

AGREEMENT FOR PROFESSIONAL ENGINEERING CONSULTING SERVICES

THIS AGREEMENT ("Agreement") is entered into as of _____, between the COUNTY OF TULARE, a political subdivision of the State of California ("COUNTY"), and NCM ENGINEERING CORPORATION, referred to as "CONSULTANT", incorporated within the State of California. COUNTY and CONSULTANT are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

A. WHEREAS, COUNTY has requested professional engineering services for a bridge replacement/rehabilitation project on Avenue 392 over Sand Creek. These consulting services are to include project management, preliminary engineering, plan, specifications, and estimate (PS&E), bidding, and other compliance tasks as described per Exhibit A, to the satisfaction of the COUNTY, State, Federal Highway Administration (FHWA) and other jurisdictional agencies. CONSULTANT shall document the results of the work to the satisfaction of the COUNTY, the State and FHWA. This may include preparation of progress and final reports or similar evidence of attainment of the agreement objectives and;

B. WHEREAS, CONSULTANT'S response indicates that it possesses the professional qualifications, relevant experience and demonstrated competence to provide such services. If there is any conflict between the approved Cost Proposal and this Agreement, this Agreement shall take precedence and;

ACCORDINGLY, IT IS AGREED:

1. SERVICES. CONSULTANT will provide professional engineering services, more particularly described in Exhibit A ("Scope of Work"). All work performed and billed to the COUNTY by the CONSULTANT shall be grant eligible in accordance with the Caltrans Local Assistance Procedures Manual (LAPM), unless otherwise directed by the COUNTY, in writing.

2. TIME FOR PERFORMANCE/TERM. Time is of the essence in this Agreement. The services as described in Exhibit A will commence within five days of receipt of a written notice to proceed issued following approval of this Agreement by the COUNTY. This agreement becomes effective as of September 11, 2018 and expires at 11:59 PM on June 30th, 2021, unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this Agreement. Mutually acceptable changes in the scope, character, or complexity of the work, if such changes become desirable or necessary as the work progresses,

will be accommodated by a supplemental agreement. An appropriate extension of time may be made in the form of a supplemental agreement in case of unavoidable delays. Corresponding warranted adjustments in payment will be made based upon the incorporated rate schedule. CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until the contract is fully executed and approved by COUNTY.

3. COMPENSATION.

- a. The COUNTY shall reimburse the CONSULTANT for hours worked at the hourly rates specified in the CONSULTANT's Cost Proposal, as described in Exhibit B. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.
- b. In addition, the CONSULTANT will be reimbursed for incurred direct costs other than salary costs that are identified in the Scope of Work, Exhibit A, and the Cost Proposal, Exhibit B.
- c. No additional compensation will be paid to the CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of the work or the scope of the project, adjustment to the fee will be negotiated between the CONSULTANT and COUNTY. Adjustment in the fee will not be effective until authorized by supplemental agreement and approved by the COUNTY.
- d. The CONSULTANT shall not commence performance of work or services until this Agreement has been approved by COUNTY, and a notification to proceed has been issued. No payment will be made for any work performed prior to approval of this Agreement.
- e. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by COUNTY'S Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due COUNTY that include any equipment purchased under the provisions

of Article 26 Equipment Purchase of this Agreement. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to COUNTY'S Contract Administrator at the following address:

Jason K. Vivian
5961 S. Mooney Blvd.
Visalia, CA 93277

- f. The total amount payable by the COUNTY for services identified in Exhibit A and Exhibit B shall not exceed sum of **ONE HUNDRED FORTY-FOUR THOUSAND NINE HUNDRED EIGHTY-THREE AND NO CENTS (\$144,983.00)** for services.

The CONSULTANT shall not commence performance of work or services until this Agreement has been approved by COUNTY, and a notification to proceed has been issued. The CONSULTANT shall not commence performance of optional services until a notification to proceed has been issued. No payment will be made prior to approval or for any optional services performed prior to the issuance of a notice to proceed.

CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

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

CONSULTANT also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are subject to repayment by CONSULTANT to the COUNTY.

The approved Indirect Cost Rate (ICR), specified in Exhibit B, shall be fixed for the term of this Agreement and no adjustment will be made unless both Parties are in mutual agreement.

Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions of this article.

