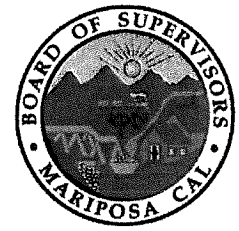




MARIPOSA COUNTY

Planning • 209-966-5151



RESOLUTION - ACTION REQUESTED 2016-181

MEETING: April 19, 2016
TO: The Board of Supervisors
FROM: Sarah Williams, Planning Director
RE: Approve MOU with NPS Yosemite National Park for Wawona

RECOMMENDATION AND JUSTIFICATION:

Approve a Memorandum of Understanding (MOU) Between the County of Mariposa and United States Department of Interior National Park Service Yosemite National Park for Wawona (Agreement Number M-YOSERV003); and Authorize the Board of Supervisors Chair to Sign the MOU.

The current MOU was drafted and executed in 1987, and doesn't reflect the current status of National Park Service-County responsibilities for providing shared public services in Wawona. There have been subsequent Agreements executed for:

"Responsibilities for Law Enforcement" (2012),
"Providing and Maintaining Public Library Services" (1996),
"Fire Protection" (2011),
"Emergency Medical Service" (2011), and
"Behavioral Health Care" (2015).

The proposed document will rescind and replace the current MOU.

The Superintendent, Yosemite National Park supports the MOU document.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

See attached memo to Board of Supervisors

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternatives: Modify text in draft MOU. Modified text would have to be approved by County Counsel and the Superintendent, Yosemite National Park.

Negative Action: If the MOU is not approved, the current MOU from 1987 will remain in effect. The 1987 MOU does not reflect the current status of responsibilities for some community services.

FINANCIAL IMPACT:

No change in current financial obligations for county services in Wawona.

ATTACHMENTS:

160401 BOS-Wawona MOU Update (DOC)

160401 BOS-Wawona MOU Update-NPS executed (PDF)

Agreement U880812PX0003 for Law Enforcement Activities and Emergency Operations 2012 (PDF)

Agreement AO 8800-96-005 for Library Services 1996 (PDF)

Agreement F8803110001 for Fire Protection 2011 (PDF)

Agreement P880811PX0001 for Emergency Medical Service in El Portal Corridor 2011 (PDF)

Agreement MYOSERV001 for Behavioral Health Services 2015 (PDF)

Agreement Number MU 8800-7-8005 (1987 Wawona MOU) (PDF)

12/15/15 NPS Approval Letter(PDF)

3/30/16 NPS Approval E-mail (MSG)

CAO RECOMMENDATION

Requested Action Recommended



Mary Hodson, CAO

4/13/2016

RESULT: ADOPTED [UNANIMOUS]

MOVER: Marshall Long, District III Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Smallcombe, Jones, Long, Cann, Carrier

MEMORANDUM OF UNDERSTANDING

RES. NO. 16-181

BETWEEN

COUNTY OF MARIPOSA

AND

**UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
YOSEMITE NATIONAL PARK**

This Agreement hereinafter referred to as "AGREEMENT" shall supersede and replace Memorandum of Understanding Agreement Number MU 8800-7-8005 and is entered into on the date or dates last below written, by and between the County of Mariposa, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the United States Government acting by and through the Department of the Interior, National Park Service, Yosemite National Park, hereinafter referred to as "SERVICE."

ARTICLE I. BACKGROUND AND OBJECTIVES

WHEREAS, the SERVICE has responsibility for protection and management of lands in the National Park System, and for enforcement of Federal laws, rules and regulations within such system; and Yosemite National Park is part of the National Park System; and Section 35, T.4S., R.21E., M.D.B.&M. (hereinafter referred to as "Wawona, Section 35") is within the boundaries of Yosemite National Park.

