

CONTRACT

THIS CONTRACT, hereinafter referred to as “CONTRACT” for purposes of identification hereby numbered MA-080-20011629, and dated _____ day of _____, 20_____ is

BY AND BETWEEN

County of Orange, a political subdivision of the State of California, hereinafter referred to as “COUNTY”

AND

Q3 Consulting, a California Corporation, hereinafter referred to as “A-E”,

which are sometimes individually referred to as “PARTY” or collectively referred to as “PARTIES”.

RECITALS

WHEREAS, COUNTY requires professional services to accomplish projects and/or services (“PROJECTS/SERVICES”) as described in MA-080-20011629 Scope of Work for A-E Services for San Juan and Trabuco Creek Facility Study, hereinafter referred to as “Attachment A,” attached hereto and incorporated herein by reference; and

WHEREAS, A-E is a firm whose principals are, as required by law, registered by the State of California for the practice of specialized A-E services per the attached Scope of Work.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. GENERAL

1.1. Retainer

1.1.1. COUNTY does hereby retain A-E to perform the PROJECTS/SERVICES as required by this CONTRACT.

1.1.2. A-E has offered, and COUNTY has accepted, the professional services of **John McCarthy, PE** and A-E shall assign him/her to the PROJECTS/SERVICES.

1.1.3. A-E may employ special consultants/contractors for the accomplishment of the PROJECTS/SERVICES specified; and only the firms or independent consultants/contractors identified in Attachment C may be employed by A-E to provide these PROJECTS/SERVICES.

1.1.4. Consultants/contractors may be substituted and/or added by mutual CONTRACT of A-E and the Director, County of Orange, OC Public Works or his designee, hereinafter referred to as “DIRECTOR”.

1.1.5. A-E's employment of independent consultants/contractors shall not relieve A-E from the performance of its own responsibilities pursuant to this CONTRACT. However, all consultants/contractors independently contracting with COUNTY shall be independently liable to COUNTY for the performance of the work pursuant to their agreements, and A-E shall have no liability for work by contractors independently contracting with COUNTY.

1.2. Projects/Services**1.2.1. Description of PROJECTS/SERVICES**

- a. PROJECT/SERVICES to be performed by A-E shall consist of the work as specified herein and as required in Attachment A. If in the event Attachment A shall be in conflict with any provision of this CONTRACT, the wording as set forth in Attachment A shall prevail.
- b. A-E shall be responsible for submitting all PROJECTS/SERVICES to COUNTY in a form which has been thoroughly reviewed and checked for completeness, accuracy and consistency by the registered professional named in Section 1.1.2 herein; and, any PROJECTS/SERVICES not meeting this requirement will be returned to A-E prior to review by COUNTY.

1.2.2. Design Criteria and Standards

All PROJECTS/SERVICES shall be performed in accordance with instructions, criteria and standards set forth by the DIRECTOR.

1.2.3. Scheduling

- a) Concurrently with the work of the CONTRACT, A-E shall prepare a progress work schedule and within five (5) working days from the date of receipt of individual assignments from COUNTY, A-E shall submit to COUNTY two (2) copies of a progress work schedule which shall delineate dates of commencement and completion of the various phases of PROJECTS/SERVICES assignments. A-E schedule shall include required COUNTY review period(s) set forth herein. An approved copy of the progress schedule will be returned to A-E.
- b) A-E shall allow at least five (5) working days for COUNTY review of progress work schedule. In planning work A-E should anticipate and allow ten (10) working days for COUNTY review of each submittal required in Attachment A.
- c) A-E shall meet on an as-needed basis as determined by COUNTY or at least once every four (4) weeks with COUNTY to review progress of work, adherence to progress schedule, coordination of work, scheduling of seminars, if needed, and to resolve any problems that may develop.
- d) Within five (5) working days of each meeting, A-E shall prepare a brief memorandum summarizing the results of the meeting and shall submit it to COUNTY for concurrence.
- e) A-E shall complete all the work of PROJECTS/SERVICES and obtain all approvals by the COUNTY within the time frame indicated in Attachment A except A-E shall not be responsible for any delay beyond the control of A-E.
- f) In the event A-E fails to complete the work and obtain the approval of DIRECTOR in the time allowed, COUNTY shall have the option of completing the work by its own forces or by contract with another firm. The time allowed for A-E to complete the PROJECTS/SERVICES pursuant to this CONTRACT shall be extended for delay caused by COUNTY in completing its work pursuant to this CONTRACT which delay exceeds the agreed COUNTY review and/or approval time periods.

1.3. Assistance by COUNTY STAFF

- 1.3.1.** COUNTY shall assign an appropriate staff member to work with A-E in connection with the work of this CONTRACT. Said staff member's duties will consist of the giving of advice and consultations, assisting A-E in negotiations with other public agencies and private parties, miscellaneous items which in the judgment of A-E or COUNTY's staff warrant attention, and all other duties as may be described in Attachment A.
- 1.3.2.** All of the above activities, however, shall be the primary responsibility of A-E to schedule, initiate and carry through to completion.

1.4. Term and Maximum Compensation

- 1.4.1.** The term of this CONTRACT shall commence upon Board of Supervisor approval, and unless earlier terminated as provided for herein, shall be in full force and effect until project completion, with a maximum allowable compensation of one million, eight hundred and thirty five thousand, one hundred and thirty four dollars (**\$1,835,134**); except as permitted in Paragraph 1.5 below.

1.5. A-E Compensation and Extra Work

- 1.5.1.** For the PROJECTS/SERVICES authorized under this CONTRACT, A-E shall be compensated in accordance with the following:
- 1.5.2.** For completion and approval of all PROJECTS/SERVICES where "Extra Work" (defined as changes in approved portions of the PROJECT/SERVICES required by and ordered in writing by DIRECTOR which changes constitute a change in or departure from said approved portions of PROJECTS/SERVICES) is not authorized, compensation including reimbursables shall be described and payable as stipulated in Fee Schedule, herein after referred to as "Attachment B", attached hereto and incorporated herein by reference.
- 1.5.3.** Where extra work is authorized for PROJECTS/SERVICES:
- a) The amount for Extra Work shall be determined using Attachment B. Extra Work shall be required by and ordered in writing by DIRECTOR. If this CONTRACT is not approved by the Board of Supervisors, any change that increases the cumulative CONTRACT price beyond \$200,000 must be approved by the Board. Increases in the CONTRACT amount for services within the existing scope of work may be granted by the DIRECTOR where the amount does not exceed 25 percent of the existing CONTRACT price or \$200,000, whichever is less.
 - b) A-E's billing for the Extra Work shall include but not be limited to names of A-E's staff employed in the Extra Work, classification of employees and number of hours worked.
- 1.5.4.** For partial completion of work of PROJECTS/SERVICES followed by default on part of A-E:
- a) For failure to complete and secure approval of the first required submittal, there shall be no compensation.
 - b) For failure to complete and secure approval of other authorized phases, A-E shall, upon completion of PROJECTS/SERVICES by others, be entitled to receive compensation based on approved work of PROJECTS/SERVICES not to exceed the amounts specified in Attachment A for that particular submittal, plus the reasonable value as determined by COUNTY of the non-approved work; provided, however, that if the cost to COUNTY to

complete the contract exceeds the amount specified herein, A-E shall be liable to COUNTY for such excess costs attributable to A-E's breach of the CONTRACT.

