RESOLUTION - ACTION REQUESTED 2017-52

MEETING: February 7, 2017

TO: The Board of Supervisors

FROM: Doug Binnewies, Sheriff-Coroner-Public Administrator

RE: Approve Professional Service Agreement with Preparative Consulting

RECOMMENDATION AND JUSTIFICATION:
Approve a 13 Month Professional Service Agreement with Preparative Consulting in the Not-To-Exceed Amount of $50,000 to Prepare a Current and Comprehensive Mariposa County Emergency Operations Plan; and Authorize the Board of Supervisors Chair to Sign the Agreement.

The Mariposa County Emergency Operations Plan of 2005 continues in draft form and has been periodically updated over the years. The current plan is in critical need of update, which upon completion will essentially be a new plan.

When Departmental Heads, Supervisors and Managers retire or move to other areas of responsibility, often directives, contractual agreements, thoughts and procedures change with regards to responding to or mitigating a hazard, emergency or critical incident. Federal, State and County guidelines as well as new technology can also be driving forces for change.

Through collaboration between state and local personnel, Paul Bockrath of Preparative Consulting was identified as having the expertise, knowledge and background in preparing Emergency Operations Plans for counties throughout the state.

After meeting with representatives of Preparative Consulting, direction was given to pursue a Professional Services Agreement. If approved, representatives of Mariposa County and select stakeholders will work with Preparative Consulting who will prepare a current and comprehensive Emergency Operations Plan and Annexes for Mariposa County.

As outlined in the Mariposa County Code 2.80.010, elected or appointed leaders in Mariposa County are required "to provide for the preparation and carrying out of plans for the protection of persons and property within Mariposa County in the event of an emergency". The Sheriff/Coroner/Public Administrator/Interim Fire Chief having been charged with this responsibility and supervision of our local Office of Emergency Services, has identified deficiencies in our current draft Emergency Operations Plan.
By working collaboratively with Preparative Consulting, Mariposa County will resolve all deficiencies and ultimately be better prepared for responses to all types of hazards, disaster and emergency situations.

Mariposa County HS and Health Department are both contributing with financial support to assist this project.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Mariposa County Emergency Operations Plan exists but it is in need of updating. The Board has previously supported similar agreements when it’s necessary to stay compliant with Federal, State and Local governmental requirements.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION: Continue to use the 2005 version and possibly jeopardize participation in Federal or State grant funding.

FINANCIAL IMPACT:
There will be no impact to the General Fund as sufficient funding in the Sheriff’s approved/adopted budget for FY 2016-2017 has been identified. No impact to the General Fund for FY 2017/2018 as funding sources have already been identified to cover the remaining cost of this agreement. Also, partnering county agencies are also contributing funds to help support this item.

ATTACHMENTS:
Preparative Consulting Professional Service Agreement  (PDF)
Professional Service Agreement Exhibits A and B  (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Dallin Kimble
Dallin Kimble, Interim CAO  2/2/2017

RESULT:        ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER:         Rosemarie Smallcombe, District I Supervisor
SECONDER:      Kevin Cann, District IV Supervisor
AYES:          Menetrey, Smallcombe, Jones, Long, Cann
PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is made this 24th day of January, 2017 between:

COUNTY:
Mariposa County
5100 Bullion Street
Mariposa, CA 95338

and

CONTRACTOR:
Preparative Consulting
P.O. Box 143
Vacaville, CA 95696

ARTICLE 1. TERM OF AGREEMENT

1.01 Agreement Term: This Agreement shall become effective on January 24, 2017 and shall terminate on February 28, 2018, unless terminated in accordance with the provisions of Article 7 of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the express intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement 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 Agreement.

2.02 Contractor Qualifications: Contractor warrants that it has the necessary competence, experience and qualifications for the services to be performed.

2.03 Agreement Management: Contractor shall report to Sheriff Doug Binnewies who will Review the activities and performance of the Contractor and administer this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to perform the services as described on 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 Agreement time. All such services are to be coordinated with County
and the results of the work shall be monitored by Sheriff Doug Binnewies or his/her designate. 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. 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 Agreement. County may not control, direct, or supervise Contractor's responsibility for assistants or employees in the performance of those services. Contractor assumes full performance of those services. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of such 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 in the not to exceed amount of $50,000 for services as described above. The total sum 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:

See Exhibit “B” Compensation

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 30 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 equipment provided by Contractor, 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 Agreement. 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) or an amount as otherwise determined appropriate by the County Risk Manager to cover such claims. 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 Agreement 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 Agreement, 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 Agreement Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least $500,000 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 the named insureds will be called on to cover a loss covered hereunder. 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 Professional Liability Coverage: Contractor shall provide proof of professional liability coverage satisfactory to County prior to commencing work under the Agreement.

5.05 Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Agreement, 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 Agreement, without ten (10) days written notice to County prior to the effective date of such cancellation.

5.06 Workers’ Compensation: During the term of this Agreement 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.

5.07 Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement 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.

5.08 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.