WHEREAS, the COUNTY has responsibility for protection and management of lands in Mariposa County, and for enforcement of State and COUNTY laws and ordinances within COUNTY and Wawona, Section 35 is located within the boundaries of the COUNTY; and

WHEREAS, the State of California ceded exclusive legislative jurisdiction over the lands included in Yosemite National Park to the United States, the United States accepted and established exclusive legislative jurisdiction, and the SERVICE has the legislative authority to administratively relinquish part of the legislative jurisdiction back to a State (54 U.S.C. 100754); and

WHEREAS, in the interest of cooperation, the United States of America, through the SERVICE, has retroceded partial civil legislative jurisdiction regarding the private lands of Wawona, Section 35 to the State; and

WHEREAS, the State, and the COUNTY, have accepted this retrocession and established concurrent civil jurisdiction over private lands in the Wawona, Section 35 area; and

WHEREAS, there are privately owned lands (private lands) in Wawona, Section 35; and

WHEREAS, the PARTIES determined that it was desirable to cooperate in better utilizing the resources of both agencies to provide for more adequate community services in Wawona, Section 35; and

WHEREAS, Agreement Number MU 8800-7-8005 was entered into in 1987 for the mutual interests of both the COUNTY and the SERVICE, as well as the interests of the residents of Wawona, Section 35 and the general public; and

WHEREAS, ARTICLE II, Section C, Provision 3 of Agreement Number MU 8800-7-8005 requires designated representatives of the COUNTY and the SERVICE to meet and confer annually concerning the AGREEMENT to discuss the need for modification of the agreement; and

WHEREAS, modifications to the AGREEMENT are necessary to reflect current conditions and subsequent agreements; and

WHEREAS, this AGREEMENT reflects the Wawona Town Plan Guiding Principle describing the intent of the SERVICE to work collaboratively with appropriate county officials and representatives of the Wawona Town Plan Advisory Committee, regarding all planning and development in the community; and

WHEREAS, the COUNTY and the SERVICE have the authority to enter into this AGREEMENT and believe it is in their mutual interest, as well as the residents of Wawona, Section 35 and the general public, to do so.

NOW THEREFORE, the PARTIES hereby mutually agree as follows:

ARTICLE II. LEGAL AUTHORITY

54 U.S.C. 100101 directs the Secretary to promote and regulate the National Park System lands by such means and measures as to conform to the fundamental purpose of such lands, namely, conservation of the scenery and natural and historic objects and wild life therein, and to provide for the enjoyment of these resources in a manner and by such means as will leave them unimpaired for the enjoyment of future generations.

ARTICLE III. STATEMENT OF WORK

- A. The COUNTY shall within the private lands in Wawona, Section 35, subject to availability of funds:
 - 1. Issue building permits and make building inspections on private lands in Wawona, Section 35. The basis for issuing permits and making inspections will be the California Code of Regulations Title 24, Parts 1-12 as adopted by the Board of Supervisors, other applicable State law and local ordinances and the Wawona Land Use Regulations, as described in Paragraph III (C) (6) below.
 - 2. Provide the services of the County Health Department, which include issuing permits and making inspections on private lands in Wawona, Section 35 for private sewage disposal systems and wells. Services and permits also include those provided by the Air Pollution Control District.
 - 3. Provide mental health, behavioral health and social services for Wawona, Section 35 residents consistent with those services that are available to all other County residents.
 - 4. Provide welfare services to residents of Wawona, Section 35 consistent with services provided to other County residents.
 - 5. Provide maintenance for all designated county maintained roads on the same basis as provided throughout Mariposa County.
 - 6. Issue encroachment permits for all designated county maintained roads on the same basis as provided throughout Mariposa County.
 - 7. Administer a contract with a private trash hauling company for solid waste removal services in the community.
 - 8. Coordinate the pine needle removal program and bulky items (trash) removal program if available.
- B. The SERVICE shall, within private lands in Wawona, Section 35, subject to availability of funds:

1. Continue to provide a dedicated ambulance properly staffed and equipped for immediate service into Wawona, Section 35.
2. Provide a wastewater treatment system for Wawona, Section 35.
3. Provide a potable water system for Wawona, Section 35.
4. Adhere to due process of federal law, regulation and policy in accordance with congressional direction and pursuant to NPS policy as found in Director's Order #25: Land Protection: Sec. 3.6 prior to instituting any condemnation proceedings affecting private land in Wawona Section 35. The SERVICE shall give the COUNTY thirty (30) calendar days prior written notice of intended condemnation proceedings; said notice shall be directed to the Chair of the Mariposa County Board of Supervisors.