2. LABOR

2.1 Non-Employment of COUNTY Personnel

2.1.1 A-E agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of COUNTY in professional classifications of the same skills required for the performance of this CONTRACT who is involved in this Project in a participatory status during the life of this CONTRACT regardless of the assignments said employee may be given or the days or hours employee may work.

2.1.2 Nothing in this CONTRACT shall be deemed to make A-E, or any of A-E's employees or agents, agents or employees of the COUNTY. A-E shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work, provided that A-E is in compliance with the terms of this CONTRACT. Anything in the CONTRACT which may appear to give COUNTY the right to direct A-E as to the details of the performance of the work or to exercise a measure of control over A-E shall mean that A-E shall follow the desires of COUNTY, only in the results of the work.

2.2 Non-Discrimination

2.2.1 In the performance of this CONTRACT, A-E agrees that it will comply with the requirements of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons.

2.2.2 A-E acknowledges that a violation of this provision shall subject A-E to all the penalties imposed for a violation of the California Labor Code.

2.3 Employee Eligibility Verification

2.3.1 A-E warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens, and others and that all its employees performing work under this CONTRACT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. A-E shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations, including but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324 et seq., as they currently exist and as they may be hereafter amended. A-E shall retain all such documentation for all covered employees for the period prescribed by the law.

2.4 Independent Contractor

2.4.1 As referenced in Section 2.1.2 of this CONTRACT, A-E shall be considered an independent contractor.

2.4.2 Neither A-E, its employees nor anyone working under A-E shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

2.5 Conflict of Interest Contractor Personnel

- 2.5.1** The A-E shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the A-E; the A-E's employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and PROJECTS/SERVICES hereunder.
- 2.5.2** A-E's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

2.6 Labor Code Notice

- 2.6.1** All A-E and subcontractors must comply with the requirements of California Labor Code 1770 et seq. if the work performed is considered a "public works" under California Labor Code 1720 et seq. A-E is encouraged to contact the California Department of Industrial Relations for clarification if the A-E is unsure if some or any of the work performed under this CONTRACT qualifies as "public works".

3. INSURANCE

- 3.1.1** Prior to the provision of services under this CONTRACT, the A-E agrees to purchase all required insurance at A-E's expense, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this CONTRACT have been complied with. A-E agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the COUNTY during the entire term of this CONTRACT. The COUNTY reserves the right to request the declarations page showing all endorsements and a certified copy of the policy. In addition, all subcontractors performing work on behalf of A-E pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for A-E.
- 3.1.2** A-E shall ensure that all subcontractors performing work on behalf of A-E pursuant to this CONTRACT shall be covered under A-E's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for A-E. A-E shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from A-E under this CONTRACT. It is the obligation of A-E to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by A-E through the entirety of this CONTRACT for inspection by COUNTY representative(s) at any reasonable time.
- 3.1.3** All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the COUNTY's Risk Manager, or designee, upon review of A-E's current audited financial report. If A-E's SIR is approved, A-E, in addition to, and without limitation of, any other indemnity provision(s) in this CONTRACT, agrees to all of the following:
1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from A-E's, its agents, employee's or subcontractor's performance of this CONTRACT, A-E shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
 2. A-E's duty to defend, as stated above, shall be absolute and irrespective of any duty to

indemnify or hold harmless; and

3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the A-E's SIR provision shall be interpreted as though the A-E was an insurer and the COUNTY was the insured.

3.1.4 If the A-E fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

A. Qualified Insurer

1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

2. The policy or policies of insurance maintained by the A-E shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$5,000,000 per claims made or per occurrence \$5,000,000 aggregate

B. Required Coverage Forms

1. The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage as broad.
2. The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

C. Required Endorsements

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
 - a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, Orange County Flood Control District, and their respective elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.
 - b. A primary non-contributing endorsement using ISO form CG 20 01 0413, or a form at least as broad evidencing that A-E's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
2. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against **the County of Orange, Orange County Flood Control District, and their respective elected and appointed officials, officers, employees and agents**, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.
3. All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.
4. A-E shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.
5. If A-E's Professional Liability policy is a claims-made policy, A-E shall agree to maintain professional liability coverage for two (2) years following completion of Contract.
6. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
7. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
8. If the A-E fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

9. County expressly retains the right to require A-E to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.
10. County shall notify A-E in writing of changes in the insurance requirements. If A-E does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to A-E, and County shall be entitled to all legal remedies.
11. The procuring of such required policy or policies of insurance shall not be construed to limit A-E's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

4. INDEMNITY/COMPLIANCE

- 4.1 **A-E shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, Orange County Flood Control District and their agents, officers, and employees from employer sanctions and any other liability which may be assessed against A-E or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.**
- 4.2 All PROJECTS/SERVICES submitted by A-E shall be complete and shall be carefully checked prior to submission. A-E understands that COUNTY's checking is discretionary, and A-E shall not assume that COUNTY will discover errors and/or omissions. If COUNTY discovers any errors or omissions prior to approving A-E's PROJECTS/SERVICES, the PROJECTS/SERVICES will be returned to A-E for correction. Should COUNTY or others discover errors or omissions in the work submitted by A-E after COUNTY's approval thereof, COUNTY's approval of A-E's PROJECTS/SERVICES shall not be used as a defense by A-E.
- 4.3 **Indemnification**
 - 4.3.1 **A-E agrees to, indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, Orange County Flood Control District, and their elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A-E. If judgment is entered against A-E and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of A-E and COUNTY or COUNTY INDEMNITEES, A-E and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve A-E of any insurance requirements or obligations created elsewhere in this CONTRACT.**

4.4 Bills and Liens

4.4.1 A-E shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. A-E shall not permit any lien or charge to attach to the work or the premises, **but if any does so attach, A-E shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses arising from or related thereto.**

4.5 Compliance with Laws

4.5.1 A-E represents and agrees that services to be provided under this CONTRACT shall fully comply, at A-E's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the PROJECTS/SERVICES at the time PROJECTS/SERVICES are provided to and accepted by COUNTY.

