

**FRESNO COUNCIL OF GOVERNMENTS
AGREEMENT FOR CONTRACTOR SERVICES**

This AGREEMENT, made and entered into this ____ day of _____, 2014 by and between the FRESNO COUNCIL OF GOVERNMENTS, 2035 Tulare St., Suite 201, Fresno, California 93721, a joint powers Public Agency (hereafter referred to as "FCOG"), and Yosemite Area Regional Transportation System, a California Joint Powers authority (hereafter referred to as "YARTS").

WITNESSETH:

WHEREAS FCOG and YARTS entered into a cooperative agreement dated _____ to establish transit service on Hwy 41 between the City of Fresno and Yosemite national Park; and

WHEREAS FCOG applied for and received grant funding from a Caltrans Transit Planning for Sustainable Communities grant to create a plan and perform marketing outreach for the desired transit service; and

WHEREAS, YARTS represents it is qualified to perform tasks funded by the Caltrans Transit Planning for Sustainable Communities grant (hereafter referred to as "PROJECT") and is willing to perform such services pursuant to the terms and conditions stated in this Agreement; and

NOW, THEREFORE, it is agreed by FCOG and YARTS as follows:

I. YARTS'S OBLIGATIONS

A. YARTS shall perform all work necessary to complete the PROJECT. YARTS shall perform those services as described in Caltrans Transit Planning for Sustainable Communities grant Scope of Work:, (Exhibit A) attached hereto and incorporated herein by this reference as though set forth in full. YARTS shall perform those tasks and services in accordance with the instructions set forth in Exhibit A. In the event of any inconsistency between this Agreement and Caltrans Transit Planning for Sustainable Communities grant Scope of Work (Exhibit A), such inconsistency shall be resolved by giving precedence in the following order of priority: (1) to the text of this Agreement; (2) Caltrans Transit Planning for Sustainable Communities grant Scope of Work (Exhibit A)

II. FCOG's OBLIGATIONS

A. FCOG shall compensate YARTS as provided in section III of this Agreement.

B. FCOG will make available to the YARTS any document, studies, or other information in its possession related to the PROJECT.

III. COMPENSATION

A. Total Compensation.

Notwithstanding any other provision in this Agreement, the basic fee for the services rendered shall be computed at the hourly and cost rates as set forth in Exhibit A (Caltrans Transit

Planning for Sustainable Communities grant Scope of Work), and shall be limited by an amount not to exceed the sum of \$94,500.

B. Progress Payments.

FCOG shall make progress payments to YARTS upon receipt and approval by FCOG of YARTS's monthly invoices, based upon completion of the task and services as set forth in Exhibit B. Payment of said progress payments to YARTS shall be based upon FCOG's evaluation of the completion of each respective component.

C. Invoices.

YARTS shall submit two copies of each invoice with adequate supporting documentation of work billed and costs charged by Task as defined in Exhibit A, to FCOG, specifying those services which YARTS believes have been completed. The invoice shall specify: (1) hours worked multiplied times the billing rates authorized in Exhibit A, (2) an itemization of Other direct cost and/or subcontractor fees as agreed to in Exhibit A; (3) the total amount billed for the current period, (4) the total amount billed to-date for the project. The invoice shall include a written progress report adequately describing the services billed and provided, and summarizing the status of the PROJECT in regard to task completion, timelines, and budget.

D. Payment.

Within 30 days of receipt of a proper invoice, FCOG shall determine whether YARTS has adequately performed to the satisfaction of FCOG the item(s) for which YARTS seeks payment, and shall remit payment thereof to YARTS.

E. Disputes.

If FCOG determines that YARTS has not adequately performed any such task or services, FCOG shall inform YARTS of those acts in writing which are necessary for satisfactory completion of the item(s). YARTS shall undertake any and all work to satisfactorily complete the item(s) at no additional charge to FCOG.

In the event there is a dispute over an alleged error or omission by YARTS, FCOG shall have the right to withhold payment of YARTS's fees in the disputed amount.

