RESOLUTION - ACTION REQUESTED 2014-426

MEETING: August 19, 2014

TO: The Board of Supervisors

FROM: Chevon Kothari, Human Services Director

RE: Approve an Agreement with Capacity Consulting for Fiscal Year 2014-2015

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Capacity Consulting to Research Grant Opportunities and Special Projects as Directed by the Human Services Director, and Authorize the Board of Supervisors Chair to Sign the Agreement.

This agreement activity has grown beyond grant writing for community needs to include consulting services and interagency collaborations. The attached agreement and scope of work outlines the various tasks that Capacity Consulting will do for the Department. The contract has a not to exceed amount of $30,000.

Through the efforts of Capacity Consulting, to date the County has been awarded several grants including the Blue Shield Foundation $84,000 for outreach activities as they pertain to Health Care Reform and a Substance Abuse and Mental Health Services Administration (SAMHSA) grant for $716,000 to fund Drug Court activities.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The previous agreement with Capacity Consulting LLC was approved by the Board on September 24, 2013 by Resolution 2013-412.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If the Board chooses not to sign this agreement, the Department may be hindered in applying for grants and exploring new opportunities. It may also be more difficult to facilitate and organize interagency collaborations without these services.

FINANCIAL IMPACT:
This agreement will be split equally between the Human Services Administrative Budget, Social Services Budget and the Behavioral Health Budget for the fiscal year 2014-2015. There is no impact to the County General Fund.

ATTACHMENTS:
Contract for Services FY14-15 Admin(DOC)
Attachment A Admin Contract FY14-15 (DOC)
CAO RECOMMENDATION
Requested Action Recommended

[Signature]
Rick Benson, County Administrator/Office

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Janet Bibby, District III Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
CONTRACT FOR SERVICES

This Contract made this 19th day of August, 2014 between:

COUNTY: MARIPOSA COUNTY
Human Services Department
5362 Lemea Lane
P.O. Box 99
Mariposa, CA 95338

and

CONTRACTOR: Capacity Consulting, LLC
P.O. Box 3008-353
Mariposa, CA 95338

ARTICLE I. TERM OF CONTRACT

1.01 Contract Term: This Contract shall become effective as of August 1, 2014 and shall terminate on June 30, 2015 unless terminated in accordance with the provisions of Article 7 of this Contract.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the expressed intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Contract.

2.02 Contractor Qualifications: Contractor warrants that Contractor has the necessary experience and technical skills to provide services under this Contract.

2.03 Contract Management: Contractor shall report to the Behavioral Health Deputy Director who will review the activities and performance of the Contractor and administer this Contract.
ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to furnish the following services: Contractor shall provide the services described in Exhibit “A” attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with County and the results of the work shall be monitored by the Director of Human Services or his/her designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

3.02 Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services including measures to protect the safety of the traveling public and Contractor's employees. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.

3.03 Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Contract. County may not control, direct, or supervise Contractor's assistants or employees in the performance of those services.

Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

4.01 Compensation: In consideration for the services to be performed by Contractor, County agrees to pay Contractor in proportion to the services satisfactorily performed. The total sum, not to exceed Thirty thousand dollars ($30,000), to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:

[ ] Total sum to be paid upon completion of services.

or

[ X ] Incremental payments based on the following schedule:

| Payment schedule per Exhibit “A”. |
4.02 **Invoices:** Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County.

4.03 **Date for Payment of Compensation:** County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.

4.04 **Expenses:** Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of materials, equipment, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

**ARTICLE 5. OBLIGATIONS OF CONTRACTOR**

5.01 **Tools and Instrumentalities:** Contractor will supply all tools and instrumentalities required to perform the services under this Contract. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.

5.02 **Indemnification:** Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure of Contractor or Contractor's assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars ($1,000,000) to cover such claims or in an amount determined appropriate by the County Risk Manager. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Contract, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.03 **General Liability and Automobile Insurance:** During the term of this Contract Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least $1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work
performed by Contractor and its sub-contractors, and that no other insurance effected by County or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.

5.04 Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Contract, certificates of insurance evidencing coverage as set forth in paragraphs 5.02 and 5.03 above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Contract, without thirty (30) days written notice to County prior to the effective date of such cancellation.

5.05 Workers’ Compensation: During the term of this Contract Contractor agrees to provide workers’ compensation insurance for Contractor’s employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor’s employees or agents.

5.06 Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

5.07 State and Federal Taxes: As Contractor is not County’s employee; Contractor is responsible for paying all required state and federal taxes. In particular:

a. County will not withhold FICA (Social Security) from Contractor’s payments;

b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;

c. County will not withhold state or federal income tax from payment to Contractor;

d. County will not make disability insurance contributions on behalf of Contractor;

e. County will not obtain workers’ compensation insurance on behalf of Contractor.

5.08 Records: It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Contract shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents
and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Contract are prepared specifically for the County and are not necessarily suitable for any future or other use.

5.09 **Contractor’s Books and Records:** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

5.10 **Assignability of Contract:** It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

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**ARTICLE 6. OBLIGATIONS OF COUNTY**

6.01 **Cooperation of County:** County agrees to comply with all reasonable requests of Contractor and to provide access to all documents as permitted by law necessary to the performance of Contractor’s duties under this Contract.