C. The PARTIES mutually agree:

1. Responsibilities for Law Enforcement shall be as specified in the General Agreement between the United States National Park Service Yosemite National Park, California and the Mariposa County Sheriff's Office, Agreement Number U880812PX0003 entered into in 2012, or as amended.
2. Responsibilities for providing and maintaining public library services in Wawona, Section 35 shall be as specified in the Agreement between the National Park Service Yosemite National Park and the County of Mariposa for the County Public Library, Wawona, Agreement Number AG 8800-96-005 entered into in October 1996, or as amended.
3. Responsibilities for fire protection shall be as specified in the Agreement between The United States Department of Interior National Park Service and the County of Mariposa, Agreement Number F8803110001 entered into in October 2011, or as amended.
4. Responsibilities for Emergency Medical Service shall be as specified in the Memorandum of Agreement between the United States Department of the Interior National Park Service and the County of Mariposa, Agreement Number P880811PX0001, entered into in October, 2011, or as amended.
5. Responsibilities for Behavioral Health Care shall be as specified in the General Agreement between the United States Department of the Interior National Park Service and the County of Mariposa, Agreement Number MYOSERV001, entered into in June, 2015, or as amended.
6. Land use control on private lands in Wawona, Section 35 will be governed by the Wawona Specific Plan and any adopted implementing ordinances, both of which may be amended from time to time, as approved and adopted by COUNTY and as approved by the SERVICE. The Wawona Specific Plan, as adopted or amended, is by this reference incorporated herein. Said Wawona Specific Plan Land Use Policies, Regulations and Maps, and any adopted implementing ordinances, as amended from time to time, shall be a part of this AGREEMENT by reference. Land use control on private lands in Wawona, Section 35 will also be governed by California State Statutes and Mariposa County Code. Where inconsistencies exist among the Wawona Specific Plan, California State Statutes and Mariposa County Code, the most restrictive requirement shall apply.
7. The Chair of the MARIPOSA COUNTY BOARD OF SUPERVISORS and the Superintendent of Yosemite National Park shall each designate a maximum of three (3) representatives to make or receive requests for their respective agencies for special services under this AGREEMENT. One COUNTY representative shall be the Chair of the Wawona Town Planning Advisory Committee or his/her designee. Such persons will hereinafter be referred to as "DESIGNATED REPRESENTATIVES."

8. The DESIGNATED REPRESENTATIVES shall meet and confer annually concerning the AGREEMENT to discuss any need for modification of the AGREEMENT and/or the Wawona Specific Plan, as above described. Said DESIGNATED REPRESENTATIVES may recommend modifications to their respective agencies. Any modification will be by mutual agreement of both PARTIES, following review by the Wawona Town Planning Advisory Committee. Amendments to the Wawona Specific Plan or the AGREEMENT shall be processed pursuant to applicable specific plan provisions and all other applicable policies, statutes and ordinances. The responsibility to chair these annual meetings shall alternate each year; Mariposa County shall chair the first meeting.
9. The officers, agents, and employees of the COUNTY performing services under this AGREEMENT shall not be considered as agents of the SERVICE, or otherwise coming within the scope of Federal employment and none of the benefits of federal employment will be conferred under the AGREEMENT. Officers, agents, and employees of the SERVICE performing services under this AGREEMENT shall not be considered as coming within the scope of COUNTY employment and none of the benefits of COUNTY employment will be conferred under this AGREEMENT.
10. The COUNTY and the SERVICE are obligated to provide the services specified in this AGREEMENT only to the extent that personnel and equipment are available. Cessation of any current service may not occur until notice is served to the PARTIES specified in this AGREEMENT a minimum of 90 days prior to cessation.
11. All applicable immunities enjoyed by SERVICE and COUNTY shall apply to their participation in rendering assistance under this Agreement. To the extent required by the Federal Tort Claims Act, the United States will be liable for the acts of its employees acting within their course and scope of employment. To the extent required by California law, the County will be liable for the acts of its employees acting within the course and scope of their employment.