FCOG and YARTS shall endeavor to resolve any dispute informally between them. In the event the dispute cannot be thus resolved, either party may request the parties engage in arbitration or mediation (hereafter referred to as "arbitration") of the dispute before an independent arbitrator. In the case the parties mutually agree to arbitrate the dispute, they shall mutually select an independent arbitrator. Any arbitration shall occur in Fresno County, California.

IV. TERMINATION

A. Termination Without Cause.

This Agreement may be terminated without cause at any time by FCOG or the YARTS upon thirty (30) calendar days written notice. If FCOG terminates this Agreement, YARTS shall be compensated for services satisfactorily completed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to in Section III.

B. Breach of Contract.

FCOG may immediately suspend or terminate this Agreement in whole or in part, where in the reasonable determination of FCOG there is:

1. an illegal or improper use of funds;
2. a failure to comply with any material term of this Agreement;
3. a substantially incorrect or incomplete report, study, or other documents or documentation submitted to FCOG;

4. improperly performed services under this Agreement.

In no event shall any payment by FCOG constitute a waiver by FCOG of any breach of this Agreement or any default which may then exist on the part of YARTS. Neither shall such payment impair or prejudice any remedy available to FCOG with respect to the breach or default.

C. Non-Allocation of Funds.

The terms of this Agreement, and the services to be provided hereunder, are contingent on the approval of funds by the appropriating government agency. YARTS services and reimbursements beyond June 30, 2015, are subject to the inclusion and funding agency approval of this project in the FCOG FY15-16 Overall Work Program. Should sufficient funds not be allocated, the services to be provided hereunder may be modified, or this Agreement terminated at any time by FCOG's giving the YARTS thirty (30) days advance written notice.

D. In the event of any termination of this Agreement, all finished and unfinished work materials, including, without limitation, notes, minutes, research, documents, maps, graphs, and studies, shall be FCOG's property, and at FCOG's sole option, shall be delivered by YARTS to FCOG.

V. INDEPENDENT CONTRACTOR

In performance of the work, duties, and obligations assumed by YARTS to be provided under this Agreement, it is mutually expressly understood and agreed that YARTS, including any and all of YARTS's officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of FCOG. Furthermore, FCOG shall have no right to control or supervise or direct the manner or method by which YARTS shall perform its work and function. However, FCOG shall retain the right to administer this Agreement so as to verify that YARTS is performing its obligations in accordance with the terms and conditions thereof. YARTS and FCOG shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, YARTS shall have absolutely no right to employment rights and benefits available to FCOG employees. YARTS shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, YARTS shall be solely responsible and save FCOG harmless from all matters relating to payment of YARTS's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, YARTS may be providing services to others unrelated to FCOG or to this Agreement.

VI. ASSIGNMENT

YARTS shall not assign or subcontract its duties under this Agreement without the prior express written consent of the FCOG. No such consent shall be construed as making the FCOG a party to such subcontract, or subjecting the FCOG to liability of any kind to any subcontractor.

No subcontract whether existing or later entered into as set forth herein, under any circumstances shall relieve the YARTS of its liability and obligation under this contract, and all transactions with the FCOG must be through the YARTS. Subcontractors may not be changed by YARTS without the prior express written approval of FCOG.

VII. BINDING NATURE OF AGREEMENT; MODIFICATION

The parties agree that all of the terms of this Agreement and its Exhibits shall be binding upon them and that together these terms constitute the entire Agreement of the parties with respect to the subject matter hereof. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the parties. This Agreement shall be binding upon FCOG, the YARTS, and their successors in interest, legal representatives, executors, administrators, and assigns with respect to all covenants as set forth herein.

VIII. INDEMNITY

YARTS agrees to indemnify, save, hold harmless, and at FCOG's request, defend the FCOG, its boards, committees, representatives, officers, agents, and employees from and against any and all costs and expenses (including reasonable attorneys fees and litigation costs), damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death, and property damage) occurring or resulting to FCOG to the extent arise from any negligent acts, errors or omissions of YARTS, its officers, agents, subcontractors, or employees in their performance of this Agreement, and from any and all costs and expenses (including reasonable attorneys fees and litigation costs), damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death and property damage), occurring or resulting to any person, firm, corporation, or entity who may be injured or damaged to the extent such injury or damage arises from any negligent acts, errors or omissions of YARTS, its officers, agents, subcontractors, or employees in their performance of this Agreement.