4. PAYMENT. No sooner than the 10th day of each calendar month, CONSULTANT will submit to the Resource Management Agency, Attn: Contract Administrator, a detailed invoice for services rendered under this Agreement during the previous calendar month. CONSULTANT will be deemed to have waived all rights to compensation for any services not billed within 90 calendar days after the month in which the services were provided. Invoices shall detail the work performed on each milestone, on each project as applicable and shall provide total contract recap of prior invoices, current invoice, and contract balance. Invoices shall reference this Agreement number and the project title. CONSULTANT shall not commence performance of work or services until this Agreement has been approved by the COUNTY, and a notification to proceed has been issued. No payment will be made for any work performed prior to receiving the notification to proceed.

5. COMPLIANCE WITH LAW. CONSULTANT shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONSULTANT'S employees, CONSULTANT shall comply with all laws and regulations pertaining to prevailing wage rates and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

6. RETENTION OF RECORDS/AUDIT. For the purpose of determining compliance with Public Contract Code section 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 Agreement pursuant to Government Code section 8546.7; CONSULTANT,

subconsultants, and COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All Parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants' (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

7. AUDIT REVIEW PROCEDURES. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by subsequent agreement, shall be reviewed by the COUNTY'S Auditor-Controller.

Not later than 30 calendar days after issuance of the final audit report, CONSULTANT may request a review by COUNTY'S Administrative Officer of unresolved audit issues. The request for review will be submitted in writing.

Neither the pendency of a dispute nor its consideration by COUNTY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this Agreement.

CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COUNTY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be

considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

8. SUBCONTRACTING. Nothing contained in this Agreement or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT'S obligation to pay its subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to the CONSULTANT.

CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by COUNTY'S Contract Administrator, except that which is expressly identified in the approved Cost Proposal.

CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by COUNTY.

All subcontracts entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

Any substitution of subconsultant(s) must be approved in writing by COUNTY'S Contract Administrator prior to the start of work by the subconsultant(s).

9. INDEPENDENT CONTRACTOR STATUS. The Parties enter into this Agreement with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. The Parties agree that the CONTRACTOR and any of its agents, employees, or officers cannot be considered agents, employees, or officers of COUNTY. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR will be solely responsible for determining the means and methods of performing the specified services and COUNTY will have no right to control or exercise any supervision over CONTRACTOR as to how the CONTRACTOR will perform the services. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- (1) Withhold FICA (Social Security) from CONTRACTOR'S payments.
- (2) Make state or federal unemployment insurance contributions on CONTRACTOR'S

behalf.

- (3) Withhold state or federal income tax from payments to CONTRACTOR.
- (4) Make disability insurance contributions on behalf of CONTRACTOR.
- (5) Obtain unemployment compensation insurance on behalf of CONTRACTOR.

Notwithstanding this independent contractor relationship, COUNTY reserves the right to monitor and evaluate the performance of CONSULTANT for the purpose of assuring compliance with this Agreement.

10. INSURANCE. Prior to approval of this Agreement by the COUNTY, CONSULTANT shall file with the Resource Management Agency, evidence of the insurance in accordance with Exhibit C attached, which outlines the minimum scope, specifications and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in Exhibit C cannot be used to reduce limits available to COUNTY as an additional insured from the Contactor's full policy limits. Insurance policies shall not be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer (s). If CONSULTANT fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement. COUNTY may also withhold any payment otherwise due to CONSULTANT for failure to provide evidence of renewal until CONSULTANT provides such evidence.

11. INDEMNIFICATION:

(a) To the fullest extent permitted by law, CONSULTANT must indemnify, defend (at CONSULTANT'S sole cost and expense and with legal counsel approved by COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate

(directly or indirectly) to the negligence, recklessness, or misconduct of CONSULTANT with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of CONSULTANT, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). CONSULTANT'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONSULTANT'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from CONSULTANT'S duty to indemnify. CONSULTANT shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to CONSULTANT of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to CONSULTANT by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than CONSULTANT are responsible for the Claim does not relieve CONSULTANT from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if CONSULTANT asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONSULTANT may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. CONSULTANT'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. CONSULTANT'S liability for indemnification under this Agreement is in addition to any liability CONSULTANT may have to COUNTY for a breach by CONSULTANT of any of the provisions of this Agreement. Under no circumstances may the

insurance requirements and limits set forth in this Agreement be construed to limit CONSULTANT'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

(c) CONSULTANT must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

12. TERMINATION. The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating Party may be entitled at law or under this Agreement.

