

REQUEST FOR PROPOSAL
ENVIRONMENTAL CONSULTING SERVICES
MID-BARATARIA SEDIMENT DIVERSION
THIRD-PARTY ENVIRONMENTAL IMPACT STATEMENT



RFP #: 2503-16-23

PROPOSAL DUE DATE/TIME: NOVEMBER 16, 2016
3:00PM

State of Louisiana
COASTAL PROTECTION AND RESTORATION AUTHORITY

October 12, 2016

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**REQUEST FOR PROPOSAL
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MID-BARATARIA SEDIMENT DIVERSION**

PART I: ADMINISTRATIVE AND GENERAL INFORMATION

1.1 Background

The Louisiana Coastal Protection and Restoration Authority Board of Louisiana, through the Coastal Protection and Restoration Authority (“CPRA”), has submitted a Joint Permit Application for Department of the Army (“DA”) permits under the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) (hereinafter “Section 404”), and Section 10 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 403) (“Section 10”) and will also submit a permission request under Section 14 (33 U.S.C. 408) (Section 408) of the Rivers and Harbors Act of 1899 to the U.S. Army Corps of Engineers (“USACE”), at the New Orleans District (“CEMVN”) for CPRA’s proposed Mid-Barataria Sediment Diversion Project (“MBSD Project” or “Project”).

An Environmental Impact Statement (EIS) will be prepared to disclose and analyze the significant environmental impacts of the Project as required under the National Environmental Policy Act (NEPA) in accordance with the Council on Environmental Quality’s (CEQ) regulations found in 40 CFR Parts 1500-1508. This EIS will address the Public Interest Review requirements of 33 CFR Parts 320-332 including 33 CFR Part 325, Appendix B, 33 U.S.C. 408 and 40 CFR Part 230 (Section 404(b)(1) Guidelines), so that the EIS, when completed, will provide information required for an informed decision on the DA permit application and Section 408 permission request. Any additional information required for the Section 408 permission request beyond the completed final EIS will not be performed by the selected third party contractor.

CEMVN filed a Notice of Intent to prepare an EIS which was published in the Federal Register in accordance with 40 C.F.R. § 1507.3(e) and 33 C.F.R. § 230, Appendix C on October 4, 2013.

In 1999, USACE Headquarters issued guidance establishing third-party contractors as the primary method for EIS preparation in support of DA permits and permissions [HQUSACE Memorandum dated 17 Dec 1999 from the Director of Civil Works to Major Subordinate Commanders and District Commanders, Subject: Guidance on Preparation Corps regulatory program; Regulatory Guidance Letter No. 05-08 Environmental Impact Statements – Third Party contracting.] 40CFR 1506.5(c) provides for use of third-party contracts in the preparation of an EIS by a USACE qualified contractor paid for by the applicant (CPRA), but who is supervised directly by the USACE District Engineer or his/her designated representative (40 C.F.R. 1506.5(c)).

Services in the RFP will include preparation of a Public Involvement Plan, Executive Summary, Alternatives and Screening Criteria, Historic and Existing Conditions, Environmental Consequences (including cumulative effects), preparation of the Draft and Final EIS, and Draft Records of Decision (RODs) as well as preparation for the public scoping meeting(s) and the public hearing(s) on the Draft EIS. Preparation of the EIS will include the analysis, evaluation and documentation of the proposed alternatives and their impacts in accordance with the provisions of NEPA and associated regulations, laws, and Executive Orders. The preparation of the EIS will also rely upon and ensure consistency with the *Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final*