IX. NON DISCRIMINATION AND DBE

YARTS shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. YARTS shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the YARTS to carry out these requirements is a material breach of this contract, which may result in the termination of this contract and such other remedy as the recipient deems appropriate.

X. INSURANCE

Without limiting FCOG's right to obtain indemnification from YARTS or any third parties, YARTS, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement:

A. Comprehensive general liability insurance with coverage of not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

Comprehensive general liability insurance policies shall name the FCOG, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned.

Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by FCOG, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the YARTS'S policies herein.

B. Workers compensation insurance as required by law.

This insurance shall not be canceled or changed without a minimum of thirty (30) days advance, written notice given to FCOG.

YARTS shall provide certification of said insurance to FCOG within twenty-one (21) days of the date of the execution of this Agreement.

XI. CONFLICT OF INTEREST

YARTS covenants that it has no interest, and will not have any interest, direct or indirect, which would conflict in any manner with the performances of the services required hereunder.

XII. EFFECTIVE DATE, TERM

This Agreement shall become effective as of the date of its execution by the parties hereto and shall remain in full force and effect through June 30, 2017, unless sooner terminated or unless its term is extended. Upon the mutual written Agreement of the parties hereto, this Agreement may be extended beyond that date.

XIII. NOTICES

Any and all notices between FCOG and the YARTS provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such party, at such addresses set forth below:

FCOG

Council of Fresno County Governments
2035 Tulare, Suite 201
Fresno, CA 93721

YARTS

Yosemite Area Regional Transportation System
369 W. 18th St.
Merced, Ca. 95340

XIV. PROJECT MANAGER

The YARTS's project manager shall be Dick Whittington. YARTS may not change its project manager without obtaining prior express written approval by FCOG.

XV. VENUE; GOVERNING LAW

Venue for any claim or action arising under this Agreement shall only be in Fresno County, California. This Agreement shall be governed in all respects by the laws of the State of California.

XVI. COMPLIANCE WITH LAWS

YARTS shall comply with all current Federal, State, and local laws, ordinances, and regulations applicable in carrying out its obligations under this Agreement.

YARTS agrees that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et. seq., shall be used to determine the eligibility of individual items of cost.

YARTS also agrees to comply with applicable federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the contract pursuant to Government Code 8546.7, the YARTS, YARTS's subcontractors, and the FCOG shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the cost of administering the contract. All parties shall make such material available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. Any duly authorized representative of the FCOG, the state, or federal government shall have access to any books, records, and documents that are pertinent to the contract for audits examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Any costs for which payment has been made to YARTS that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by YARTS to FCOG.

Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration as specified by the California Department of Transportation's Travel Guide at the following link; <http://www.dot.ca.gov/hq/asc/travel/> unless written verification is supplied that hotel rates were not then commercially available at the time and location required.

Any subcontract entered into by YARTS as a result of this contract, shall contain all of the provisions of this article.

XVII. YARTS'S LEGAL AUTHORITY

Each individual executing or attesting this Agreement on behalf of YARTS hereby covenants, warrants, and represents: (1) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with a duly adopted resolution of the corporation's board of directors and in accordance with such corporation's article of incorporation or charter and bylaws; (2) that this Agreement is binding upon such corporation; and (3) that YARTS is a duly organized and legally existing corporation in good standing in the State of California.

XVIII. DRUG FREE WORK PLACE

YARTS shall certify compliance with Government Code Section 8355 pertaining to providing a drug-free workplace per Exhibit B - "Drug Free Workplace Certification".

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

FRESNO COUNCIL OF GOVERNMENTS

By _____
TONY BOREN, Executive Director

YARTS,

By _____
Marjie Kim, Executive Director

APPROVED AS TO LEGAL FORM ON BEHALF OF THE FRESNO COUNCIL OF GOVERNMENTS:

DANIEL C. CEDERBORG, County Counsel

By _____
ARTHUR WILLE, Senior Deputy County Counsel

APPROVED AS TO LEGAL FORM ON BEHALF OF YARTS:

By _____
YARTS Counsel