5.09 Records: It is understood and agreed that all plans, studies, specifications, and 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 Agreement 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 Agreement are prepared specifically for the County and are not necessarily suitable for any future or other use. Contractor shall maintain such records for a minimum of three (3) years or as otherwise required by law.

5.10 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.

5.11 Assignability of Agreement: It is understood and agreed that this Agreement 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 Agreement will be permitted only with the express written consent of the County.

ARTICLE 6. OBLIGATIONS OF COUNTY

6.01 Cooperation of County: County agrees to comply with all reasonable requests of Contractor and provide access as allowed by law to all documents reasonably necessary to the performance of Contractor's duties under this Agreement.

6.02 Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by County without the prior written consent of Contractor.
ARTICLE 7. TERMINATION OF AGREEMENT

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

1. Bankruptcy or insolvency of Contractor;
2. Death of Contractor.

7.02 Termination by County for Default of Contractor: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at County's option, may terminate this Agreement by giving written notification to Contractor.

7.03 Termination for Convenience of County: County may terminate this Agreement at any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated and no further work shall be performed by Contractor. If the Agreement 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 Agreement 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 Agreement and all obligations of County arising from this Agreement 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 Agreement, 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 Agreement supersedes any and all agreements, 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 agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement 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 Agreement is held by a court of 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 Agreement, the prevailing party will be entitled to reasonable attorneys' 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 Agreement 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 Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation.

8.07 **Governing Law:** This Agreement 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 Agreement shall be held exclusively in a state court in the County of Mariposa.

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

**COUNTY:**

[Signature]

Marshall Long, Chairman
Mariposa County Board of Supervisors

**CONTRACTOR:**

[Signature]

Paul J. Bockrath
DBA: Preparative Consulting

**APPROVED AS TO FORM:**

[Signature]

STEVEN W. DAHLEM
County Counsel

Last Revised 6/11/12
EXHIBIT "A"
Project Scope of Work

Preparative Consulting will work with Mariposa County and select stakeholders representing the whole community to write an Emergency Operations Plan. This process will involve regular meetings to identify the threats and hazards the County may face and plan the County’s response to address them. We will follow the planning guidelines established by the Federal Emergency Management Agency Comprehensive Preparedness Guide 101 and 201, and the California Governor’s Office of Emergency Services (Cal OES) “Emergency Operations Plan Crosswalk for Plan Review” to ensure the plan is comprehensive and meets all current best practices. Preparative Consulting provides emergency planning instruction for the California Governor’s Office of Emergency Services and will work with Cal OES staff to ensure compliance with State and Federal standards and best practices.

As sections of the plan are completed, representatives from the planning team will be asked to review it to ensure it meets your standards and reflects your policies and procedures. Though the planning process will be collaborative, Preparative Consulting will write the plan and provide the project management. Our goal is to assist Mariposa County in establishing a comprehensive preparedness program that will continue to grow and flourish, ensuring future success. Beyond writing the Emergency Operations Plan, Preparative Consulting will assist Mariposa County with updating or establishing language and/or procedures for the following:

- Accredited Disaster Council/ Director of Emergency Services program
- Disaster Service Worker Volunteer Program
- County Code 2.80.010 - EMERGENCY SERVICES, EMERGENCY ADVISORY COUNCIL AND EMERGENCY SERVICES COUNCIL
- Lines Of Succession For Officials With Emergency Responsibilities/ Succession Planning (Section 36512 of the California Government Code/ Article 15, Section 8638 ESA)
- Employee Recall Procedure
- County Emergency Organization
- Identifying an Emergency Operations Center/ Alt. EOC
- American Red Cross Shelter Agreement
- Vital Records Management
- Mutual Aid Agreement Review
PLANNING PROCESS

Planning is the first step in the preparedness cycle. The National Preparedness Goal is “to build a secure and resilient Nation with the capabilities required across the whole community to prevent, protect against, mitigate, respond to, and recover from the threats and hazards that pose the greatest risk.” (National Preparedness Goal, 2015)

Planning is how we identify risk associated with threats and hazards and plan our response and recovery based on our resource and training capabilities. Resilience, broadly defined, is the ability to resist, absorb, recover from, or adapt to an adverse occurrence. Engaging the community in the planning process will improve community resiliency by increasing the understanding of threats and hazards, participating in the planning process, and communicating the expected actions for the community to undertake during an emergency.

Planning must include participation from all stakeholders in the community. Effective planning ensures that the whole community is represented and involved in the planning process. The most realistic and complete plans are prepared by a diverse planning team, including representatives from the jurisdiction’s departments and agencies, civic leaders, businesses, and organizations (e.g., civic, social, faith-based, humanitarian, educational, advocacy, professional) who are able to contribute critical perspectives and/or have a role in executing the plan.

Planning must be community-based, representing the whole community and its needs. Understanding the composition of the population—such as accounting for people with disabilities, others with access and functional needs, and for the needs of children—must occur from the outset of the planning effort. Therefore, establishing collaborative and core planning teams will be the first of seven steps in the planning process.