(a) Without Cause: COUNTY may terminate this Agreement without cause by giving thirty (30) days' prior written notice to CONSULTANT of its intention to terminate under this provision, specifying the date of termination and with the reasons for termination stated in the notice. COUNTY will pay to CONSULTANT the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONSULTANT of any and all plans, specifications and estimates, and other documents prepared by CONSULTANT in accordance with this Agreement. COUNTY will not impose sanctions on CONSULTANT under these circumstances.

(b) With Cause: Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) material misrepresentation, either by CONSULTANT or anyone acting on CONSULTANT'S behalf, as to any matter related in any way to COUNTY'S retention of CONSULTANT, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONSULTANT to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If CONSULTANT fails to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 calendar days written notice to CONSULTANT.

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 calendar days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

COUNTY will pay to the CONSULTANT the compensation earned for work satisfactorily performed and not previously paid to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONSULTANT of any and all reports and other documents prepared by CONSULTANT by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will the COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting

from such termination. If COUNTY terminates this Agreement for cause and the expense of finishing CONSULTANT'S scope of work exceeds the unpaid balance of the agreement, then CONSULTANT must pay the difference to COUNTY. COUNTY may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific cause of CONSULTANT'S non-performance.

(c) Effects of Termination: Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY terminates CONSULTANT'S services, that termination will not affect any rights of COUNTY to recover damages against CONSULTANT.

(d) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of the COUNTY department or agency for which CONSULTANT'S services are to be performed, may immediately suspend performance by CONSULTANT, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONSULTANT to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

13. ENTIRE AGREEMENT REPRESENTED. This Agreement represents the entire agreement between CONSULTANT and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

14. HEADINGS. Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

15. NOTICE. Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Tulare County Resource Management Agency
Attention: Jason K. Vivian, Contract Administrator
5961 South Mooney Boulevard
Visalia, CA 93277

Fax No.: (559) 730-2653 Confirming No.: (559) 624-7000,
Email: jvivian@co.tulare.ca.us

CONSULTANT:

NCM Engineering Corporation
Attention: Steve Mislinski, P.E.
1322 E. Shaw Ave, Suite 190
Fresno, CA 93710

Confirming No.: (559) 492-3016
Confirming Fax No.: (559) 492-3539
Email: steve@ncmcivil.com

Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either party may change the above address by giving written notice under this section. The above stated CONSULTANT address is to be the main working office location for the duration of this Agreement.

16. CONSTRUCTION. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 will not apply to address and interpret any uncertainty.

17. NO THIRD PARTY BENEFICIARIES INTENDED. Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy. The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. The COUNTY warrants that it has not required the CONSULTANT to employ or retain any company or person, or to pay or agree to pay any firm, person or organization, any fee, contribution donation or consideration of any land, contingent upon or resulting from the award or formation of this Agreement.

18. JURISDICTION/VENUE. This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this Agreement is made in and shall be performed in Tulare County California. CONSULTANT waives the removal provisions of California Code of Civil Procedure Section 394.

19. WAIVERS. The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

20. EXHIBITS AND RECITALS. The Recitals and the Exhibits A-E to this Agreement are fully incorporated into and are integral parts of this Agreement. In the event of any conflict or inconsistency among or between this Agreement and any Exhibit, Schedule, or Attachment, the terms and conditions of this Agreement shall prevail.

21. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY. This Agreement is subject to all applicable laws and regulations. If any provisions of this Agreement are found by any court or other legal authority, or are agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases the remainder of the Agreement will continue in full force and effect.

22. FURTHER ASSURANCES. Each Party agrees to execute any additional documents and to perform any further acts which may be reasonably required to affect the purposes of this Agreement.

23. PROFESSIONAL STANDARDS. By submitting final documents for approval by COUNTY, CONSULTANT represents that said documents are accurate. CONSULTANT will be responsible to COUNTY for the professional quality, adequacy, and completeness of the services, studies, and reports provided, and represents that such services, studies and reports will be suitable for the intended purposes.

CONSULTANT will perform the services provided in this Agreement in a manner consistent with the professional skill and care ordinarily exercised by expert members of the planning, engineering, and environmental profession practicing in the State of California under similar conditions.

Where applicable and in accordance with California law, the responsible CONSULTANT/engineer shall sign and seal reports and engineering data furnished by him/her.

24. DBE PARTICIPATION REQUIREMENTS: This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

The goal for DBE participation for this contract is 0%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Contract DBE Commitment (**Exhibit D**) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting COUNTY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid

under the, contract is commensurate with the work it is actually performing, and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COUNTY'S Contract Administrator within 30 days.

