrimination - Employment

The Contractor shall ensure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. The Contractor's equal employment opportunity policies shall be made available to the Commission upon request.

Equal Benefits

With respect to the provision of employee benefits, the Contractor shall comply with the San Mateo County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

14 **Retention of Records**

- The Contractor shall maintain all records related to this Agreement for no less than three years after the Commission makes final payment or after termination of this Agreement and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of the Commission, the County of San Mateo, the State of California and/or Federal grantor agencies.

15 **Merger Clause**

- This Agreement, including exhibits and attachments included herewith and incorporated by reference, constitutes the sole and entire Agreement of the Parties hereto and correctly states the rights, duties, and obligations of each Party as of this document's date. All subsequent modifications shall be in writing and executed by the Parties.

16 **Governing Law**

- The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the Parties hereunder, the interpretation and performance of this Agreement shall be governed by the laws of the State of California. Any lawsuit related to this Agreement must be venued in the San Mateo County Superior Court.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have affixed their hands to this **Project Name and Services** to F5SMC Agreement.

[ORGANIZATION NAME
Street Address
City, State Zip Code]

FIRST 5 SAN MATEO COUNTY
1700 S. El Camino Real, Suite 405
San Mateo , CA 94402

_____	_____
Print Name and Title	Commission Chair
_____	_____
Signature	Date
_____	19540-XXXX
Date	Budget Unit

Grantee's Tax ID Number	

Template

**AGREEMENT BETWEEN
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NAME OF CONTRACTOR
(Project Name and Services)**

EXHIBIT A

SCOPE OF WORK

I. Introduction

Pursuant to the Agreement for services between **Name of Contractor** effective **July 1, 202X**, the Contractor shall provide the services as described in this Exhibit and detailed more fully in Attachment A-1 over the term of this Agreement from **July 1, 202X to June 30, 202X**.

II. Supplantation

Funds provided pursuant to this Agreement are provided pursuant to Proposition 10 and are intended to supplement, expand upon, and enhance activities funded from existing sources. Contractor shall not use funds under this Agreement to supplant existing resources or services.

III. Description of Services to be Performed by the Contractor

The Contractor will perform the scope of work for July 1, 202X through June 30, 202X as following:

Deliverable 1:

xxxxx

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NAME OF CONTRACTOR
(Project Name and Services)**

EXHIBIT B

PAYMENTS

1. Payment shall be conditioned on the performance of the services described in Exhibit A to the full satisfaction of the Executive Director, on behalf of First 5 San Mateo County.
2. The amount that the Commission shall be obligated to pay for services rendered under this Agreement shall not exceed **XXXX THOUSAND DOLLARS (\$XXX,XXX)** for the Agreement term of **July 1, 202X to June 30, 202X**. The Commission shall pay the Contractor for actual Services performed in accordance with approved budget. Payment shall be made upon receipt of invoice itemizing all services rendered from the Contractor. Invoices shall be submitted to First 5 San Mateo County, with accompanying documentation of services rendered.
3. Payment for all services provided pursuant to this Agreement is contingent upon the availability of funds under Proposition 10. In the event such funds are not provided or not available to the First 5 San Mateo County, the Commission shall not be liable for any payment whatsoever, including, but not limited to, payments that are based on Commission funds. The Commission may terminate the Agreement for unavailability of State funds. In this event, the Commission shall, through its Executive Director, inform the Contractor of such unavailability as soon as it is known, and to the extent legally possible pay all outstanding amounts due.

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(Project Name and Services)

EXHIBIT C

**ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE
REHABILITATION ACT OF 1973, AS AMENDED**

The undersigned (the "Contractor") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable U.S. Department of Health and Human Services (DHHS) regulation(s), and all guidelines and interpretations issued pursuant thereto.

The Contractor gives this assurance in consideration of and for the purpose of obtaining contracts after the date of this assurance. The Contractor recognizes and agrees that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor.

The Contractor: (Check a or b)

- a. () employs fewer than 15 persons *
- b. () employs 15 or more persons and, pursuant to DHHS regulation (45 C.F.R. 84.7 (a)), has designated the following person(s) to coordinate its efforts to comply with the applicable DHHS regulation(s).

Name of 504 Person – Type or Print

Name of Contractor – Type or Print

Address

City

State

Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

Date

Signature and Title of Authorized Official

*Exception: DHHS regulations state that:

“If a recipient with fewer than 15 employees finds that, after consultation with a handicapped person seeking its services, there is no method of complying with (the facility accessibility regulations)...other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.”