Programmatic Environmental Impact Statement (DWH PDARP/PEIS) published by the *Deepwater Horizon* Natural Resource Damage Assessment Trustees on February 16, 2016; the EIS will also ensure consistency with the Record of Decision (ROD), published by the Trustees in March 2016. The ROD states project-specific NEPA analyses would be tiered from the Deepwater Horizon PEIS and be integrated with the restoration plan. The MBSD EIS (the “daughter EIS”) shall focus on the project specific issues, and summarize or reference (rather than repeat) the broader issues discussed in the DWH PDARP/PEIS (the “parent EIS”). Potential tasks under this contract may include, but are not limited to: reviewing existing project-specific documentation on topics such as Cultural Resources, Wetland Determination, and Future Without Project; preparation of a project-specific Biological Assessment, Wetland Value Assessment (WVA), and Environmental Site Assessment (ESA) for Hazardous, Toxic, and Radioactive Waste (HTRW). The EIS will also require familiarity with the Marine Mammal Protection Act (MMPA), Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the Oil Pollution Act (OPA), and Natural Resource Damage Assessment (NRDA) restoration planning.

1.1.1 Description and Location

The MBSD is identified as a large-scale, long-term restoration feature recommended for construction in the first implementation period (2012-2031) in Louisiana’s Comprehensive Master Plan for a Sustainable Coast (2012 State Master Plan), unanimously approved by the Louisiana State Legislature in May 2012. CPRA submitted a Joint Coastal Use Permit application in July 2013 for DA authorization under Section 10/404 (DA permit # MVN 2012-02806-ETT) and permissions under Section 408. The permit application was updated and submitted to USACE in June 2016. The DWH PDARP/PEIS also considers the implementation of Mississippi River diversions as a preferred restoration type to restore Louisiana’s injured wetlands and resources resulting from the DWH oil spill. While no decisions have been made regarding the implementation of Mississippi River diversions to restore for these injuries, this Project is an approved restoration alternative for DWH restoration.

CPRA proposes to locate the gravity conveyance structure in Plaquemines Parish, Louisiana on the right descending bank of the Mississippi River, approximately at river mile 60.7 in the vicinity of the town of Ironton, LA and the Phillips 66 Alliance Refinery and approximately 8 miles east of the town of Lafitte in Jefferson Parish, LA. The project boundaries are from the Mississippi River west bank to the mid-Barataria Basin just west of the back levee, spanning a total width of approximately 1600 feet for the gravity conveyance. The project width could span approximately two miles north and south of the gravity conveyance structure location, to accommodate railroad and roadway infrastructure. A portion of the gravity conveyance structure would be located within the right-of-way of the Louisiana Department of Transportation and Development (LaDOTD) Highway 23.

The outfall of the project, the mid-Barataria Basin, is suffering from significant land loss—approximately 75,000 acres between 1985 and 2010, with projected loss by 2060 ranging from 105,000 to 150,000 acres. Historically, Mississippi River overbank flooding deposited sediment, freshwater, and nutrients in the Barataria Basin during annual flooding cycles, building land and sustaining wetland habitats. Levees and Mississippi River channelization have altered natural fluvial interaction and sediment transport from the river into the basin, removing the source of sediment and freshwater that built and maintained wetlands relative to subsidence and sea level rise. In addition, recent hurricane events and the Deepwater Horizon (DWH) oil spill have exacerbated land loss impacts in the basin. The purpose of the MBSD project is to reconnect and reestablish the natural or deltaic sediment deposition process between the Mississippi River and the Barataria Basin; the project is needed as a long-term resilient, sustainable strategy to reduce land loss rates and sustain DWH injured wetlands through the delivery of sediment, freshwater, and nutrients.

1.1.2 Instructions by CEMVN

CEMVN will provide instructions and guidance to the Selected Proposer to meet NEPA requirements relative to the preparation of the EIS, data interpretation, and impact assessments. These activities are included in the attached Scope of Work (SOW) and are the sole responsibility of CEMVN and the Selected Proposer. The Selected Proposer may neither take nor request direction from CPRA on any aspect of the EIS preparation.

A formal process for defining the roles of CEMVN, the Proposer, and CPRA is outlined in the Memorandum of Understanding (MOU) attached to the Scope of Work. CPRA will supply various work products through the USACE in accordance with the MOU for the preparation of the EIS as identified in the Document Matrix in Attachment 1.