25. OWNERSHIP OF DOCUMENTS. Upon completion of all work under this Agreement, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this Agreement will automatically be vested in COUNTY; and no further

agreement will be necessary to transfer ownership to COUNTY. CONSULTANT shall furnish COUNTY all necessary copies of data needed to complete the review and approval process.

It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.

CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by COUNTY of the machine-readable information and data provided by CONSULTANT under this Agreement; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by COUNTY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONSULTANT.

Applicable patent rights provisions regarding right to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts for federal-aid contracts.

COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

26. EQUIPMENT PURCHASE. Prior authorization in writing by the COUNTY'S Contract Administrator shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

Prior to seeking authorization by the COUNTY'S Contract Administrator for the purchase of any item, service or consulting work not covered in the CONSULTANT'S Cost Proposal and exceeding \$5,000, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this Agreement is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the COUNTY in an

amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If the COUNTY elects to keep the equipment, fair market value shall be determined at the CONSULTANT'S expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5000.00 is credited to the project.

All subcontracts in excess \$25,000 shall contain the above provisions.

27. DISPUTES. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the COUNTY'S Contract Administrator and the RMA Assistant Director - Public Works, who may consider written or verbal information submitted by the CONSULTANT.

Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

Not later than 30 calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by the Tulare County Board of Supervisors for unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

28. CONFIDENTIALITY: CONSULTANT may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from CONSULTANT that CONSULTANT has previously identified as confidential. If COUNTY determines that it must disclose any information that CONSULTANT previously identified as confidential, then it shall promptly give CONSULTANT written notice of its intention to disclose such information and the authority for such disclosure. CONSULTANT shall have a period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify COUNTY that it will not seek such an order. COUNTY shall

cooperate with CONSULTANT in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from CONSULTANT, or CONSULTANT has notified COUNTY that it will not seek such an order, or CONSULTANT has sought and a court has declined to issue a protective order for such information. If CONSULTANT seeks a protective order for such information, CONSULTANT shall defend and indemnify COUNTY from any and all loss, injury, or claim arising from COUNTY'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of COUNTY and CONSULTANT to maintain confidentiality of information under this section continues beyond the term of this Agreement.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than COUNTY.

29. CONFLICT OF INTEREST. The CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this Agreement, or any ensuing COUNTY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing COUNTY construction project, which will follow.

The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this article.

The CONSULTANT hereby certifies that neither the CONSULTANT, its employees, nor any firm affiliated with the CONSULTANT providing services on this project will bid on any construction contract, or any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultants who have provided design services in connection with this Agreement shall be eligible to bid on any construction contract, or any contract to provide construction inspection for any construction project resulting from this Agreement.

30. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION. The CONSULTANT warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion to terminate the Agreement without liability; to pay only for the value of the work actually performed; to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

31. PROHIBITION OF EXPENDING COUNTY, STATE OR FEDERAL FUNDS FOR LOBBYING.

The CONSULTANT certifies to the best of his or her knowledge and belief that:

- a. No state, federal or COUNTY appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The CONSULTANT also agrees by signing this Agreement that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

32. CLAIMS FILED BY CONSTRUCTION CONTRACTOR. If claims are filed by COUNTY'S construction contractor relating to work performed by CONSULTANT'S personnel, and additional information or assistance from CONSULTANT'S personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with COUNTY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or mediation proceedings.

CONSULTANT'S personnel that COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT'S personnel services under this Agreement.

Services of CONSULTANT'S personnel in connection with COUNTY'S construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to resolve the construction claims.

Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

33. SAFETY. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by COUNTY Safety Officer and other COUNTY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

Pursuant to authority contained in Section 591 of the Vehicle Code, COUNTY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Article.

34. EVALUATION OF CONSULTANT. CONSULTANT'S performance will be evaluated by COUNTY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the Agreement record.

35. STATEMENT OF COMPLIANCE. CONSULTANT'S signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code section 12990 and Title 2, California Administrative Code section 8103.

36. NONDISCRIMINATION. During the performance of this Agreement, CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the 5applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The CONSULTANT, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the CONSULTANT shall not discriminate on the

basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

37. FUNDING REQUIREMENTS. It is understood and agreed that if COUNTY'S funding is either discontinued or reduced for the services to be provided hereunder, then COUNTY will have the right to terminate this Agreement as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to COUNTY of any kind, provided that COUNTY shall pay CONTRACTOR for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.