6.02 **Assignment:** Neither this Contract nor any duties or obligations under this Contract may be assigned by County without the prior written consent of Contractor.

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**ARTICLE 7. TERMINATION OF CONTRACT**

7.01 **Termination on Occurrence of Stated Events:** This Contract shall terminate automatically on the occurrence of any of the following events:

1. Bankruptcy or insolvency of Contractor;
2. Death of Contractor.
3. Violation of Scope of Work; Exhibit A: Sec II(c)

7.02 **Termination by County for Default of Contractor:** Should Contractor default in the performance of this Contract or materially breach any of its provisions, County, at County’s option, may terminate this Contract by giving written notification to Contractor.
7.03 **Termination for Convenience of County:** County may terminate this Contract at any
time by providing a notice in writing to Contractor that the Contract is terminated. Said
Contract shall then be deemed terminated and no further work shall be performed by
Contractor. If the Contract is so terminated, the Contractor shall be paid for that
percentage of the phase of work actually completed, based on a pro rata portion of the
compensation for said phase satisfactorily completed at the time the notice of
termination is received.

7.04 **Termination of Funding:** The parties acknowledge that the nature of government
finance is unpredictable and that the rights and obligations set forth in this Contract are
necessarily contingent upon the receipt and/or appropriation of the necessary funds. In
the event that funding is terminated, in whole or in part, for any reason, at any time,
this Contract and all obligations of County arising from this Contract shall be
immediately discharged. County agrees to inform Contractor no later than thirty (30)
calendar days after County determines, in its sole judgment, that funding will be
terminated and the final date for which funding will be available.

**ARTICLE 8. GENERAL PROVISIONS**

8.01 **Notices:** Any notices to be given hereunder by either party to the other may be effected
either by personal delivery in writing or by mail, registered or certified, postage prepaid
and return receipt requested. Mailed notices shall be addressed to the parties at the
addresses appearing in the introductory paragraph of this Contract, but each party
may change the address by written notice in accordance with this paragraph. Notices
delivered personally will be deemed communicated as of actual receipt; mailed notices
will be deemed communicated as of two (2) days after mailing.

8.02 **Entire Agreement of the Parties:** This Contract supersedes any and all contracts,
either oral or written, between the Parties hereto with respect to the rendering of
services by Contractor for County and contains all the covenants and contracts
between the Parties with respect to the rendering of such services in any manner
whatsoever. Each Party to this Contract acknowledges that no representatives,
inducements, promises, or contracts, orally or otherwise, have been made by any
Party, or anyone acting on behalf of any Party, which are not embodied herein, and
that no other contract, statement, or promise not contained in this Contract shall be
valid or binding. Any modification of this Contract will be effective only if it is in writing
signed by the Party to be charged and approved by the County as provided herein or
as otherwise required by law.

8.03 **Partial Invalidity:** If any provision in this Contract is held by a court or competent
jurisdiction to be invalid, void, or unenforceable, the remaining provisions will
nevertheless continue in full force without being impaired or invalidated in any way.

8.04 **Attorney's Fees:** If any action at law or in equity, including an action for declaratory
relief, is brought to enforce or interpret the provisions of this Contract, the prevailing
Party will be entitled to reasonable attorney's fees, which may be set by the court in
the same action or in a separate action brought for that purpose, in addition to any other relief to which that Party may be entitled.

8.05 Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

8.06 Waiver: In the event that either County or Contractor shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition or obligation.

8.07 Governing Law: This Contract and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Contract shall be held exclusively in a state court in the County of Mariposa.

Executed in Mariposa, California, on the date and year first above written.

CONTRACTOR:

Capacity Consulting, LLC

By: [Signature]
Heather Bernikoff  (date)

(printed name)

COUNTY:

County of Mariposa

BY: [Signature]
Kevin Cann, Chair  (date)
Mariposa County Board of Supervisors

APPROVED AS TO FORM:

By: [Signature]
Steven W. Dahlem  
County Counsel
EXHIBIT A

SCOPE OF WORK

Projects, research, presentations, and reporting to be initiated upon the request of the Human Services Director or Deputy Directors.

Research and present grant opportunities and special projects to the Department of Human Services (Department) through the Deputy Directors’ scheduled meetings.

Research and present grant opportunities and special projects through the Deputy Directors’ scheduled meetings to Mariposa County community partners.

Assist the Department in the proposal and grant application writing process as requested by the Department Director.

Grant applications will be submitted to the grantor by the department, including copying the final application and postage.

Help define and work on special projects as identified by the department.

Report to the Department Director as often as necessary and at least 'once a month, on the Progress of any research or ongoing grant application process.

Use funds as available for match requirements in other grants. Effectiveness of this agreement will be based on the following, but not limited to, criteria: The number of grant possibilities identified.

The number of grant applications completed.

The number of grants awarded.

The dollar amount of the grant awards.

Outcome measures from special projects.

Hours will be invoiced monthly at a varying dollar rate of $35.00- to $100.00 depending on persons hired on a per project basis.