RESOLUTION - ACTION REQUESTED 2017-267

MEETING: May 9, 2017

TO: The Board of Supervisors

FROM: Steve Dahlem, County Counsel

RE: Annual Agreement Between County and YARTS JPA

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Yosemite Area Regional Transportation System (YARTS) Joint Powers Authority (JPA) to Continue Providing Public Transit Services; and Authorize the Chairman of the Board of Supervisors to Sign the Agreement.

The Agreement is for Transportation Services Between Merced Junior College and Mariposa County; Public Transit Commuter Services to Employees of Yosemite National Park and Businesses Near the Park; Transit Commuter Services to Mariposa Residents Traveling to Work Centers in Merced County; Maintain Connectivity with Intercity Transportation Providers in Merced County (Amtrak, Greyhound, and Merced County “The Bus”); to Provide Transit Service Options for Visitors Traveling to Mariposa County and Yosemite National Park; and to Provide Transit Service Options for Visitors Traveling Along the Highway 41 Corridor to Yosemite National Park.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board has approved this Agreement annually since May of 2000. This year is the first year that the Highway 41 corridor has been included.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve the agreement. Some Mariposa residents and visitors may not have transportation options to Merced, Mariposa and/or Yosemite, which could negatively affect their employment and Mariposa tourism.

FINANCIAL IMPACT:
$191,000; Funding for this Agreement is from Local Transportation funds and there is no impact to the General Fund.

ATTACHMENTS:
Annual YARTS Agt (PDF)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Kevin Cann, District IV Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
AGREEMENT TO PROVIDE PUBLIC TRANSIT SERVICES TO AND FROM MARIPOSA COUNTY

THIS AGREEMENT ("Agreement") is made and entered into this \text{24th} day of \text{May}, 2017, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Yosemite Area Regional Transportation System ("Contractor"), pursuant to the following terms and conditions.

WITNESSETH:

1. TERM

The term of this Agreement shall commence on July 1, 2017 and terminate on June 30, 2018 unless extended as provided by this Agreement.

2. SERVICES

Contractor shall provide public transit services to and from Mariposa County 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 One Hundred Ninety-One Thousand Dollars and no/100 ($191,000.00). 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

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO)Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(3) Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $2,000,000 per accident for bodily injury or disease.

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. 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.

(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. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify Entity its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney’s fees, arising from all acts or omissions to act of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from Entity’s sole negligence or willful acts.

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:  COUNTY:
Yosemite Area Regional Transportation  Mariposa County Public Works Dept.
369 W. 18th Street  4639 Ben Hur Road
Merced, CA 95340  Mariposa, CA 95338

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 [INSERT DEPARTMENT HEAD]. 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 [INSERT TIMEFRAME] 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.

[ONLY FOR PROJECT OPTION]

D. If County terminates this Agreement for default or material breach, then Contractor shall be liable for any reasonable costs in excess of the Agreement amount incurred by County in order to complete Exhibit A, “Scope of Work.” In addition, Contractor understands and agrees that County may, in County’s sole discretion, refuse to pay Contractor for that portion of Contractor’s services which were performed by Contractor prior to the termination date and which remain unacceptable to County as of the termination date.

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.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

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. **CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.
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.

COUNTY OF MARIPOSA

Marshall Long, Chair
Mariposa County Board of Supervisors

CONTRACTOR

Stacie Dabbs
Stacie Dabbs, Interim Executive Director
Yosemite Area Regional Transportation System

ATTEST:

Rene LaRoche
Clerk of the Board

APPROVED AS TO FORM:

Steven W. Dahlem
County Counsel
OTHER PROGRAMS

600  YOSEMITE AREA REGIONAL TRANSPORTATION SYSTEM (YARTS) MANAGEMENT ACTIVITIES

Purpose:

The Yosemite Area Regional Transportation System (YARTS) Joint Powers Authority (JPA) contracts with Merced County Association of Governments (MCAG) to provide management, planning, and administrative services to the transit system, including oversight of all of the day-to-day operations of the transit system.

Discussion:

Entering its 18th year of operation in May of 2017, YARTS provides an alternative to driving in the Yosemite region for travelers and locals. It operates year-round on the Hwy 140 corridor between Merced and Yosemite National Park, through Mariposa County and during the summer, June through September, on the Hwy 120/395 corridors between Yosemite Valley and Mono County destinations and between Tuolumne County destinations and Yosemite Valley.

As of May 2015, through contract with the Fresno Council of Governments (FCOG), YARTS now also operates on Hwy 41 between Fresno and Yosemite National Park during the summer (May – Sept.).

Tasks:

610 – Management, Administration and Planning

Provide administration functions to the YARTS Joint Powers Authority (JPA) Board and the YARTS Authority Advisory Committee (AAC), at the direction of the YARTS Board.

