RESOLUTION - ACTION REQUESTED 2017-212

MEETING: April 18, 2017

TO: The Board of Supervisors

FROM: Eric Sergienko, Health Officer

RE: Approve an Agreement with the University of Utah for Infectious Disease Consulting Services

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with the University of Utah to Prepare an Emerging Infectious Disease Annex for the Public Health Emergency Preparedness Program in a Not-To-Exceed Amount of $25,000; and Authorize the Board of Supervisors Chair to Sign the Agreement.

The term of this agreement shall commence on March 1, 2017 and terminate on June 30, 2017.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On March 24, 2015 the Board has previously signed the Request for Application for Supplemental Funding for Ebola Preparedness and Response with Resolution #2015-128. Additionally, the Board approved the Agreement for the Supplemental Funding for Ebola Preparedness and Response with Resolution #2015-256.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
1. Do not approve the agreement. The grant fund will expire June 30, 2017 and will be unable to find another contractor by that time.

2. Return the grant funds and discontinue the program.

FINANCIAL IMPACT:
This is a grant funded program. Grant funding and corresponding appropriations are included in the approved Fiscal Year 2016-2017 Budget.

ATTACHMENTS:
Agreement for Infectious Disease Consulting Services with the University of Utah (PDF)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
AGREEMENT FOR INFECTIOUS DISEASE CONSULTING SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this 1st day of March, 2017, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and the University of Utah, a body politic and corporate of the State of Utah, on behalf of its Department of Family and Preventive Medicine in the School of Medicine, ("Contractor"), pursuant to the following terms and conditions.

WITNESSETH:

1. TERM

The term of this Agreement shall commence on March 1, 2017 and terminate on June 30, 2017 unless extended as provided by this Agreement.

2. SERVICES

Contractor shall prepare deliverables for the development and strategic assessment of the Mariposa County Public Health Infectious Disease Emergency Operations Plan as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed $25,000. The Contractor’s hourly rates are listed in Exhibit B, "Cost Proposal." The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. INSURANCE

Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Contractor participates in a risk pooling arrangement managed by the State Risk Manager of the State of Utah which provides coverage provisions and limits required by the State Risk Manager of the State of Utah and applicable law. Said coverage provisions and limits are set forth below. Nothing in this section 4. INSURANCE or the Agreement shall require Contractor to carry different or additional insurance.

(1) Commercial General Liability (CGL): Per occurrence limits of at least $1,000,000 and general aggregate limits of at least $2,000,000.
(2) Workers’ Compensation insurance as required by the State of Utah.

B. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. This obligation shall be limited to naming the County as additional insured with respect to the Contractor’s negligent acts or omissions. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the County, the Utah State Division of Risk Management, or an appropriately funded program of self-insurance.

(7) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide.
them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(8) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(9) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. LIABILITY

Each of the parties assumes full responsibility for the negligent operations, acts, and omissions of its own employees, agents, and contractors. It is not the intent of the parties to incur by contract any additional liability for the negligent operations, acts, or omissions of the other party or its agents or employees.

6. 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 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.

7. 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.

8. 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.

9. ASSIGNMENT

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.

10. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

**CONTRACTOR:**
University of Utah  
Dept of Family & Preventive Medicine  
Attn: Alicen Bringard  
375 Chipeta Way, Suite A  
Salt Lake City, UT 84108

**COUNTY:**
Mariposa County Public Health Department  
County of Mariposa  
Post Office Box 5  
Mariposa, CA 95338  
Fax: (209) 966-4929

11. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor’s performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person’s race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

12. PUBLIC RECORDS ACT

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject
matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the Health Officer/Director. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

15. TERMINATION AND RIGHTS UPON TERMINATION

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon 30 calendar days’ written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

16. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

17. DISPUTES

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney’s fees.

18. CAPTIONS

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
19.  NUMBER AND GENDER

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word “person” includes corporations, partnerships, firms or associations, wherever the context so requires.

20.  MANDATORY AND PERMISSIVE

“Shall” is mandatory. “May” is permissive.

21.  SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22.  COUNTERPARTS

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

23.  OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

24.  [Intentionally Omitted.]

25.  AUTHORITY

Each party and each party’s signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

26.  NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.
27. **NO RELIANCE ON REPRESENTATIONS**

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

28. **WARRANTY**

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release.

29. **FUNDING AVAILABILITY**

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this Agreement, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, or offer an Agreement amendment to Contractor to reflect the reduced amount.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

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**COUNTY OF MARIPOSA**  
Marshall Long, Chair  
Board of Supervisors

**CONTRACTOR**  
Kola Okuyemi, M.D., MPH  
Professor and Department Chair  
Department of Family & Preventive Medicine  
University of Utah
Vivian S. Lee, MD, PhD, MBA
Senior Vice President for Health Sciences
Dean, School of Medicine
University of Utah

ATTEST:

Rene LaRoche
Clerk of the Board

APPROVED AS TO FORM:

Steven W. Dahlem
County Counsel
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<th>SERVICE/DELIVERABLE</th>
<th>OUTPUT</th>
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<td><strong>Deliverable 1</strong></td>
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| Update/Develop the Mariposa County Public Health Infectious Disease Emergency Operations Plan (Annex) to include EVD and other emerging infectious diseases (EID). | • Review existing Infectious Disease Emergency Operations Plan (or Annex).  
• Identify and meet with key partners in Mariposa County (including PHS and NPS personnel at Yosemite National Park; John C. Freeman Health District; other health care entities)  
• Identify roles and processes for responding to an EID event in Mariposa County.  
• Identify potential individuals who would need to utilize varying levels of PPE in an EID response.  
• Provide MCPH with key updates to the Infectious Disease EOP (Annex) | 60 hours x $250/hr | $15,000         |
| **Deliverable 2**   |                                                                         |                      |                 |
| Identify and validate strategies and approaches for health hazard assessment methodology | • Develop/adapt PPE training for MCPH  
• Delineate MCPH staff and other agency/organizations who will need to complete PPE training. | 20 hours x $250/hr | $5,000          |
| **Deliverable 3**   |                                                                         |                      |                 |
| Conduct a Tabletop Exercise for Mariposa County Public Health and partners to test the EID plans | • Develop and conduct a ½ day long Tabletop Exercise (TTX) with MCPH and up to 15 partner agency/organizations testing the SOP for Emerging Infectious Disease Response  
• Provide an After Action Report | 20 hours x $250/hr | $5,000          |
|                     |                                                                         |                      |                 |
|                     | Total                                                                   |                      | $25,000         |
Exhibit B
COST PROPOSAL

Noted in above table.