1.2 Definitions

- A. Agency – Any department, commission, council, board, office, bureau, committee, institution, agency, government, corporation, or other establishment of the executive branch of this state authorized to participate in any contract resulting from this solicitation.
- B. CEMVN – Corps of Engineers, New Orleans District.
- C. Contractor/Contracting Party – Any person having contact with a governmental body; the selected proposer(s). Synonymous with the selected proposer(s), Prime Contractor, or Third Party Contractor.
- D. DA – Department of the Army.
- E. Discussions – For the purposes of this RFP, a formal, structured means of conducting written or oral communications/presentations with responsible Proposers who submit proposals in response to this RFP.
- F. DWH PDARP/PEIS – The *Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (DWH PDARP/PEIS)* published by the *Deepwater Horizon (DWH) Natural Resource Trustees* on February 16, 2016.
- G. EIS – Environmental Impact Statement.
- H. ESA – Endangered Species Act.
- I. HTRW – Hazardous, Toxic, and Radioactive Waste (HTRW).
- J. LaDOTD – Louisiana Department of Transportation and Development.
- K. May and Can – The terms “may” and “can” denote an advisory or permissible action.
- L. MBSD – Mid-Barataria Sediment Diversion.
- M. MMPA – Marine Mammal Protection Act (16 U.S.C. § 1362).
- N. MOU – Memorandum of Understanding. The purpose of this MOU is to outline the roles, responsibilities, terms, conditions, procedures, requirements, communication methods and protocols that the Contractor, CPRA, and USACE, agree to follow in the preparation of the EIS to ensure there are no conflicts of interest; to preserve impartial decision-making; and to prevent any impropriety or undue influence or the appearance thereof, in order to maintain integrity of the process.
- O. NEPA – National Environmental Policy Act.
- P. NRDA – Natural Resource Damage Assessment (15 C.F.R. 990).

- Q. NRDA Trustees – The council of government (federal and state) entities authorized under OPA to act on behalf of the public to 1) assess the natural resource injuries resulting from the Deepwater Horizon oil pollution incident, and then 2) develop and implement a restoration plan to rehabilitate, replace, or acquire the equivalent of the injured natural resources and services those resources provide.
- R. OCI - Organizational Conflicts of Interest. This disclosure statement is for the Proposer to declare “they have no financial or other interest in the outcome of the project”, as required by NEPA regulations.
- S. OPA - Oil Pollution Act (33 U.S.C. §2701 et seq.).
- T. OSP – Office of State Procurement.
- U. Prime Contractor – The prime firm or individual with contracting authority who responds to this RFP and shall be responsible, as a result of any contract negotiation, for all deliverables specified in the RFP and proposal. Synonymous with the selected proposer(s), Contractor, Contracting Party, or Third Party Contractor.
- V. Principal Investigator — For the purposes of cultural resources in this RFP, the individual meeting the stated qualifications.
- W. Proposer – A firm or individual who responds to this RFP.
- X. RFP – Request for Proposal.
- Y. RHA — Rivers and Harbors Act of 1899.
- Z. ROD — Record of Decision.
- AA. Shall, Will, and Must – The terms “shall”, “will”, and “must” denote mandatory requirements.
- BB. Should - The term “should” denotes a desirable action.
- CC. State - The State of Louisiana.
- DD. SOW – Scope of Work
- EE. Sub-Contractor – A firm or individual contracted to the Prime or the Proposer.
- FF. TPC – Third Party Contractor. Any person having contact with a governmental body. Synonymous with selected proposer(s), Prime Contractor, Contractor, or Contracting Party.
- GG. USACE — United States Army Corps of Engineers.
- HH. WVA—Wetland Value Assessment

1.3 Schedule of Events

<u>Event</u>	<u>Date</u>
Advertise RFP and mail public announcements	October 12, 2016
Pre-Proposal Conference	October 24, 2016 @ 1:00 PM
Deadline for receipt of written inquiries	October 26, 2016 @ 3:00 PM
Issue responses to written inquiries	November 2, 2016
Deadline for receipt of proposals	November 16, 2016 @ 3:00 PM

Oral Presentations	December 14, 2016 @ TBD
Announce award of contractor selection on or about	December 21, 2016
Contract execution on or about	February 10, 2017

NOTE: The State of Louisiana reserves the right to revise this schedule. Revisions, if any, before the Proposal Submission Deadline will be formalized by the issuance of an addendum to the RFP.