4.5.2 A-E acknowledges that COUNTY is relying on A-E for such compliance, and pursuant to the requirements of the indemnification paragraph above, **A-E agrees that it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.**

5. TERMINATION**5.1 Termination of Contract for Cause**

5.1.1 If A-E breaches any of the covenants or conditions of this CONTRACT, COUNTY shall have the right to terminate this CONTRACT upon ten (10) days written notice prior to the effective day of termination.

5.1.2 A-E shall have the opportunity to cure the alleged breach prior to termination.

5.1.3 In the event the alleged breach is not cured by A-E prior to termination, all work performed by A-E pursuant to this CONTRACT, which work has been reduced to plans or other documents, shall be made available to COUNTY.

5.2 Termination for Convenience

5.2.1 Notwithstanding any other provision of the CONTRACT, COUNTY may at any time, and without cause, terminate this CONTRACT in whole or in part, upon not less than seven (7) calendar days' written notice to the A-E. Such termination shall be effected by delivery to the A-E of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated.

5.2.2 A-E shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by COUNTY.

5.2.3 COUNTY shall pay the A-E for the Work completed prior to the effective date of the termination, and such payment shall be the A-E's sole remedy under this CONTRACT.

5.2.4 Under no circumstances will A-E be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph.

5.2.5 A-E shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination, and shall require subcontractors to insert the same condition in any lower tier subcontracts.

5.3 Breach of Contract

5.3.1 The failure of the A-E to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT, the COUNTY may:

- a) afford the A-E written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;
- b) discontinue payment to the A-E for and during the period in which the A-E is in breach; and
- c) offset those monies disallowed pursuant to the above, against any monies billed by the A-E but yet unpaid by the COUNTY.

5.4 Default

5.4.1 In the event any equipment or service furnished by the A-E in the performance of this CONTRACT should fail to conform to the specifications therein within one (1) calendar year from the COUNTY's acceptance of the equipment or service, or any performance period specifically specified within the specifications or CONTRACT, whichever is greater, the COUNTY may reject same, and it shall become the duty of the A-E to reclaim and remove the items without expense to the COUNTY and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should the A-E fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, the COUNTY shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the A-E the difference between the price specified in this CONTRACT and the actual cost to the COUNTY.

5.4.2 In the event the A-E shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the COUNTY to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this CONTRACT.

5.4.3 In the event of the cancellation of this CONTRACT, either in whole or in part, by reason of the default or breach by the A-E, any loss or damage sustained by the COUNTY in procuring any equipment or service which the A-E agreed to supply under this CONTRACT shall be borne and paid for by the A-E.

5.4.4 Default shall include failure to carry out any of the requirements of this CONTRACT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the PROJECTS/SERVICES as agreed to herein, or otherwise substantially violating any provision of this CONTRACT.

5.4.5 Upon termination of the CONTRACT with A-E, the COUNTY may begin negotiations with a third-party A-E to provide goods and/or PROJECTS/SERVICES as specified in this CONTRACT.

5.4.6 The right of either party to terminate this CONTRACT hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

**County of Orange, OC Public Works
Q3 Consulting**

6. MISCELLANEOUS**6.1 Laws to be Observed**

6.1.1 A-E is assumed to be familiar with and, at all times, shall observe and comply with all federal, state and local laws, ordinances and regulations in any manner affecting the conduct of the PROJECTS/SERVICES.

6.2 Award of Construction Contract and Other Future Contracts

6.2.1 A-E is hereby informed that provisions of the Public Contract Code, the Political Reform Act of 1974, other statutes, regulations, and COUNTY policy prohibit, as an impermissible conflict of interest, the award of a contract for the construction of the project(s) on which A-E performed architectural-engineering services under this A-E CONTRACT. A-E is hereby informed that these statutes and regulations could also prohibit the award to A-E of design or other contracts on future phases related to tasks performed by A-E under this CONTRACT. This prohibition applies also to a subcontractor of or parent company of the firm that performed architectural-engineering tasks under this CONTRACT.

6.3 Amendments

6.3.1 No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.

6.4 Successors and Assigns

6.4.1 The terms and provisions of this CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

6.5 Entirety

6.5.1 This CONTRACT contains the entire agreement between the parties with respect to the matters provided for herein.

6.6 Severability

6.6.1 If any part of this CONTRACT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this CONTRACT shall be given effect to the fullest extent reasonably possible.

6.7 Binding Obligation

6.7.1 The PARTIES to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity enforceable in accordance with its terms.

6.8 Governing Law and Venue

6.8.1 This CONTRACT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of

competent jurisdiction located in Orange County, California, and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

6.8.2 The PARTIES specifically agree that by soliciting and entering into and performing PROJECTS/SERVICES under this CONTRACT, the A-E shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all PROJECTS/SERVICES under this CONTRACT is completed, and continuing until the expiration of any applicable limitations period.

6.9 Intentionally Omitted

6.10 Ownership of Documents

6.10.1 All data, including but not limited to letters, reports, files, plans, drawings, specifications, proposals, sketches, diagrams and calculations, prepared by A-E and/or anyone acting under the supervision of A-E pursuant to this CONTRACT, shall become the property of COUNTY upon preparation by A-E and may be used by the COUNTY as it may require without additional cost to the COUNTY.

6.10.2 COUNTY shall not be limited in any way to its use thereof at any time, including the release of this data to third parties. A-E shall be held harmless for release of such data as may be prepared or created under this CONTRACT to any third party. If A-E and/or anyone acting under the supervision of A-E should later desire to use any of the data prepared in connection with this CONTRACT, A-E shall first obtain the written approval of COUNTY.

6.11 Confidentiality

6.11.1 All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to A-E in connection with the performance of this CONTRACT shall be held confidential by A-E and/or anyone acting under the supervision of A-E and shall not, without the prior written consent of COUNTY, be used for any purposes other than the performance of the PROJECTS/SERVICES described in Attachment A, nor be disclosed to any person, partnership, company, corporation or agency, not connected with the performance of the PROJECTS/SERVICES.

6.11.2 Nothing furnished to A-E which is generally known among counties in Southern California shall be deemed confidential.

6.11.3 A-E and/or anyone acting under the supervision of A-E shall not use COUNTY name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other medium without the express written consent of COUNTY.

6.12 Publication

6.12.1 No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this CONTRACT, are to be released by A-E and/or anyone acting under the supervision of A-E to any person, partnership, company, corporation, or agency, without prior written approval by the COUNTY, except as necessary for the performance of the services of this CONTRACT. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after COUNTY approval.

6.12.2 The A-E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this CONTRACT or any subsequent amendment of, or effort under this CONTRACT. A-E must first obtain review and approval of said media contact from the COUNTY through the COUNTY'S Project Manager. Any requests for interviews or information received by the media should be referred directly to the COUNTY. A-E's are not authorized to serve as a media spokespersons for COUNTY projects without first obtaining permission from the COUNTY Project Manager.