The seven steps in the emergency planning process are as follows:

**Project Approach**

Step 1: Form a Collaborative Planning Team
Step 2: Threat and Hazard Assessment
Step 3: Establish Goals and Objectives
Step 4: Review and Analyze Existing Plans, Policies, and Agreements
Step 5: Develop and Present Draft of Plan
Step 6: Plan Review and Refinement
Step 7: Presentation and Approval of Final Plan

1. **Form a Collaborative Planning Team.** Experience and lessons learned indicate that emergency planning is best performed by a team. Using a team approach helps organizations define the role they will play during an incident, emergency, or disaster. Case studies and research reinforce this concept by pointing out that the common thread found in successful incident response is that participating organizations have
understood and accepted their roles. In addition, members of the planning team should be able to understand and accept the roles of other departments and agencies. One goal of using a planning team is to build and expand relationships that help bring creativity and innovation to planning.

Two teams will be created, a collaborative planning team representative of the whole community and made up of select subject matter experts and a core planning team, drawn from the collaborative planning team, that will meet frequently to develop the Emergency Operations Plan with input from the collaborative planning team that will meet infrequently.

2. **Threat and Hazard Assessment.** Every community should understand the risks it faces. By understanding its risks, a community can make informed decisions about how to manage risk, including developing needed capabilities. Risk is the potential for an unwanted outcome resulting from an incident, emergency, or disaster as determined by its likelihood and the associated consequences. By considering response capabilities, a community can understand how to best manage and plan for its greatest risks across the full range of the threats and hazards it faces.

   Effective risk assessment depends on a consistent comparison of the threats and hazards a particular jurisdiction faces. This is typically performed through a threat/hazard identification and risk assessment process that collects information about threats and hazards and assigns values to risk for the purposes of determining priorities, developing or comparing courses of action, and informing decision making.

3. **Establish Goals and Objectives.** By using information from the threat and hazard profile developed as part of the threat and hazard assessment process, the planning team considers how the threat or hazard may impact the jurisdiction and what defines successful response and recovery actions. The planning team will establish a timeline and process to involve the collaborative planning team, representing the whole community, to provide their response and recovery capabilities and input for the emergency operations plan.

4. **Review and Analyze Existing Plans, Policies, and Agreements.** A critical first step in the planning process is to identify all existing Plans, Policies, and Agreements that the jurisdiction currently has in place. Once these documents have been located, reviewed, and assessed, the planning team can determine their need to be updated, enhanced, replaced, or applied to the Emergency Operations Plan. Where response or recovery gaps exist, new plans, policies, or agreements may be suggested.

5. **Develop and Present Draft of Plan.** This step is a process of generating, comparing, and selecting possible solutions for achieving success in the jurisdictions response and recovery actions. Planners consider the incident requirements, goals, objectives, and capabilities to develop several response and recovery alternatives to the various threats and hazards identified in the threat and hazard assessment. During this step the planning team develops a rough draft of the basic plan, position specific annexes,
Professional Service Agreement Exhibits

hazard annex, functional annexes, and other appropriate appendixes as the components of the Emergency Operations Plan.

6. **Plan Review and Refinement.** After the planning team develops a rough draft of the basic plan, position specific annexes, hazard annex, functional annexes, and other appropriate appendixes, each member of the planning team reviews the draft plan. As the planning team works through successive drafts, the members make necessary additions or corrections and add necessary tables, charts, and other illustrations as needed. A final draft is prepared and circulated to organizations that have responsibilities for implementing the plan to obtain their comments.

7. **Presentation and Approval of Final Plan.** The final draft of the plan is presented to the Director of Emergency Services and the County Board of Supervisors for review, approval, and ratification.

**Principles for Project Success**

Emergency Planning is best accomplished when assembling collaborative and core planning teams comprised of key stakeholders who have intimate knowledge of their organization, agency or departments capabilities, are empowered to make decisions, and can identify and commit resources. It is recommended that the members of a core planning team be second in command for their organization, agency or department or have the authorities as previously described.

Communication and organization are also key elements of project success. A member of the County clerical staff should be assigned to the core planning team to assist with meeting scheduling, preparation, logistics, and documentation.
## Estimated Project Timeline

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EXHIBIT “B”
Compensation

Upon submission of an invoice by Consultant, Mariposa County shall pay Consultant the amounts indicated for the corresponding completed benchmark. Payments are due within 30 days after the completion of the mutually agreed upon benchmarks and submission of an invoice. The cancellation of meetings or on-site work by Mariposa County with less than 7 days’ notice, unless mutually agreed to by the Mariposa County representative and Consultant, shall result in the County reimbursing Consultant for any costs associated with the revised travel or work plans. Compensation does not include printed materials to include drafts or final copies of the Emergency Operations Plan. Mariposa County may elect to print these materials or have Preparative Consulting print them at an additional cost. Mariposa County will provide at its cost the facilities necessary for all meetings, training, workshops, or exercises necessary for the completion of this Scope of Work.

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<th>Estimated Completion Date</th>
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<td>Step 2: Threat and Hazard Assessment</td>
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