1.3.1 Period of Agreement

The State shall have the right to contract for up to a total of three (3) years with the concurrence of the Contractor and with all appropriate approvals.

1.3.2 Blackout Period

The Blackout Period is a specified period of time during a competitive procurement process in which any proposer, bidder, or its agent or representative, is prohibited from communicating with any state employee or contractor of the State involved in any step in the procurement process about the affected procurement. The Blackout Period shall apply not only to state employees, but also to any contractor of the State. "Involvement" in the procurement process shall include but shall not be limited to project management, design, development, implementation, procurement management, development of specifications, and evaluation of proposals for a particular procurement. All solicitations for competitive procurements will identify a designated contact person. All communications to and from potential proposers, bidders, vendors and/or their representatives during the Blackout Period must be in accordance with this solicitation's defined method of communication with the designated contact person. The Blackout Period will begin upon posting of the solicitation. The Blackout Period will end when the contract is awarded.

In those instances in which a prospective vendor is also an incumbent vendor, the State and the incumbent vendor shall contact each other with respect to the existing contract only. Under no circumstances shall the State and the incumbent vendor and/or its representative(s) discuss the blacked-out procurement.

Any bidder, proposer, or state Contractor who violates the Blackout Period may be liable to the State in damages and/or subject to any other remedy allowed by law.

Notwithstanding the foregoing, the Blackout Period shall not apply to:

1. A protest to a solicitation;
2. Duly noticed site visits and/or conferences for bidders or proposers; or
3. Oral presentations during the evaluation process.

1.4 Proposal Submission

Firms/individuals who are interested in providing services requested under this RFP must submit a proposal containing the mandatory information specified in this section. The proposal must be received in hard copy (printed) version by the RFP Coordinator on or before 3:00 PM Central Daylight Time on the date specified in the Schedule of Events. FAX or e-mail submissions shall not be acceptable. Proposers mailing their proposals should allow sufficient mail delivery time to ensure receipt of their proposal by the time specified. The proposal package must be delivered at the proposer's expense to:

Allison Richard, Coastal Resources Program Specialist
Coastal Protection and Restoration Authority
3rd Floor, Room 319
150 Terrace Avenue
Baton Rouge, LA 70802
225-342-5453

It shall be solely the responsibility of each Proposer to ensure that its proposal is delivered at the specified place and prior to the deadline for submission. Proposals received after the deadline will not be considered.

1.5 Acceptance of Proposal Content

All proposals submissions will be reviewed to determine compliance with administrative and mandatory requirements. Administrative and Mandatory Requirements are outlined throughout this RFP and are listed below:

- Signed Certification Statement per Section 1.6 A. c.;
- Signed MOU and OCI Documents per Section 1.6 A.d.;
- Proposer Qualifications per Section 1.6 A.f.;
- Minimum Personnel Qualifications per Section 1.6 A.g.;
- Required Rate Schedule per Section 1.6 A.l.;
- A statement of self-performance or a list of Sub-Contractors per Section 1.6 A.m.; and,
- Financial Capability per Section 1.6 B.

CEMVN will concur that compliance with the Minimum Personnel Qualifications (Section 1.6 A.g.) has been met. Proposals that are not in compliance with the requirements of this RFP will be rejected from further consideration and the Proposer(s) will be notified by CPRA.