6.13 Records and Audit/Inspections

6.13.1 A-E shall keep an accurate record of time expended by A-E and/or consultants employed by A-E in the performance of this CONTRACT.

6.13.2 Within ten (10) days of COUNTY's written request, A-E shall allow COUNTY or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this CONTRACT.

6.13.3 A-E shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of three (3) years after termination or completion of the CONTRACT or until resolution of any claim or dispute between the PARTIES, whichever is later.

6.13.4 Should A-E cease to exist as a legal entity, records pertaining to this CONTRACT shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to COUNTY.

6.14 Notices

6.14.1 Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the PARTIES' project managers' routine exchange of information and cooperation during the PROJECTS/SERVICES.

6.14.2 Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt, or no greater than four (4) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

6.14.3 All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For A-E: Q3 Consulting
200 S. Main St., Ste. 300
Corona, CA 92882-2212
Attn: John McCarthy, PE
Phone: 949-259-6730
E-mail: jmccarthy@q3consulting.net

For COUNTY: OC Public Works,
OC Infrastructure Programs/Programming/Project Development
601 N. Ross St.
Santa Ana, CA 92701
Attn: Samantha Mihelish
Phone: 714-647-3974
E-mail: Samantha.Mihelish@ocpw.ocgov.com

cc: OC Public Works,
Procurement Services
601 N. Ross St., 4th Floor
Santa Ana, CA 92701
Attn: Ranique Cortez, Deputy Purchasing Agent
Phone: 714-647-4906
E-mail: Ranique.Cortez@ocpw.ocgov.com

6.15 Attorney's Fees

6.15.1 In any action or proceeding to enforce or interpret any provision of this CONTRACT, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

6.16 Interpretation

6.16.1 CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT.

6.16.2 In addition, each PARTY has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite having the opportunity to do so.

6.16.3 Each PARTY further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other PARTY hereto or by any person representing them, or both.

6.16.4 Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the PARTY that has drafted it is not applicable and is waived.

6.16.5 The provisions of this CONTRACT shall be interpreted in a reasonable manner to affect the purpose of the PARTIES and this CONTRACT.

6.17 Headings

6.17.1 The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

6.18 Acceptance

6.18.1 Unless otherwise agreed to in writing by COUNTY acceptance shall not be deemed complete unless in writing and until all the services have actually been received, inspected, and tested to the satisfaction of COUNTY.

6.19 Changes

6.19.1 A-E shall make no changes in the work or perform any additional work without the COUNTY'S specific written approval.

6.20 Assignment

6.20.1 The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or sub-contracted by A-E, by any means whatsoever including but not limited to acquisition by merger, without the express written consent of COUNTY. Any attempt by A-E to assign or sub-contract the performance or any portion thereof of this CONTRACT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this CONTRACT.

6.21 Changes in Ownership

6.21.1 A-E agrees that if there is a change or transfer in ownership, including but not limited to merger by acquisition, of A-E's business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume A-E's duties and obligations contained in this CONTRACT and to obtain the written approval of COUNTY of such merger or acquisition, and complete the obligations and duties contained in the CONTRACT to the satisfaction of COUNTY. A-E agrees to pay, or credit toward future work, COUNTY's costs associated with processing the merger or acquisition.

6.22 Force Majeure

6.22.1 A-E shall not be assessed with damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided A-E gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and A-E avails himself of any available remedies.

6.23 Calendar Days

6.23.1 Any reference to the word "day" or "days" herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

6.24 Title to Data

6.24.1 All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the A-E in the performance of this CONTRACT, will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the A-E after completion or termination of this CONTRACT without the express written consent of the COUNTY.

6.24.2 All materials, documents, data or information, including copies furnished by COUNTY and loaned to A-E for his temporary use, must be returned to the COUNTY at the end of this CONTRACT unless otherwise specified by the DIRECTOR.

6.25 Availability of Funds

6.25.1 The obligation of COUNTY is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the COUNTY to expend or as involving the COUNTY in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

6.26 Contingency of Funding

6.26.1 A-E acknowledges that funding or portions of funding for this CONTRACT may also be contingent upon receipt of funds from, and/or appropriation of funds by, the State of California or other funding sources to COUNTY. If such funding and/or appropriations are not forthcoming, or otherwise limited, COUNTY may immediately terminate or modify this CONTRACT without penalty.

6.27 Contract Construction

6.27.1 The parties acknowledge that each party and its counsel have reviewed this CONTRACT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this CONTRACT or any amendment or exhibits hereto.

6.28 Conflicts of Interest

6.28.1 A-E or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may be materially affected by services provided under this CONTRACT, (2) prohibits such persons from making, or participating in making, decisions that could reasonably affect such interest; and (3) may require the filing a Statement of Economic Interest (Form 700).

6.28.2 If subject to the Act, A-E shall conform to all requirements of the Act. Failure to do so shall constitute a material breach and is grounds for immediate termination of this CONTRACT by COUNTY. Pursuant to Section 4.3 "Indemnification", A-E shall indemnify and hold harmless COUNTY for any and all claims for damages resulting from Contractor's violation of this Section.

6.29 Usage

6.29.1 No guarantee is given by the COUNTY to A-E regarding usage of this CONTRACT. The A-E agrees to supply services requested, as needed by the County of Orange, at prices listed in the CONTRACT, regardless of quantity requested.

6.30 Wage Rates

6.30.1 Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov/DLSR/PWD. The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

6.31 Apprenticeship Requirements

6.31.1 The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.

6.32 Registration of Contractor

6.32.1 All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

6.33 Payroll Records

6.33.1 Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

6.33.2 The requirements of Labor Code Section 1776 provide, in summary:

6.33.3 Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.

6.33.4 Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

6.33.5 The information contained in the payroll record is true and correct.

6.33.6 The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

6.33.7 The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.

6.33.8 Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.

6.33.9 Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards

Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

6.33.10 Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

6.34 Work Hour Penalty

6.34.1 Eight hours of labor constitute a legal day's work, and forty hours constitute a legal week's work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than the legal day's or week's work, except that work performed by employees of said Contractor and subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight hours per day of not less than 1-1/2 times the basic rate of pay.

6.35 Apprentices

6.35.1 The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.

6.35.2 Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractors under him employing workers in any apprenticeable craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.

6.35.3 Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractor under him may be required to make contributions to the apprenticeship program.

6.35.4 The Contractor and all subcontractors under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.

**County of Orange, OC Public Works
Q3 Consulting**

IN WITNESS WHEREOF, the PARTIES hereto have executed this CONTRACT on the dates opposite their respective signatures:

Q3 Consulting,
a California Corporation,

Date: 4/21/2020

By: John McCarthy
Signature

John McCarthy, Vice President
Print Name & Title

(If a corporation, the document must be signed by two corporate officers. The 1st must be either Chairman of the Board, President or any Vice President.)