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**INDEPENDENT CONTRACTOR
NAME OF CONTRACTOR
(Project Name and Services)**

EXHIBIT D

INTELLECTUAL PROPERTY PROTOCOL

The protocol provided below addresses how and when a person must obtain permission to disseminate data, findings or products emerging from First 5 San Mateo County ("F5SMC" or "Commission")-funded projects or their evaluations.

1. Categories of Materials

The following tiers represent the general types or categories of dissemination and the F5SMC's policy for each category.

- Tier 1** acknowledges that cleaned and reviewed data, and summaries of cleaned/reviewed data are commonly shared among individuals and/or organizations (collectively "Persons"). The F5SMC encourages this practice and does not expect any advance notice, preapproval or involvement.
- Tier 2** recognizes that data sets are commonly analyzed and findings are broadly shared through publication, teaching and other methods of dissemination. These activities can be viewed as beneficial to the community and therefore the F5SMC generally encourages them. However, prior to any publication of F5SMC-funded and produced materials, such material shall be submitted to the F5SMC for prior approval for input and to ensure inclusion of appropriate F5SMC acknowledgment. Failure to obtain approval prior to dissemination is a violation of this protocol.
- Tier 3** acknowledges that in some instances, Persons will develop analyses, Materials or products for distribution and/or sale (e.g. software programs, CD-ROMs, brochures, manuals, curricula and books). Persons need to acknowledge that in such instances, the F5SMC owns the rights to such analyses, Materials or products. Consequently, no person shall sell or otherwise appropriate any analyses, Materials or products which are made possible, in whole or in part, by F5SMC funded support, without the express prior approval of the F5SMC. When presented with a request by a person for prior approval, the F5SMC shall decide whether, and to what extent, such analyses, Materials or products may be appropriated or sold, the determination of which shall include consideration of such issues such as profit sharing, on a case by case basis. Failure to obtain approval prior to dissemination is a violation of this protocol. The decision whether to grant approval is the Commission's alone and is not subject to a requirement of good cause.

2. Definitions and Process

At present, F5SMC Agreements provide that F5SMC owns any products from F5SMC-funded projects. The protocol provided below addresses how/when a person must obtain permission to disseminate data, findings or products emerging from F5SMC-funded projects or their evaluations.

Tier 1- Cleaned/Reviewed Data and Summary of Findings

Definition:

This category generally includes data that is considered to be "in the public domain." This includes data from general surveys as well as specific surveys and other data collection methods utilized to identify the "results" of F5SMCfunded efforts (-e.g. percentage of WIC clients who initiate breast feeding).

This data has been cleaned and reviewed for clarity and reasonable validity. This does not include "draft" data or draft summaries which have not been approved or finalized by the originator.

Criteria/Conditions for Release of Information:

In the spirit of cooperating/coordinating with all Persons who are working to improve the health and well-being of children and families in the County, these data may be released without specific F5SMC review and approval provided that appropriate measures are taken to ensure client confidentiality AND provided that the methods used to collect the data are reasonably valid and are available for review upon request.

Tier 2 Analytic Reports for Public Dissemination, Publication and/or Teaching

Definition:

This category includes reports that analyze cleaned data and their significance and which are to be used for public dissemination, publication, or teaching.

Criteria/Conditions for Release of Information:

Reports for public dissemination, publication and/or teaching must (1) acknowledge F5SMC support for the intervention or evaluation effort; and (2) be submitted to F5SMC prior to distribution/publication for approval, feedback and comments. This includes reports which analyze the status of population (results) and/or those which assess the effectiveness of funded interventions.

Client confidentiality must be maintained and methods of data collection utilized must be included or available upon request. Requests for comments/feedback shall be submitted to F5SMC offices. The request shall then go to the full F5SMC for comment and/or approval. The decision whether to grant approval is the Commission's alone and is not subject to a requirement of good cause.

Tier 3 Products with Sales or ProfitProducing Potential

Definition:

This category includes any analyses, Materials or products wholly or partially created or produced with F5SMC support which may be sold or otherwise appropriated. This may include, but is not limited to: manuals, brochures, software programs, CDROMs, curricula, and books.

Process for Consideration and /or Approval of Product Sale:

Any Person with a F5SMCsupported product for sale or for profit must submit a request to F5SMC for approval for sale specifying the use of profits prior to its sale. Terms of approval of such requests will be considered on a case by case basis.

Requests shall be submitted to F5SMC offices. The request shall go to the full F5SMC for comment and/or approval. The decision whether to grant approval is the Commission's alone and is not subject to a requirement of good cause.