1.6 Proposal Format

A. VOLUME I – TECHNICAL PROPOSAL AND COST RATES

a. **Cover Letter:**

A cover letter should be submitted on the Proposer’s official business letterhead explaining the intent of the Proposer.

b. **Table of Contents:**

The proposal should include a paginated table of contents to facilitate locating the information included and be organized in the order contained herein.

c. **Certification Statement:**

A signed Certification Statement is required for Acceptance of this Proposal. The Proposer **shall** sign and submit the Certification Statement shown in Attachment 2.

d. **MOU and OCI:**

Signed MOU and OCI documents are required for Acceptance of this Proposal. The Proposer **shall** sign and submit the MOU and OCI agreements. The MOU and OCI

agreements are attachments to the SOW. The MOU and OCI agreements are non-negotiable.

e. **Executive Summary:**

This section should serve to introduce the scope of the proposal. It should include administrative information including, Proposer contact name and phone number, and the stipulation that the proposal is valid for a time period of at least 270 calendar days from the date of submission. This section should also include a summary of the Proposer's qualifications and Proposer's ability to meet CPRA's overall requirements in the timeframes set by the agency. It should include a positive statement of compliance with the contract terms. If the Proposer cannot comply with any of the contract terms, an explanation of each exception should be supplied. The Proposer should address the specific language in Attachment 3, Sample Contract, and submit exceptions or exact contract modifications that its firm may seek. While final wording will be resolved during contract negotiations, the intent of the provisions will not be substantially altered.

f. **Proposer Qualifications Form for Acceptance of Proposal:**

Compliance with the Proposer Qualifications is required for Acceptance of this Proposal. The Proposer **shall** complete the form in Attachment 4.

Proposers shall have at least five (5) years of experience in NEPA analysis and preparation of Environmental Impact Statements at the time of proposal submission. Proposers shall demonstrate capacity to fulfill services and provide examples of relevant experience, in each of the following areas: Environmental Impact Statements for complex projects; requirements of 33 CFR Part 230, Appendix B; Data Analysis and Management; Biological Surveys; Wetland Delineation; Cultural Resources Management; Hazardous, Toxic, and Radioactive Waste (HTRW); Socioeconomics and Environmental Justice (EJ); Natural Resources Socioeconomics; Floodplain Management; 404(b)(1) requirements.

g. **Minimum Personnel Qualifications Form for Acceptance of Proposal:**

Compliance with the Minimum Personnel Qualifications is required for Acceptance of this Proposal. CEMVN will concur that compliance with the Minimum Personnel Qualifications has been met. The Proposer **shall** complete the form in Attachment 5. The Proposer and Sub-Contractor team shall demonstrate the minimum personnel requirements for a third-party contractor developing an EIS:

- A. At least one individual of the Proposer (Prime) who shall be responsible for the day-to-day project management of Project tasks and the primary point of contact. This individual must have a minimum of five (5) years experience in the preparation of NEPA documents (i.e., complex Environmental Impact Statements, Environmental Assessments, etc.) for use by the USACE Regulatory Program in their evaluation of permit applications.
- B. At least one individual of the Proposer (Prime or Sub-Contractor) must have a minimum of ten (10) years in preparing EIS in accordance with NEPA; of which at least five (5) years experience is in the preparation of NEPA documents for use by USACE in the evaluation of civil works projects. This individual may not be the same team member as listed in Section 1.6 A.g.A.