Date: 4/21/2020

By: Mark S Anderson
Signature

Mark Anderson, CFO
Print Name & Title

(If a corporation, the 2nd signature must be either the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer)

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By: _____

Print
Name: _____

Title: _____

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

By: Mark Sanchez
Deputy

Print Name: Mark N. Sanchez

**ATTACHMENT A
SCOPE OF WORK****I. PURPOSE**

The County of Orange is seeking to make improvements to San Juan Creek and Trabuco Creek Channels that will bring the facilities to their ultimate condition. Constructed in the early 1960s, these channels sustained significant damage to levee embankments and a pedestrian bridge due to major storms in 1969, 1993, 1998, 2005, 2010, and 2019. Emergency repairs were completed as needed, then OC Public Works began implementing a series of levee protection projects in 2008 to protect the levees from failure. These projects primarily consisted of installing a steel sheet pile wall behind the existing concrete lining. Although these projects did not significantly increase the flood-carrying capacity, they provided protection against catastrophic levee failure with the intent that they would also be compatible with the ultimate channel geometry. However, there are reaches of the channels that have not yet been reinforced as well as gaps in the sheet piles at storm drain outlets and utility crossings that must be addressed in order for these sheet piles to become part of the ultimate channel geometry.

Previous analysis has revealed that the Coast Highway/Park Lantern bridge near the ocean outlet is a hydraulic choke point for San Juan Creek. This will need to be addressed for the channels to be able to carry the 100-year storm event. Furthermore, San Juan Creek and Trabuco Creek Channels are very susceptible to scour. The channel invert has areas of severe degradation and aggradation, making the invert unstable. OC Public Works has procured a consultant that is currently completing a grade stabilization study for these two channels, which is to be completed by February 2020. The study will provide a recommended alternative for stabilization of the channel inverts which considers the design constraints of flood protection and operations and maintenance, hydraulic design, physical constraints, and environmental/regulatory limitations (including fish passage).

II. PROJECT DESCRIPTION

The goal of this Facility Study is to evaluate, analyze and provide recommendations for the project elements that need to be implemented to bring these channel facility to ultimate condition. In order to accomplish this, these channels need to have issues address including those related to scour, capacity, fish passage and levee protection to name a few. The Study area focuses on the reaches that are owned by the Orange County Flood Control District (OCFCD). OCFCD owns the reach of San Juan Creek between the ocean outlet and the I-5 freeway, and owns the reach of the Trabuco Creek from the confluence with San Juan Creek and 2,800' upstream of Del Obispo Street. Attachment A, Scope of Work document outlines the tasks needed to meet this study's objective.

III. SCOPE OF SERVICES

All work related to the Project shall comply with the latest requirements of all of the following types of rules, laws, and regulations, without limitation, and these requirements shall apply to this entire Request for Proposal (RFP) and any subsequent contracts as though incorporated herein by reference:

1. Federal laws;
2. State laws;
3. Local laws;
4. Rules and regulations of the governing utility agencies and/or districts;
5. Rules and regulations of other authorities with jurisdiction over the procurement of products

In general, A-E design services are needed to perform the tasks noted below. All reports and/or studies, renderings and exhibits, plans and specifications, calculations, etc. developed by the A-E shall at a minimum comply with the County of Orange standards. Electronic file deliverables shall be in PDF (Portable Document Format), Microsoft (MS) Word, Microsoft (MS) Excel, and/or CAD (Computer Aided Design) [Autodesk AutoCAD 2018 format].

This scope of work should build upon and utilize, but not duplicate still-valid work and/or information previously prepared for or by the County of Orange. This information would include design memorandums and design reports and/or studies, CAD design files, environmental reports, Caltrans bridge inspection reports, as-built plans, etc. developed for the Project. Below is a list of the reports and/or studies as well as funding applications that are available:

1. San Juan Creek Watershed Hydrology Study (2008)
2. Record Drawings
3. Invert Stabilization Study Phase 1 Report
4. Invert Stabilization Study Phase 2 Report (complete by February 2020)
5. Geotechnical Reports
 - a. Geotechnical Investigation San Juan Creek (L01) Channel Improvements, Station 72+00 to Station 112+00 (west Bank), San Juan Capistrano, California (2007)
 - b. Final – Lower San Juan Basin Sheet piling Assessment Modeling Report (2007)
 - c. Geotechnical Engineering Investigation San Juan Creek (L01) Channel Improvement Project Phase II, Station 123+50 to Station 144+50 (2007)
 - d. Geotechnical Investigation San Juan Creek Levee Improvement Phase III (2007)
 - e. Geotechnical Investigation Report for San Juan Creek (L01) Channel Levee Protection Project, Phase 6 (Western Levee Station 51+00 to Station 72+00, Cities of Dana Point and San Juan Capistrano, Orange County, California) (2011)
 - f. San Juan Creek Levee Protection Phase 6 (Supplemental Geotechnical Investigation, 2015)
 - g. Geotechnical Report San Juan Creek (L01) Channel Levee Protection, Phases 4 & 5 (Station 51+00 to 112+00) (2010)
 - h. Re-evaluation of Geotechnical Parameters – San Juan Creek Phases 4 & 5 (2015)
6. Structural Reports
 - a. San Juan Creek (L01) Phases II, III & Trabuco Creek (L02) Phase VII Structural Analysis for Steel Sheet pile Wall Design (2009)

It should be noted that the Invert Stabilization Study Phase 2 Report is currently being finalized and will be made available to the A-E once it becomes available. It is expected that the A-E will review, collaborate, and implement recommendations and measures based on the information from these documents into the design of the Project.

IV. TASKS

A. Task 1 – Data Collection and Review

The A-E shall review all still-valid work and/or information prepared for or by the County of Orange, including studies, geotechnical reports, structural reports, as-built plans, etc. developed for the study area. A list of the documents that are available is provided below. The A-E shall build upon and utilize the reviewed background information in the development of the study. In addition, the A-E should note that the Invert Stabilization Study Phase 2 Report is being prepared and draft and final versions will be made available to the A-E when available.