38. INSPECTION OF WORK. CONSULTANT and any subconsultant shall permit COUNTY, the state, and the FHWA if federal participating funds are used in this Agreement, to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement, including review and inspection on a daily basis.

39. RETENTION OF FUNDS. No retainage will be withheld by COUNTY Contract Administrator from progress payments due to the CONSULTANT. Retainage by the prime CONSULTANT or subconsultants is prohibited, and no retainage will be held by the prime CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating prime CONSULTANT or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the prime CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime CONSULTANTS and subconsultants.

Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

40. DEBARMENT AND SUSPENSION. CONSULTANTS signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California,

// THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

By _____

Chairman, Board of Supervisors

ATTEST: _____,
County Administrative Officer/
Clerk of the Board of Supervisors

By _____
Deputy Clerk

NCM ENGINEERING CORPORATION

By [Signature]

Title PRESIDENT
By [Signature]

Title CEO

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chair-man of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having record-keeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract.

Approved as to Form
County Counsel

By [Signature] 20181328
Deputy 8/27/18

EXHIBIT A
SCOPE OF WORK

Project Understanding

NCM Engineering's understanding of the Avenue 392 Sand Creek Bridge project is based on information provided by the County, County project programming information, review of bridge inventory and inspection data and discussions with County staff.

Project Description

The existing Avenue 392 bridge (Bridge No.: 46C0345) is located approximately 0.4 miles east of Road 108. The bridge is a 2-lane, 20ft wide and 77ft long, four span reinforced concrete haunched slab structure over Sand Creek. The structure is supported on pier walls and abutments that are founded on spread footings. The bridge hydraulic opening is of insufficient size and constricts creek flows. In addition to hydraulic issues, the existing bridge is flagged as Functionally Obsolete (FO) with a Sufficiency Rating (SR) of 48.4.

To correct the FO flag, and to improve channel hydraulics, the existing bridge will be replaced with a three span, 100ft CIP flat slab that will span Sand Creek. The new bridge will incorporate "open-type" concrete barriers (Caltrans Type 80 Concrete Barrier) with metal beam guard railing on the approaches. It is understood that Avenue 392 will be closed during construction, and traffic will be detoured.

Work Plan

To date, preliminary engineering has progressed through Caltrans approval of a Structure Alternative Justification Report that recommends replacement of the existing bridge with a cast-in-place concrete slab structure. The following discussion outlines the tasks necessary to complete preliminary engineering and type selection, as well as final design, development of plans, specifications and estimates, and design support during construction.

1.1 Project Management

The NCM project manager will undertake a proactive, solutions based management approach that will include communication and coordination

with the County and other consultants working under separate contract, attendance of the NCM PM at up to 6 PDT meetings, preparation of invoices and status reports and development and maintenance of a project delivery schedule. The objective of this task is to provide overall management of the Engineering Services.

All project communication will be coordinated between the County Project Manager and the NCM Project Manager. No communication between any Consultant team members will take place with County Staff, County Leadership, Local Media, or outside agencies without the express permission of the County Project Manager.

Project management activities will also include preparation and submittal of invoices and progress reports. NCM proposes to prepare and submit on a monthly basis invoices and project progress reports for all work completed during the previous month, including labor costs and direct expenses, and percent completion of work during that reporting period.

Major milestones include the completion of the following:

- Type Selection Memorandum
- 65% PS&E
- 90% PS&E
- Final PS&E

Task 1.1 Deliverables: Monthly progress reports, schedule updates and invoices, and meeting agendas and minutes

1.2 Prepare Preliminary Bridge Design (Completed)

1.3 Project Memorandum

1.3.1 – Draft Project Memorandum (Completed)

1.3.2 – Final Project Memorandum

NCM will update the Project Memorandum to incorporate comments received from the County, Caltrans and other project team members. Once updated, submitted and approved by Caltrans, it is assumed that the Final Project Memorandum will serve as the approved Bridge Type Selection Report.