- Prepare the YARTS Overall Work Program
- Prepare agendas for the YARTS Board and the AAC
- Confer with Board Chair to create the Board agenda
- File notices of Public Hearings as needed
- Staff Board and AAC meetings and facilitate video conferencing as needed
- Record and prepare the minutes from Board and AAC meetings
- Implement and coordinate Board directives
- Maintain the YARTS accounting records
- Prepare financial updates for the Board and the AAC for each regular meeting or at least quarterly
- Contract for and complete an annual audit
- Prepare and administer the approved YARTS budget
- Identify, apply for, and administer grants to fund operating and capital projects

EXHIBIT A
- Administer YARTS contracts and agreements and do billing for same, I.E. Amtrak, NPS, VIA, Greyhound, Fresno COG
- Monitor service contractor performance
- File required state and federal reports
- Implement on-board rider satisfaction survey annually, typically during the busier visitor season
- Annually review the operating schedules and demand by run. Recommend changes as needed
- Contract for liability and property insurance coverage
- Participate in Social Services Transportation Advisory Committee (SSTAC) meetings in the three member-county service areas
- Maintain working relationships with elected and appointed state and federal officials, Yosemite National Park management, Park Concessionaire management, Amtrak, environmental organizations and member-county staff
- Maintain contractual agreements with Greyhound Bus Lines and Amtrak to share customers and jointly promote public transit to Yosemite and the region
- Continue to work with the County of Tuolumne, TCTC, on the service on Hwy 120 between Tuolumne County destinations and Yosemite NP.
- Prepare and distribute a Manager’s Update to the Board members and other stakeholders, regularly to keep stakeholders aware of management activities between Board meetings
- Maintain YARTS-owned property, i.e. replacing broken glass at shelters as needed, clean and remove graffiti and stickers from shelters, review maintenance on YARTS-owned buses with contractor
- Under written agreement with the National Park Service, work with Yosemite NP to establish temporary “summer peak demand” service in Tuolumne, Mono and Mariposa/Merced Counties. This project includes working with locals in each project county to determine their priorities and preferences, writing schedules, preparing and distributing marketing materials, and attending regular bi-weekly (phone) meetings with park staff to evaluate and direct the effort.
- Participate in CalACT legislative meetings (phone) to stay current on legislation that effects rural public transit and attend CalACT semi-annual meetings for professional growth and improvement
- Work with the Board to establish the appropriate number of vehicles in the YARTS-owned fleet
- Start the process to establish an Acquisition/Replacement fund within the YARTS budget
- Seek funding from the most advantageous source for the purchase of buses to grow the YARTS-owned fleet to the level directed by the Board
- Create a Capital Acquisition/Replacement fund within the YARTS Budget.

The current Short Range Transit Plan (SRTP) completed its 5-year life in 2016 and, by rule, it must be replaced. The following will take place during the 2017-2018 fiscal year:

- A grant application has been approved by Caltrans, but no contract has been let by Caltrans to facilitate starting the SRTP project.
- Upon receipt of a fully executed contract, Secure the services of a consultant through an RFP process
• Prepare a new 5-year SRTP for approval by the YARTS Board

621 – Fresno COG Contract

• Perform all work necessary to complete the 2-year startup project as specified in a Caltrans Transit Planning Grant and spelled out in a contract between YARTS and FCOG. (ends in June 2017)
• Administer the requirements of the agreement between YARTS and the Fresno Council of Governments (FCOG) for the provision of public transit on Hwy 41 between Fresno and Yosemite National Park as specified in a Memorandum of Understanding (MOU) between YARTS and FCOG.
• Coordinate regularly with the FCOG project manager.
• Provide timely billing, as specified in the agreements, to FCOG seeking reimbursement for work performed in their behalf.
• Prepare a quarterly financial report to FCOG

615 – Outreach and Marketing

Provide outreach and marketing efforts to promote ridership.
• Schedules - Create, distribute and install seasonal schedules and brochures, and other promotional materials, as needed
• Administer all aspects of the YARTS marketing budget from identifying funding sources through approving the payment of invoices
• Ticket vendors – Administer ticket sales through contracted vendors; includes distribution of tickets, review of sales reports, and collections of revenue
• Public Information – Prepare and distribute news releases to media contacts as appropriate
• Create and place advertising in appropriate venues,
• Public Appearances – seek opportunities for and make public speaking and other appearances where possible to market the transit service
• Maintain the YARTS website and continue the ongoing remodel/update of the site
• Refine and market the ticket reservation program
• Sustain the social media marketing efforts
• Maintain YARTS presence on Google Transit
• Respond to rider comments and complaints
• Maintain a good working relationship with the Gateway Partners organization
• Conduct “Fam Tours” for media and local stakeholders annually
• Maintain contact with tour operators who use YARTS in their business plans;
• Build and/or retain strong relationships with connecting transit providers who serve the Yosemite region; Greyhound, Amtrak, Boutique Air, Alaska/ Horizon Air, Fresno Airport, ESTA, Merced Co. “The Bus”, Fresno Area Express, Madera County Transit,
• Under written agreement with the Park Service, conduct marketing efforts toward public use of the "peak period" expanded transit service during the summer months.