- a. San Juan Creek Watershed Hydrology Study (2008)
- b. Record Drawings
- c. Invert Stabilization Study Phase 1 Report

- d. Invert Stabilization Study Phase 2 Report (complete by February 2020)
- e. Geotechnical Reports
 - i. Geotechnical Investigation San Juan Creek (L01) Channel Improvements, Station 72+00 to Station 112+00 (west Bank), San Juan Capistrano, California (2007)
 - ii. Final – Lower San Juan Basin Sheet piling Assessment Modeling Report (2007)
 - iii. Geotechnical Engineering Investigation San Juan Creek (L01) Channel Improvement Project Phase II, Station 123+50 to Station 144+50 (2007)
 - iv. Geotechnical Investigation San Juan Creek Levee Improvement Phase III (2007)
 - v. Geotechnical Investigation Report for San Juan Creek (L01) Channel Levee Protection Project, Phase 6 (Western Levee Station 51+00 to Station 72+00, Cities of Dana Point and San Juan Capistrano, Orange County, California) (2011)
 - vi. San Juan Creek Levee Protection Phase 6 (Supplemental Geotechnical Investigation, 2015)
 - vii. Geotechnical Report San Juan Creek (L01) Channel Levee Protection, Phases 4 & 5 (Station 51+00 to 112+00) (2010)
 - viii. Re-evaluation of Geotechnical Parameters – San Juan Creek Phases 4 & 5 (2015)
- f. Structural Reports
 - i. San Juan Creek (L01) Phases II, III & Trabuco Creek (L02) Phase VII Structural Analysis for Steel Sheet pile Wall Design (2009)

B. Task 2 – Project Management and Meetings

The A-E shall arrange, attend and conduct project meetings with OC Public Works staff and/or the project stakeholders as directed by the OC Public Works staff to discuss project status, technical issues, schedules and/or other details of the Project. The A-E shall prepare and issue the agenda and minutes for each of the project meetings. Minutes of all meetings shall be prepared by A-E and submitted to meeting attendees within five (5) working days following each meeting. Also, at the request of OC Public Works, the A-E shall attend other meetings and or presentations (on or off-site) as needed to complete the terms of this Scope of Work. This task assumes that as a minimum, the Project Manager will attend with appropriate staff.

In addition to ongoing informal communications, coordination and administration, this Task will include, at a minimum, the following meetings:

- a. Kick-off meeting
- b. Preliminary Hydrology Meeting
- c. 35% Progress Meeting
- d. Resource Agency Coordination Meeting
- e. 65% Progress Meeting/Pre-Seminar Meeting
- f. Facility Study Seminar (see Task 15)
- g. 90-95% Post-Seminar Meeting
- h. Final Facility Study Delivery

The A-E shall also coordinate and facilitate one (1) public outreach meeting including development and furnishing all the necessary materials and/or information packages, exhibits, etc. Note that OC Public Works has a Strategic Communications Team that leads the outreach effort and distributes project notifications. The A-E is expected to work together with the Strategic Communications Team to support and supplement their efforts.

C. Task 3 – Survey (Deletable)

The A-E shall perform aerial topographic survey mapping at a scale of one inch equal forty feet (1"=40') with one foot contours for the study area of San Juan Creek from the ocean outlet to I-5 and Trabuco Creek from San Juan Creek to approximately 2,800 feet upstream of Del Obispo Street. The A-E shall also gather field survey data to identify the top of levee elevations and establish vertical control based on the NAVD 88 datum and horizontal control based on the NAD 83 datum.

D. Task 4 - Utilities

The A-E shall develop and maintain an updated and comprehensive utilities matrix and composite map that tracks/displays utility location and information. OC Public Works staff will manage the utility requests, collect the responses, and transfer the data to the A-E for review and inclusion in the utilities matrix. Any project alternatives shall consider any utility conflicts.

E. Task 5 – Hydrology/Hydraulics

The A-E shall review the San Juan Creek Watershed Hydrology Study completed by PACE in 2008 including checking for any missing or outdated information and update it if necessary. Using the hydrology provided in that study and the equilibrium slope provided in the Invert Stabilization Study Phase 1 Report, the A-E shall create a hydraulic model of the channel system using HEC-RAS 5.0.7.

Channel hydraulics for existing conditions shall be run using both steady and unsteady analysis to determine the existing capacity of the facilities and identify key hydraulic deficiencies and limitations. Analyses shall be conducted to determine if the existing deficiencies can be reasonably and economically improved.

During development of channel alternatives, A-E will incorporate the proposed alternatives into the hydraulic model to ensure their viability. This includes generating alternatives that propose a channel geometry that can convey the 100-year High Confidence discharge.

The A-E shall evaluate the freeboard, sea level rise and climate change criteria established by FEMA, U.S. Army Corps of Engineers, County of Orange and city of Dana Point and provide a recommendation for incorporating these elements.

F. Task 6 – Ocean Outlet Alternatives Analysis

The A-E shall develop and evaluate alternatives for improving the ocean outlet to accommodate the 100-year storm event. The Coast Highway/Park Lantern Bridge is a known hydraulic choke for the channel, so the solution may include modifications to the transportation infrastructure. The Ocean Outlet Alternatives Analysis shall include, but is not limited to, traffic and right-of-way considerations, cost and schedule. A-E shall consult with OC Public Works to select a recommended alternative.

G. Task 7 – Structural Analysis**a. Task 7.1 – Retrofit of Existing Sheet Piles**

The A-E shall review the record drawings of the channels and perform a structural analysis to determine if any areas require retrofitting to accommodate the ultimate channel configuration and develop a prioritization list of the vulnerable channel reaches. A-E shall develop alternatives for retrofitting the sheet piles that are compatible with the existing improvements and will consult with OC public Works to select a recommended alternative. Based on the A-E's review of the geotechnical reports, the A-E shall determine if additional/updated information is needed and perform the necessary geotechnical investigations.

b. Task 7.2 – Channel Improvements Downstream of Stonehill Drive

The A-E shall perform a structural analysis of channel reaches where sheet piles have not been installed and develop alternatives for bringing the channel to the ultimate condition. A-E shall consult with OC Public Works to select a recommended alternative.

c. Task 7.3 – Closure of Utility and Bridge Gaps

The A-E shall develop alternatives for closing/sealing the sheet pile gaps that exist at utility crossings, inlets and bridges. A-E shall consult with OC Public Works to select a recommended alternative.

H. Task 8 – Invert Stabilization Review**a. Task 8.1 – Refine drop structure alternatives**

The A-E shall bring to 35% design level the drop structures proposed within the Invert Stabilization Study. The drop structure design shall be compatible with the existing sheet piles as well as any proposed modifications (i.e. retrofitting) to the sheet piles.

b. Task 8.2 – Refine fish passage design

The A-E team shall include a fish passage expert (5+ years of experience in designing fish passages) who shall review and refine the fish passage elements that are presented in the Invert Stabilization Study. Modification of the presented alternatives or development of additional alternatives may be needed in order to meet OCFCD's flood and stabilization requirements. Any alternatives that are proposed shall be appropriate for the arid conditions of the San Juan Watershed. The design for the selected alternative shall be brought to the 35% design level.

I. Task 9 – Environmental

The A-E shall coordinate with OCPW – Regulatory Permits and external regulatory agencies to obtain buy-in on proposed alternatives. The A-E shall work with OC Public Works staff to develop project alternatives that are environmentally friendly or environmentally neutral (needing no mitigation outside of the channel system). This shall include analyzing alternatives with varying levels of naturalization and determining the allowable amount of growth that the channel can accommodate.