Task 1.3 Deliverables: Final Project Memorandum



2.1 Final Design (65% PS&E)

2.1.1 – Bridge Design

Bridge design will be in accordance with current Caltrans procedures and practices using Caltrans manuals: Bridge Design Aids, Bridge Design Details and Bridge Design Memos. AASHTO LRFD Bridge Design Specifications with 2006 interims and Addenda by Caltrans will serve as the bridge design criteria. The design shall meet County, Caltrans and FHWA standards that are in effect on the date of Notice to Proceed. It is assumed that the selected bridge type will be cast-in-place (CIP) flat slab and the bridge will be designed using the standard CIP design tables contained in Caltrans Bridge Design Aids Section 4. Slab reinforcement details will be per the latest standard Caltrans XS sheets, and seismic design will follow the latest Caltrans Seismic Design Criteria.

2.1.2 – Bridge Plans

Detailing of plans will be in accordance with County CAD Drafting Standards and Caltrans Bridge Design and Details manual and will use the current Caltrans Standard Plans and XS sheets where applicable. All plans shall be checked by the designer and will be revised based on comments from the independent check, the County, Caltrans and other team members. Our cost proposal is based on development of the following plan sheets:

1. General Plan
2. General Notes & Deck Contours
3. Foundation Plan
4. Abutment Layout
5. Abutment Details
6. Bent Layout
7. Bent Details
8. Typical Section
9. Deck Slab Details

2.1.3 – Engineer's Estimate of Probable Construction Cost

NCM will prepare quantity calculations and develop unit costs for items that are applicable to this project for development of the bridge cost estimate. Quantities will be prepared in accordance with Caltrans 2010 Standard Specifications and Payment Items. Unit prices will be based on the latest cost data from the County and Caltrans. Quantities for all contract items, including the cost of lump sum items, will be substantiated by calculations. Quantity calculations will be neat,

orderly, and will include all sketches, diagrams and dimensions necessary to allow them to be independently used by field engineers. The Engineer's Estimate will be presented using the Caltrans Structural Quantity and Marginal Estimate form DS-D 0019 using standard Caltrans pay items and codes with the "Check" column blank.

2.1.4 – Contract Specifications / Special Provisions

NCM will prepare project specific Structure Special Provisions, in accordance with Caltrans' Plans, Specification and Estimates Guide, using Caltrans Standard Special Provisions (SSP) format with imperial units based on the 2010 Caltrans Standards. The Structure SSP's will bear the State of California Professional Engineer registration seal with the signature, license number and registration certificate expiration date of the Engineer who prepared the special provisions, or the Engineer under whose direction they were prepared. A list of contract items, with item descriptions, item numbers, units of pay, and item pay codes, but without quantities or estimated unit costs, will be included in the front of the SSP's. It is assumed that the County will be responsible for preparation of and updates to the "boiler plate" special provisions.

Task 2.1 Deliverables:

- Three full-size sets of plans (22x34)
- One half-size set of plans (11x17)
- Three sets of annotated Special Provisions
- Three Copies of Cost Estimate/Marginal Estimate
- One set of draft (unchecked) Design Calculations
- Electronic submittal of all deliverables in PDF format

2.2 90% PS&E

2.2.1 – Bridge Independent Design Check

The unchecked plans and special provisions will be independently checked by a registered engineer who was not involved with the planning level or final design that led to the 65% unchecked details. The plans will be checked with regard to bridge layout geometry and structural integrity and the special provisions will be checked for consistency with the plans and completeness. A set of engineering calculations will be developed as part of the independent check to document the structural analysis performed, the results obtained and any

design change recommendations made. The independent check calculations will be neatly organized with a table of contents and will be signed by the professional engineer registered in the State of California responsible for performing and/or overseeing the independent check. Comments on the plans made by the independent check engineer will be made in red to indicate items to be discussed or yellow for approval. The independent check and design engineers will work together to discuss and resolve discrepancies. The bridge design and independent check calculations will be updated to reflect the final design resolution.

2.2.2 – Bridge Plan Updates

The plans will be updated as necessary to incorporate comments from the County and other team members, as well as to reflect comments from the independent design check.

2.2.3 – Update to Engineer's Estimate of Probable Construction Cost

The quantities and marginal estimate form will be updated to reflect any changes due to comments from the County and other team members and from changes incorporated as part of the independent check resolution and an independent quantity check. The independent quantity check will be performed in accordance with Caltrans standards with agreement between the originator and the checker being within 3% for all items except for earthwork which should be with 5%.

2.2.4 – Contract Specifications / Special Provisions Updates

Structural special provisions will be updated to incorporate comments from the County, other team members and from the independent design check.