ARTICLE IV. TERM OF AGREEMENT

The term of the AGREEMENT shall be five (5) years from the date of execution. The agreement shall be reviewed as provided herein, and may be renewed and/or modified by the mutual consent of the PARTIES. Upon notification by either PARTY of the intention to terminate the AGREEMENT, public hearings will be held by the PARTY proposing termination, prior to but no less than one (1) month before the expiration of the AGREEMENT to determine whether or not the AGREEMENT should be terminated. Following the public hearing, the termination order, if approved, will be executed by the Regional Director if the SERVICE has determined not to renew, or by the Chair of the Board of Supervisors if the COUNTY has determined not to renew.

ARTICLE V. KEY OFFICIALS (NPS AND MARIPOSA COUNTY)

The Superintendent, Yosemite National Park, P.O. Box 577, Yosemite, California 95389 and the Chair, Board of Supervisors, Mariposa County, P.O. Box 784, Mariposa, California 95338 shall be the officials responsible for this Agreement.

Pursuant to Article III, C.8 of this AGREEMENT, a written report of any meeting between DESIGNATED REPRESENTATIVES shall be forwarded to the Key Officials established herein and the Chair of the Wawona Town Planning Advisory Committee, prior to the 31st day of December of any given year. The report shall be discussed as an agenda item for the next scheduled Wawona Town Planning Advisory Committee meeting.

ARTICLE VI. REQUIRED CLAUSES

- A. **Non-Discrimination.** All activities pursuant to or in association with this Agreement shall be conducted without discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex, as well as in compliance with the requirements of any applicable federal laws, regulations, or policies prohibiting such discrimination.
- B. **NPS Appropriations.** Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate NPS, the Department, or the United States of America to any current or future expenditure of funds in advance of the availability of appropriations from Congress and their administrative allocation for the purposes of this Agreement, nor does this Agreement obligate NPS, the Department, or the United States of America to spend funds on any particular project or purpose, even if funds are available.
- C. **Limitations on Lobbying.** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 - No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Members or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31. In addition to the above, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.
- D. **Compliance with Applicable Laws.** This Agreement and performance hereunder is subject to all applicable laws, regulations and government policies, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as (i) in any way impairing the authority of the NPS to supervise, regulate, and administer its property under applicable laws, regulations, and management plans or policies as they may be modified from time-to-time or (ii) inconsistent with or contrary to the purpose or intent of any Act of Congress.
- E. **Modifications.** This Agreement may be extended, renewed, supplemented or amended only when agreed to in writing by the NPS and the COUNTY.
- F. **Member of Congress.** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States of America, or to any benefit to arise thereupon.
- G. **No Agency.** The COUNTY is not an agent or representative of the United States of America, the Department, or NPS, nor will the COUNTY represent itself as such to third parties. NPS employees are not agents of the COUNTY and will not represent themselves as such to third parties. Nothing in

this Agreement shall at any time be construed so as to create the relationship of employer and employee, principal and agent, or joint venture as between the COUNTY and NPS.

H. Public Information Release

1. The COUNTY will not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, pictures, still and motion pictures, articles, manuscripts or other publications) which states or implies Federal Government, Departmental, bureau, or Federal Government employee endorsement of a product, service or position which the COUNTY represents. No release of information relating to this Agreement may state or imply that the Federal Government approves of the work product of the COUNTY or considers the COUNTY's work product to be superior to other products or services.

2. The COUNTY will ensure that all information submitted for publication or other public releases of information regarding this project will carry the following disclaimer:


"The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government."


3. The COUNTY will obtain prior NPS approval from the Park public affairs office for any public information release that refers to the Department of the Interior, any bureau or employee (by name or title), or to this Agreement. The specific text, layout, photographs, etc., of the proposed release must be submitted to the key official, who will forward such materials to the public affairs office, along with the request for approval.

ARTICLE VII. SIGNATURES

THE NATIONAL PARK SERVICE:

COUNTY OF MARIPOSA:


By: 
Don L. Neubacher
Superintendent
Yosemite National Park

By: 
John Carrier, Chair
Board of Supervisors
County of Mariposa


Date: 4/3/16

Date: 4/19/16

ATTEST:


René LaRoche
Clerk of the Board of Supervisors

APPROVED AS TO FORM:


Steven W. Dahlem
County Counsel