J. Task 10 – Interior Drainage

The A-E shall evaluate the existing local drainage systems that connect to San Juan and Trabuco Creeks within the study area. The analysis shall determine if the proposed channel improvements have a significant impact on the interior drainage. Any proposed improvements should not cause local flooding.

The task shall also include the evaluation of drainage within OCFCO right-of-way along maintenance roads. A-E shall evaluate the adequacy of the existing drainage systems and develop alternatives improving them.

K. Task 11 – External Projects Coordination

The A-E shall remain up-to-date with all proposed projects affecting the project area. As directed by OC Public Works, the A-E shall incorporate the designs of the external projects into the study. The external projects include, but are not limited to, Metrolink Bridge Replacement, Trabuco Creek Fish Passage at I-5 and Santa Margarita Water District Rubber Dams Project.

L. Task 12 – Engineer’s Estimate of Probable Costs & Phasing Plan

The A-E shall prepare a Class 3 cost estimate per ASTM E2516-11 “Standard Classification for Cost Estimate Classification System” for each viable alternative. The cost estimates developed will be used as one of many comparison tools to assist OC Public Works in selecting the Facility Study’s “recommended alternative.” Engineer’s estimates for the various alternatives will be calculated to a level appropriate for preliminary engineering alternatives and will be based on local cost data, historic bid data of similar work, general current market conditions and engineering experience and judgment.

M. Task 13 – Lifecycle Cost and Cost-Benefit Analysis

The A-E shall complete a Life Cycle Cost Analysis of each proposed alternative. This shall incorporate construction, operational/maintenance costs for the lifespan of the proposed work. In addition, a Cost-Benefit Analysis shall be prepared based on the flood damage reduction estimates. Non-monetary benefits can also be taken into consideration, such as improved fish passage capabilities.

N. Task 14 – Draft Facility Study Report

An electronic copy of the draft Facility Study Report shall be submitted to OC Public Works staff prior to the Facility Study Seminar. Hard copies are not needed. All immediate comments from OC Public Works staff will be incorporated into the study prior to the Seminar or held to be discussed at the Seminar for input/feedback by all attendees.

O. Task 15 – Facility Study Seminar

After submittal of the Draft Facility Study Report to OC Public Works staff, a Facility Study Seminar shall be coordinated and scheduled with OC Public Works staff. The primary purpose of the Seminar will be to select the “Recommended Alternative” for the Facility Study that will be used to develop detailed cost estimates, a Project Construction Phasing Plan, Environmental Project Description and

discussion of special construction features, special treatment of bid items, methods of bidding or incremental construction issues. Further development of cooperative projects and agreements may also be initiated after identification of the Recommended Alternative.

The A-E will provide a Power Point presenting history and background of the channel system, presentation of the various alternatives analyzed, rating criteria used to evaluate alternatives, pros and cons of each alternative, estimated alternative costs and a proposed recommended alternative.

The A-E will document the comments and feedback during the Seminar in meeting minutes that will be provided to OC Public Works staff for distribution and comment prior to finalization. Final Seminar meeting minutes will incorporate all feedback provided at the Seminar.

The A-E will coordinate the date, time and location of the Seminar with OC Public Works staff and OC Public Works staff will be responsible for providing the meeting location, display equipment and inviting all meeting attendees at their discretion.

P. Task 16 – Comment Incorporation – 95% Submittal

A final draft Facility Study Package shall be submitted to OC Public Works for final review of all incorporated comments after the Facility Study Seminar. The final draft will be considered a 95% submittal for final comment prior to finalizing the Facility Study Package.

Q. Task 17 – Final Facility Study Package Submittal

Two (2) hard copies of the Final Facility Study Report shall be prepared and submitted to OC Public Works staff including all analyses and supporting files in native and PDF formats on a thumb drive, portable hard drive or other electronic media.

R. Task 18 – 35% Plans, Specifications and Estimates

In compliance with the appropriate design criteria, standards, regulations and codes, the A-E shall develop a 35% PS&E package using AutoCAD for the chosen recommended alternatives. All designs, rendering and exhibits, plans and specifications, calculations etc. developed by the A-E for the Project shall at a minimum comply with an/or be in accordance to the latest versions and/or editions at the time of the award of this contract for the following:

- a. Orange County Highway Design Manual (OCHDM)
- b. Orange County Traffic Manual (OCTM)
- c. Orange County Hydrology Manual (OCHM)
- d. Orange County Flood Control District Design Manual (OCFCDDM)
- e. Orange County Public Works Standard Plans
- f. Standard Plans for Public Works Construction
- g. Standard Specifications for Public Works Construction (Greenbook)
- h. Master Plan of Arterial Highways (MPAH)
- i. Caltrans Standard Plans

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- j. Caltrans Bridge Design Aids
- k. Caltrans Bridge Design Details
- l. Caltrans Bridge Design Specifications
- m. AASHTO LRFD Bridge Design Specifications as modified by Caltrans
- n. Sheet pile design shall meet both OCPCD standards and the latest US Army Corps of Engineers' Engineering Manuals

S. Task 19 – Bikeway/Trail Research

The A-E shall perform the necessary research to determine the locations of all existing and proposed bikeways and trails. This includes any and all local, regional and master planned trails and bikeways. Any proposed alternatives for the tasks within this Scope of Work shall be compatible with all existing and future bikeways/trails.

**ATTACHMENT B
COST/COMPENSATION**

- I. COMPENSATION:** This is a specific rates of compensation usage CONTRACT between COUNTY and A-E for A-E Services for San Juan and Trabuco Creek Facility Study as set forth in Attachment A, "Scope of Work".

A-E agrees to accept the specified compensation as set forth in this CONTRACT as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by A-E of all its duties and obligations hereunder. A-E shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **COUNTY shall have no obligation to pay any sum in excess of the Total CONTRACT Amount specified herein below unless authorized by amendment in accordance with Paragraphs 6.3 and 6.19 of the COUNTY CONTRACT Terms and Conditions.**

- II. PRICING:** Payment shall be made in accordance with the provisions of this CONTRACT. Partial progress payments may be allowed at the discretion of the COUNTY Project Manager. Payment shall be as follows:

A. Classification Rates:

Q3 CONSULTING	
<u>Classification Titles</u>	<u>Hourly Rate</u>
Project Director	\$220
Senior Technical Manager	\$195
Senior Engineer	\$170
Project Engineer	\$155
Design Engineer	\$134
CADD	\$118
Engineering Technician	\$98
2-Person Survey Crew	\$285

<u>Other Direct Costs:</u>	
Aerial Topographic Mapping	NTE \$17,300
Other Reimbursable: Copies, Mileage, Postage, Other Miscellaneous Expenses	NTE \$14,735.57