Task 2.2 Deliverables:

- Three full-size sets of plans (22x34)
- Two half-size set of plans (11x17)
- Three sets of annotated Special Provisions
- Three Copies of Cost Estimate/Marginal Estimate
- Three sets of Final (Checked) Design Calculations
- Three sets of Foundation Report with Log of Test Borings (by Others)
- Three sets of Hydraulic Design Report (by Others)
- Electronic submittal of all deliverables in PDF

format

2.3 Final PS&E

After receipt of final approval from the County, NCM will deliver the Final PS&E to include the following items:

Task 2.3 Deliverables:

- One set of Mylar Final plans (22x34)
- Final Plans on compact disk in AutoCAD 2012 format with CAD files prepared using County CAD standards
- Bidding Documents on compact disk in MS word format
- Engineer's Estimate/Marginal Estimate on compact disk in MS Excel format
- Three full-size sets of plans (22x34)
- Two half-size set of plans (11x17)
- Two sets of Independent Bridge Design Calculations
- Two sets of Independent Quantity Calculations
- Electronic submittal of all deliverables in PDF format

2.4 Final Roadway Design and PS&E (65%, 90% + Final) [OPTIONAL TASK]

NCM will perform final roadway design as an optional task and will submit plans, specifications and estimate as part of the bridge package outlined in Tasks 2.1 through 2.3. The roadway PS&E components will be incorporated into the bridge PS&E at the 65%, 90% and Final submittal stages, in addition to minor assistance during bidding and construction. It is expected that roadway work will be limited to the bridge approaches with approach lengths of 50 feet measured from each bridge abutment. Roadway work within these limits is expected to include guardrails, minor grading for bio-swailes and shoulder work, pavement rehabilitation/overlay and associated details and tie-in to the existing roadway. It is assumed that Caltrans Standard Plan Details will be used for guardrails and other standard details as appropriate and the roadway and bridge profile will match the existing condition.

3.1 Assistance During Bidding

It is understood that the County will advertise the project for bids, distribute plans to prospective bidders, analyze bids received and award a



construction contract. NCM will assist the County during the bidding phase with requests for information, interpretation of the bid documents and preparation of addenda. The NCM Project Manager or Engineer of Record will attend the pre-bid, preconstruction or bid opening if requested by the County.

Task 3.1 Deliverables: Responses to RFI's and Addenda to Bid Documents

3.2 Design Support During Construction

NCM will provide general design support to the County during construction of the project. The NCM Project Manager or Engineer of Record will attend the pre-construction meeting in addition to site meetings if necessary. Submittals of shop drawings, quotes, materials, etc. will be reviewed by NCM and clarifications to construction documents will be made as necessary. NCM will also review and respond to contractor RFI's. NCM will review and approve all submittals and shop plan drawings submitted by the construction contractor for consistency with the bid documents.

Task 3.2 Deliverables: Responses to RFI's and contractor submittals

EXHIBIT B
COST PROPOSAL

TULARE COUNTY
AVENUE 392 SAND CREEK BRIDGE REPLACEMENT
COST PROPOSAL FOR CONSULTANT SERVICES

Contract No. _____ Date: 7/10/2018
 Consultant NCM ENGINEERING CORPORATION

DIRECT LABOR

Classification	Name	Range	Hours	Initial Hourly Rate	Total
Project Manager			62	@ \$95.00	\$ 5,890
Senior Bridge Engineer			182	@ \$49.45	\$ 9,000
Senior Bridge Engineer			36	@ \$49.45	\$ 1,780
Staff Bridge Engineer			272	@ \$41.00	\$ 11,152
Staff Bridge Engineer			104	@ \$41.00	\$ 4,264
Staff CADD			348	@ \$44.40	\$ 15,451
Staff Administration			24	@ \$21.00	\$ 504
Senior Roadway Engineer			0	@ \$58.63	\$ 0
Assistant Roadway Engineer			0	@ \$25.50	\$ 0
Subtotal Direct Labor Costs					\$ 48,041
Anticipated Salary Increases *					\$ 0
Total Direct Labor Costs					\$ 48,041

FRINGE BENEFITS

Rate	Total
_____ %	\$ _____
Total Fringe Benefits	\$ 0

INDIRECT COSTS

	Rate	Total
Overhead	_____ %	\$ _____
General and Administrative	_____ %	\$ _____
Total	170.00 %	\$ _____
Total Indirect Costs		\$ 81,670

FEE (Profit on Direct Labor + Fringe Benefits + Indirect)