- C. At least one individual of the Proposer (Prime or Sub-Contractor) must be a Wetland Ecologist with a degree in Biological Science specializing in Wetland Ecology with a minimum of five (5) years experience in evaluating project impacts to wetland systems and marine, aquatic and plant habitats, and mitigation.
- D. At least one individual of the Proposer (Prime or Sub-Contractor) must be a Wetlands Biologist with an botany degree or environmental degree with a minimum of twenty (20) semester hours in Botany and a minimum of five (5) years experience in wetlands delineation and mitigation or a combination of five (5) years experience in wetlands delineation and mitigation and education with courses equivalent to a major in botany or basic plant science with a minimum of 24 semester hours in botany, including experience in vegetation and invasive species.
- E. At least one individual of the Proposer (Prime or Sub-Contractor) who meets the qualifications of Professional Archaeologist as stated by, § 102. Minimum Qualifications for Professional Archaeologists, available for review on the Louisiana Division of Archaeology webpage <http://crt.louisiana.gov/cultural-development/archaeology/state-legislation/title-25/index>. This team member should also have completed a course on Section 106 of the National Historic Preservation Act offered by the Advisory Council or equivalent training, and meet the appropriate qualifications presented in Professional Qualification Standards (36 CFR 61 Appendix A), as well as the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739).
- F. At least one individual of the Proposer (Prime or Sub-Contractor) must be a Hydraulics and Hydrology (H&H) Engineer with a degree in engineering and a minimum of five (5) years of experience in flood modeling/routing, surface and subsurface hydrology, constituent transport, sediment transport, coastal H&H, fluvial deposition, deltaic deposition, water resources projects, and riverine and outfall management. Familiarity with Mississippi River deltaic processes specifically.
- G. At least one individual of the Proposer (Prime or Sub-Contractor) must be a Geologist, Geomorphologist, or a Coastal Engineer with a degree in engineering, geology, geophysics, or science and minimum of five (5) years of experience in riverine/coastal processes, coastal erosion, effects of saltwater intrusion, coastal restoration, geology of the Lower Mississippi River Valley, coastal and deltaic geology and geomorphology, fluvial deposition, and deltaic deposition. Familiarity with Gulf of Mexico processes specifically.
- H. At least one individual of the Proposer (Prime or Sub-Contractor) must be a Marine Biologist with a degree in biology or biological science and a minimum of five (5) years of experience in marine mammals and their habitat, effects due to habitat changes, and familiarity with Gulf of Mexico marine species.
- I. At least one individual of the Proposer (Prime or Sub-Contractor) must be a Biologist with a degree in biology or biological science and a minimum of five (5) years of experience in the assessment of project effects to threatened and

endangered species and their critical habitats and in the preparation of Biological Assessments.

- J. At least one individual of the Proposer (Prime or Sub-Contractor) must be an Economist with a degree in economics, math, or science with a minimum of five (5) years of experience in evaluating the value of environmental and natural resources assets due to changes in watershed management, land use, land divestiture, transportation (navigation, rail, highway), and environmental compliance options. The individual should be experienced in conducting economic impact analyses for NEPA documentation and Environmental Impact Statements.
- K. Additional individuals of the Proposer (Prime or Sub-Contractor) must include a Civil Engineer with a degree in engineering, Navigation Specialist, Environmental Justice Specialist, and Public Involvement Specialist.

h. **Firm Experience:**

The Proposers **should** give a brief description of their company including a brief history, information on their corporate structure and organization, and the number of years they have been in business. This section should provide a detailed discussion of the Proposer's prior experience in working on projects similar in size, scope, and function to the proposed contract. Proposers should describe their experience in other states or with corporate/governmental entities of comparable size and diversity with references from previous clients, including names and telephone numbers.

Proposers should clearly describe their ability to meet or exceed the qualifications as outlined below:

- Relevant experience preparing NEPA documents for similar projects: Relevant large-scale coastal restoration/civil works projects, specifically including experience with conducting 3rd party EIS and NEPA documentation within the last five (5) years, including the proposed staff for the EIS role for these projects. The information shall include the agency and client contact information.
- Evidence of a thorough working knowledge, understanding and experience of CEQ NEPA regulations and NEPA Implementation Procedures for the USACE Regulatory Program, and all other applicable federal laws, regulations, and Executive Orders.
- Evidence of an understanding of an effective method for assessing cumulative effects.
- Evidence of the technical expertise necessary to accomplish the resource data adequacy review and to present the information in a thorough matter within the EIS.
- Evidence of an ability to clearly describe and distinguish Future Without Project from the Proposed Action and its potential environmental impacts.
- Evidence of creativity in addressing and solving complex problems or situations.
- Evidence of the project team's ability to effectively coordinate input from the USACE and cooperating agencies, the public, and the various other federal,

state, tribal, and local agencies that may comment on or be involved with the EIS.

i. **Experience of Personnel Assigned to the Project:**

The Proposer **should** clearly describe their detailed information about the experience of the Proposer's assigned personnel considered key to the success of the project. This information should include education, training, technical experience, functional experience, specific dates and names of employers, relevant and related experience, past and present projects with dates and responsibilities and any applicable certifications.