*Stantec	
<u>Classification Titles</u>	<u>Hourly Rate</u>
Senior Hwy/Bridge Engineer	\$220
Senior Project Manager	\$200
Senior Technical Lead	\$192
Senior Structural Engineer	\$170
Senior Design Engineer	\$160
3D CAD Tech	\$149
Junior Engineer/Project Scientist	\$132

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Other Direct Costs:	
Other Reimbursable: Copies, Mileage, Postage, Other Miscellaneous Expenses	NTE \$4,989

*GMU Geotechnical, Inc.	
Classification Titles	Hourly Rate
Principal Engineer/Geologist	\$230
Associate Engineer/Geologist	\$203
Senior Engineer/Geologist	\$187
Project Engineer/Geologist	\$169
Senior Staff Engineer/Geologist	\$154
CADD	\$156
Lab Tech	\$106

Other Direct Costs:	
Driller	NTE \$31,700
Cone Penetrometer Test (CPT)	NTE \$7,470
Traffic Control	NTE \$1,500
Other Reimbursable: Copies, Mileage, Postage, Other Miscellaneous Expenses	NTE \$100

*RIE Consultants	
Classification Titles	Hourly Rate
Senior Technical Engineer	\$200
Project Engineer	\$150

Other Direct Costs:	
3D Software Model Rental	NTE \$7,820

*COUNTY will not pay A-E more than the listed amount for Sub-Contractor work, regardless of any agreement between the A-E and their Sub-Contractor. Sub-Contractor rates are listed for convenience only.

**Construction-related work performed under A-E service contracts may meet the definition of "public work" under Labor Code § 1720 et seq. "Construction" includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. See, Labor Code § 1720. Contracts for A-E services shall mandate that prevailing wages be paid where mandated by law.

B. Total CONTRACT Amount Shall Not Exceed: \$1,835,134

III. PRICE INCREASES/DECREASES: No price increases will be permitted during the term of this CONTRACT. All price decreases will automatically be extended to COUNTY.

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- IV. FIRM DISCOUNT AND PRICING STRUCTURE:** A-E guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. A-E agrees that no price increases shall be passed along to COUNTY during the term of this CONTRACT not otherwise specified and provided for within this CONTRACT.
- V. A-E'S EXPENSE:** A-E will be responsible for all costs related to photo copying, telephone communications and fax communications while on COUNTY sites during the performance of work and services under this CONTRACT.
- VI. REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the COUNTY Project Manager. A-E may be entitled to reimbursement for the following, upon prior approval by COUNTY:
- 1) The actual costs of special equipment to be rented, leased or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the COUNTY Project Manager.
 - 2) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the COUNTY Project Manager.
 - 3) Other actual costs and/or payments specifically approved and authorized in writing by the COUNTY Project Manager and actually incurred by A-E in performance of this Contract.
 - 4) Travel costs shall only be reimbursed if approved in advance in writing by COUNTY Project Manager and are subject to the following restrictions:
 - a) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this CONTRACT shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and COUNTY location, as well as mileage within COUNTY property will not be reimbursed.
 - 5) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
 - 6) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.
 - 7) All reimbursable expenses must be itemized on A-E invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all A-E invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. A-E is responsible for submitting reimbursable invoices in a format that is acceptable to the COUNTY. Reimbursable items shall be charged at cost. Any third-party or subcontractor services shall also be charged at cost; no mark-ups will be allowed.
- VII. PAYMENT TERMS:** Invoices are to be submitted in monthly arrears, after services have been completed, to the address specified below. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the COUNTY, as applicable. Invoices shall be verified and approved by COUNTY and subject to routine processing requirements. The responsibility for providing an acceptable invoice to COUNTY for payment rests with A-E. Incomplete or incorrect invoices are not acceptable and will be returned to the A-E for correction.

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Billing shall cover services and/or goods not previously invoiced. The A-E shall reimburse the COUNTY for any monies paid to the A-E for goods or services not provided or when goods or services do not meet the CONTRACT requirements.

Payments made by COUNTY shall not preclude the right of COUNTY from thereafter disputing any items or services involved or billed under this CONTRACT and shall not be construed as acceptance of any part of the goods or services.

VIII. INVOICING INSTRUCTIONS: The A-E will provide an invoice on the A-E's letterhead. Each invoice will have a unique number and will include the following information:

- A. A-E's name and address
- B. A-E's remittance address, if different from (A), above
- C. Name of COUNTY agency/department
- D. Delivery/service address
- E. CONTRACT number
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

County of Orange / OC Public Works
Attn: Accounts Payable
601 N. Ross St.
Santa Ana, CA 92701

A-E has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the COUNTY via an EFT Authorization Form. To request a form, please contact the DPA.

**ATTACHMENT C
STAFFING PLAN**

1. A-E KEY PERSONNEL

Name	Classification/Designation	Years of Experience	Licenses/Certifications (include license number)
John McCarthy, PE, CFM	Project Manager	32	CA PE #47583, CFM # US 05-01596
Tom Ryan, MS, PE	Lead Design Engineer	23	CA PE #61701
Howard Barndt, MS, PE, CFM	Technical Studies Lead Engineer	20	CA PE #65914, CFM # US 08-03662
Jared Veronin	Fisheries Lead	20	Certified Fisheries Professional #3232
Phillip Jones, MS, PE, QSP/QSP	Senior Advisor / QA-QC	34	CA PE #44010, CSP/QSD #20073

A-E understands that the personnel represented as assigned to the CONTRACT must remain working on the CONTRACT throughout the duration of the CONTRACT unless otherwise requested or approved by the COUNTY. Substitution or addition of A-E's key personnel in any given category or classification shall be allowed only with prior written approval of the COUNTY's Project Manager. **Note: The written approval of substituted A-E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works or other County department.**

A-E may reserve the right to involve other A-E personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to COUNTY Project Manager written approval. **Note: The written approval of additional A-E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works or other County Department.** COUNTY reserves the right to have any A-E personnel removed from providing services to COUNTY under this CONTRACT. COUNTY is not required to provide any reason for the request for removal of any A-E personnel.

2. SUBCONTRACTOR(S)

Listed below are subcontractor(s) anticipated by A-E to perform services specified in Attachment A. Substitution or addition of A-E's subcontractors in any given project function shall be allowed only with prior written approval of the COUNTY Project Manager.

Company Name & Address	Contact Name and Telephone Number	Project Function
Stantec 38 Technology Drive Irvine, CA 92618	Sherry Weinmeier, PE 949-923-6265	Transportation, Structures, Fisheries
GMU Geotechnical, Inc. 23241 Arroyo Vista	Ali Bastani, PhD, PE, GE, F. ASCE	Geotechnical

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Rancho Santa Margarita, CA 92688	949-546-0019	
RIE Consultants 7241 185 th NE #2860 Redmond, WA 98073	Mizan Rashid, PhD, PE, D.WRE	CFD and Physical Modeling