Rate	Total
10.00 %	\$ _____
Fee (DC+FB+I)	\$ 12,971

OTHER COSTS

1. Reproduction	\$ _____	
2. Copying	\$ _____	
3. Plotting (Full Size Bond and Mylar Plans)	\$ 1,000	
4. Transportation / Travel	\$ 800	
5. Special Deliveries	\$ 500	
6. Computer Costs	\$ _____	
Subtotal Other Costs		\$ 2,300

FEE (Other Costs)

Rate	Total
_____ %	\$ _____
Fee (OC)	\$ 0

SUBCONTRACTOR COSTS (attach detailed cost estimate for each subcontractor)

\$ _____
\$ _____
\$ _____
\$ _____

TOTAL COST

\$ 144,983



TULARE COUNTY
 AVENUE 262 SAND CREEK BRIDGE REPLACEMENT
 COST PROPOSAL FOR CONSULTANT SERVICES

CLIENT: TULARE COUNTY		Date: 02/10/16									
ELEMENT: BRIDGE DESIGN FOR BR. 4630346		Proj.									
		Labor Hours by Classification									
		1	2	3	4	5	6	7	8	9	10
		PM	Sr. Br. Eng.	Br. Eng.	Staff Br. Eng.	Staff Br. Eng.	Staff CAZO	Staff Admin.	Sr. Br. Eng.	Asst. Br. Eng.	Subtotal
		\$32.75	\$48.07	\$48.07	\$37.77	\$37.77	\$13.07	\$2.37	\$14.13	\$7.14	
CONSULTANT STAFF											
CONSULTANT RATE											
TASKS / SUBTASKS											
1.1	Phase / Project Management										
1.1.1	Project Management & Coordination	22									
1.1.2	PCF Coordination Meetings	12									
1.1.3	Progress Reports & Schedule	13					24				
1.2	Prepare Preliminary Bridge Design (Concepts)										
1.3	Prepare Draft and Final Project Memorandum										
1.3.1	Draft Memorandum (Completed)										
1.3.2	Final Memorandum	8			16						
2.1	Final Design (80% PS&E)										
2.1.1	Bridge Design										
2.1.2	Bridge Plans										
2.1.3	Engineer's Estimate of Probable Construction Cost										
2.1.4	Contract Specifications/Special Provisions										
2.2	90% PS&E										
2.2.1	Bridge Independent Check										
2.2.2	Bridge Plan Updates										
2.2.3	Update to Engineer's Estimate of Probable Construction Cost										
2.2.4	Contract Specifications/Special Provisions/Updates										
2.3	Final PS&E										
2.3.1	Assistance During Bidding										
2.3.2	Design Support During Construction										
Grand Total		62	102	36	272	104	348	24		1028	\$142,864

EXHIBIT C
INSURANCE REQUIREMENTS

PROFESSIONAL SERVICES CONTRACTS INSURANCE REQUIREMENTS

CONSULTANT shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONSULTANT, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. 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. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the CONSULTANT has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than \$2,000,000.
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 \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONSULTANT's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
2. CONSULTANT must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of work or operations performed by or on behalf of the CONSULTANT including material, parts, or equipment furnished in connection with such work or operations.*
 - b. *For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.*
 - c. *CONSULTANT hereby grants to COUNTY a waiver of any right to subrogation which any insurer of CONSULTANT may acquire against the county by virtue of the payment of any loss under such insurance. CONSULTANT 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.*

- d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled, except after written notice has been provided to the COUNTY.*
3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONSULTANT, its employees, agents and subcontractors. CONSULTANT waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.
- C. Deductibles and Self-Insured Retentions
Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.
- D. Acceptability of Insurance
Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.
- E. Verification of Coverage
Prior to approval of this Agreement by the COUNTY, the CONSULTANT shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

EXHIBIT D

CONSULTANT CONTRACT DBE COMMITMENT

(Caltrans Exhibit 10-O2)

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: Tulare County 2. Contract DBE Goal: 0%
 3. Project Description: Avenue 392 Bridge Replacement Over Sand Creek
 4. Project Location: On Avenue 392 over Sand Creek, 0.4 miles east of Road 108
 5. Consultant's Name: NCM Engineering Corporation 6. Prime Certified DBE: 7. Total Contract Award Amount: \$144,983
 8. Total Dollar Amount for ALL Subconsultants: _____ 9. Total Number of ALL Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section			\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____	14. TOTAL CLAIMED DBE PARTICIPATION		%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 14. Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.