Proposer should also specifically include the role and responsibilities of each person on this project, their planned level of effort, and their anticipated duration of involvement. Customer references (name, title, company name, address, and telephone number) should be provided for the cited projects in the individual resumes.

Proposers should clearly describe their years of experience as outlined below:

- Evidence that the project manager and team members have a good working relationship with CEMVN and cooperating agencies.
- Personnel qualifications and experience with regards to this RFP and Scope of Work.
- Qualifications and experience in managing and completing complex EIS documents on time and within budget.
- Individual resumes should include a minimum of three (3) up to five (5) project references, and each individual resume should be limited to one (1) page.

j. **Approach and Methodology:**

Proposals **should** include enough information to satisfy evaluators that the Proposer has the relevant experience, knowledge, qualifications, and individuals to perform the Scope of Work as described herein. Proposals should demonstrate the Proposer's successful completion of NEPA documentation or Environmental Impact Statements for projects of similar complexity to the Mid-Barataria Sediment Diversion.

Proposers shall respond to all items specified in Attachment 6, Scope of Work.

The Proposer should:

- Show a clear understanding of the Scope of Work, tasks and sequences of tasks involved, NEPA process, and adherence to NEPA regulations/guidelines.
- Describe the methods, plans, and tools that will be used to track, control, manage, and report project costs within the contracted budget.
- Describe quality control procedures that will be implemented by the Proposer's deliverables
- Provide a reasonable approach to meeting the required project schedule as outlined in the Scope of Work.
- Provide a critical path identification that demonstrates an understanding of items, tasks, and implementation of these items as required within the Scope of Work.

- Demonstrate the Proposer and Sub-Contractor's understanding of the following:
 - Public Involvement/Scoping
 - Section 404 of the Clean Water Act
 - Section 10 of the Rivers and Harbors Act of 1899
 - Endangered Species Act
 - Marine Mammal Protection Act
 - Section 106 of the National Historic Preservation Act
 - Magnuson-Stevens Fishery and Conservation Management Act (as amended)
 - Coastal Zone Management Act
 - Farmland Protection Policy Act
 - Migratory Bird Treaty Act of 1918
 - Bald and Golden Eagle Protection Act
 - Executive Order 11990 (Protection of Wetlands)
 - Executive Order 11998 (Floodplain Management)
 - Executive Order 11898 (Environmental Justice)
 - Louisiana Coastal Resources Program
 - Louisiana Threatened and Endangered Species and Rare & Unique Habitats
- Provide a proposed project team and their functions.
- Provide an explanation for any additional tasks to be performed which are deemed necessary by the Proposer for successful project completion; explanation of deviation from any tasks listed in the Scope of Work.

k. **Veteran-Owned and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurship (Hudson Initiative) Programs Participation:**

Participation of Veteran Initiative and Hudson Initiative certified small entrepreneurships will be scored as part of the administrative review.

The State of Louisiana Veteran and Hudson Initiatives are designed to provide additional opportunities for Louisiana-based small entrepreneurships (sometimes referred to as LaVet's and SE's respectively) to participate in contracting and procurement with the state. A certified Veteran-Owned and Service-Connected Disabled Veteran-Owned small entrepreneurship (LaVet) and a Louisiana initiative for Small Entrepreneurships (Hudson Initiative) small entrepreneurships are businesses that have been certified by the Louisiana Department of Economic Development. All eligible vendors are encouraged to become certified. Qualification requirements and online certification are available at <http://smallbiz.louisianaeconomicdevelopment.com>

Ten percent (10%) of the total evaluation points on this RFP shall be reserved for Proposers who are themselves a certified Veteran or Hudson Initiative small entrepreneurship or who will engage the participation of one or more certified Veteran or Hudson Initiative small entrepreneurialships as Sub-Contractors.

