

Agreement No. _____

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND HATCHUEL
TABERNIK & ASSOCIATES**

This Agreement is entered into this _____ day of _____, 20____, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Hatchuel Tabernik and Associates, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of researching and identifying potential grant opportunities for the County and grant writing services

Now, therefore, it is agreed by the parties to this Agreement as follows:

a. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

b. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

c. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed FIFTY THOUSAND DOLLARS (\$50,000) for the term ending JUNE 30, 2016. In the event that the County exercises its option to extend the Agreement's term through JUNE 30, 2017, then the County's maximum fiscal obligation under this Agreement shall not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration.

d. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from NOVEMBER 17, 2015 through JUNE 30, 2016. Pursuant to Section 19, the County, in its sole discretion, may opt to extend the term of this Agreement to JUNE 30, 2017.

e. Termination; Availability of Funds

This Agreement may be terminated by Contractor or by the COUNTY MANAGER or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

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

f. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

g. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

h. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, 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 other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County 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 Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

i. **Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

j. **Insurance**

a. **General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by 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 County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. **Workers' Compensation and Employer's Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. **Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work 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 Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

☒ Comprehensive General Liability... \$1,000,000

(Applies to all agreements)

☐ Motor Vehicle Liability Insurance... \$1,000,000

(To be checked if motor vehicle used in performing services)

☐ Professional Liability..... \$1,000,000

(To be checked if Contractor is a licensed professional)

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, 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, County, 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 work and payment pursuant to this Agreement.

k. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

I. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

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

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability 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

any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:

- ☐ Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- ☐ Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- ☐ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- ☐ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section k, above. Such duty shall include reporting of the filing of any and all charges with

the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

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 County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract 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 County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

m. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed Section c, above, is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

n. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

o. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

p. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

q. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Connie Juarez-Diroll, Legislative Director
Address: 400 County Center, Redwood City CA 94063
Telephone: 650-599-1341
Email: CJuarez-Diroll@smcgov.org

In the case of Contractor, to:

Name/Title: Tim Tabernik, President
Address: 2560 Ninth Street, Suite 211, Berkeley, CA 94710
Telephone: 510-559-3193
Facsimile: 510-559-3166
Email: ttabernik@htaconsulting.com

r. Electronic Signature

If both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☒ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☐ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

s. County Option To Extend Agreement Term

The County, in its sole discretion, may opt to extend the term of this Agreement up to and including JUNE 30, 2017. If the County exercise such option, Contractor will continue to provide services pursuant to the terms and rates set forth in Exhibit B and the maximum total payment to Contractor as set forth in this Agreement and Exhibit B shall not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000). Notice of the County's exercise of this option must be set forth in a writing signed by the County Manager or his designee and transmitted to Contractor no later than the close of business on June 30, 2016.

* * *

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES. NO WORK WILL COMMENCE UNTIL THIS DOCUMENT HAS BEEN SIGNED BY THE COUNTY PURCHASING AGENT OR AUTHORIZED DESIGNEE.

For Contractor:

Contractor Signature

Date

Contractor Name (please print)

For County:

Purchasing Agent Signature
(Department Head or
Authorized Designee)
County of San Mateo

Date

Purchasing Agent Name (please print)
(Department Head or **Authorized** Designee)
County of San Mateo

Purchasing Agent or **Authorized** Designee
Job Title (please print)
County of San Mateo

Budget Unit

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

In consultation with the County's Legislative Director, the Contractor shall serve as the County's grant writer in the areas of behavioral health, human services, education, public safety, and other policy areas as assigned by the Legislative Director, and shall perform the services which shall include, but not be limited to the following:

1. Meet with individual departments annually, or as needed and authorized by the Legislative Director, to identify department grant priorities. Identified grant priorities will constitute basis of grant opportunity reports and applications.
2. Research federal, state and foundation grant programs and opportunities for County departments, provide monthly grant opportunities report to the Legislative Director, and select County staff. In identifying grants, Contractor will consider County needs and likelihood of a successful grant application. Grant notices should provide County staff with adequate time to develop a competitive and comprehensive grant application.
3. Prior to the development of a grant proposal, Contractor will provide a Scope of Work that includes: project timeline, lines of accountability and decision-making, definitions of success, communication styles, deliverables and budget for the development of the grant application. Scope of Work should help County staff interpret program requirements and anticipate what steps are needed in order to submit a competitive grant application.
4. Following County review of and in advance of the development of an application, the County and Contractor will agree to the elements of the Scope of Work identifying areas of responsibility of specified deliverables and tasks. Legislative Director will then provide written authorization to proceed with agreed to services.
5. Using agreed upon Scope of Work as a guide, grant development services will include:
 - Application Documents List—itemized list of all data, information and documents required for submission of grant application. List should include due dates to ensure timely submission to Contractor by County staff.
 - Document Collection—compilation of all required documents from County staff ensuring certain items are vetted for completeness.
 - Grant Narratives—working closely with County staff, develop strong and compelling funding arguments that are also responsive to program guidelines.
 - Program design and evaluation—development of program design, evaluation and research models as needed and requested by the County.
 - Budgets and Budget Narratives—assistance to County staff in the development and/or refining of grant application budget(s), as needed and requested by the County.
 - Supporting Documents—assistance with the creation of new supporting documents, including but not limited to: abstracts, project timelines, flow charts, organizational charts, logic models, and other documents requested by the grant funders as needed and requested by the County.
 - Final Grant Review—thorough grant application review checking to ensure that all grant requirements have been fulfilled; packaging of grant proposal in advance of deadline and according to grantor instructions. Unless specified in the agreed upon scope of work, County will be responsible for submission of the final application.
6. By the 5th of every month, Contractor shall submit an invoice and monthly progress report for the prior month to the County's Legislative Director. The monthly progress report should include:
 - Total hours spent on producing grant applications;

- Detailed breakdown of how many hours were spent on developing each grant application;
- All billable communication;
- A list of grant opportunities that were sent to the County during that month; and
- If notified of the outcome of a grant application that was previously submitted, the outcome should also be included in the monthly report.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

a. Fee Schedule

1. Total payment to Contractor shall not exceed FIFTY THOUSAND DOLLARS (\$50,000) for the term of November 3, 2015 to June 30, 2016;
2. County shall pay for services rendered and reimburse for direct project expenses agreed to in writing in advance (i.e. printing, travel, etc.) at the rates listed below;

<u>Staff</u>	<u>Rate</u>
Principals	\$175/Hour
Senior Associates	\$150/Hour
Associates	\$125/Hour
Project Coordinators	\$100/Hour
Project Assistants	\$50/Hour

<u>Materials</u>	<u>Rate</u>
Duplication	\$0.10/Page
Color Printing	\$0.35/Page
Postage/Mailing	Post Office/FedEx Rates
Travel	½ hourly rate plus parking, tolls or train fares

b. Reimbursable Travel Expenses

1. Estimated travel expenses must be submitted to the County's Legislative Director for advance written authorization before such expenses are incurred. No travel expenses are reimbursable under this Agreement unless such written pre-authorization is obtained.

2. If in doubt about the propriety of LM&I Expenses, Air & Car Expenses, or Other Expenses, Contract should err on the side of caution and not incur an expense at that level or obtain authorization from the County's Legislative Director.

c. Payments

1. County shall make payments for services pre-approved by the Legislative Director no later than the tenth (10th) working day after receipt of a monthly statement of services provided to the County by Contractor; and
2. County shall have the right to withhold payment if County determines that quality and or quantity of the work performed is unacceptable