Reserved points shall be added to the applicable Proposer's evaluation score as follows:

Proposer Status and Reserved Points:

- Proposer is a certified small entrepreneurship: Full amount of the reserved points.
- Proposer is not a certified small entrepreneurship but has engaged one or more certified small entrepreneurialships to participate as Sub-Contractors or distributors.
- Points will be allocated based on the following criteria:
 - The number of certified small entrepreneurialships to be utilized;
 - The experience and qualifications of the certified small entrepreneurship(s); and,
 - The anticipated earnings to accrue to the certified small entrepreneurship(s).

If a Proposer is not a certified small entrepreneurship as described herein, but plans to use certified small entrepreneurship(s), Proposer shall include in its proposal the names of their certified Veteran Initiative or Hudson Initiative small entrepreneurship Sub-Contractor(s), a description of the work each will perform, and the dollar value of each subcontract.

During the term of the contract and at expiration, the Proposer will also be required to report Veteran-Owned and Service-Connected Disabled Veteran Owned and Hudson Initiative small entrepreneurship Sub-Contractor or distributor participation and the dollar amount of each.

The statutes (R.S. 39:2171 et. seq.) concerning the Veteran Initiative may be viewed at <http://legis.la.gov/lss/lss.asp?doc=671504>; and the statutes (R.S. 39:2001 et. seq.) concerning the Hudson Initiative may be viewed at <http://legis.la.gov/lss/lss.asp?doc=96265>. The rules for the Veteran Initiative (LAC 19:VII, Chapters 11 and 15) and for the Hudson Initiative (LAC 19:VIII, Chapters 11 and 13) may be viewed at www.doa.la.gov/pages/osp/se/secv.aspx.

A current list of certified Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurialships may be obtained from the Louisiana Economic Development Certification System at <http://smallbiz.louisianaeconomicdevelopment.com>. Additionally, a list of Hudson and Veteran Initiative small entrepreneurialships, which have been certified by the Louisiana Department of Economic Development and who have opted to register in the State of Louisiana LaGov Supplier Portal https://lagoverpvendor.doa.louisiana.gov/irj/portal/anonymous?guest_user=self_reg may be accessed from the State of Louisiana Procurement and Contract (LaPAC) Network <http://www.wcfprd.doa.louisiana.gov/osp/lapac/pubMain.cfm>. When using this site, determine the search criteria (i.e. alphabetized list of all certified vendors, by commodities, etc.) and select Smalle, VSE, or DSVE.

Certifications with the Louisiana Department of Economic Development must be active at the time of proposal submission in order to receive points.

i. Cost Proposal:

A completed "Required Rate Schedule" is required for Acceptance of the Proposal. The Proposer **shall** provide an hourly rate (numerical value) for each of the staff classifications listed in the "Required Rate Schedule" in Attachment 7. The Prime and Sub-Contractors shall all adhere to the "Required Rate Schedule" for the full term of the contract, so Proposers are to submit only one "Required Rate Schedule." Proposers shall not provide additional labor rate categories beyond those listed in the "Required Rate Schedule." Rate sheets shall include a numerical rate for each of the labor rate categories.

Additions, deletions, or blanks to the "Required Rate Schedule" are not acceptable. A completed "Required Rate Schedule" is required for Acceptance of this Proposal.

The labor rate category shall be inclusive of all costs associated with labor, overhead, administrative costs, software, account management, and any other costs associated with the provision of services (including, but not limited to, standard equipment, computers, field sampling supplies, office supplies, copies, cameras, routine travel such as office meetings, personal protective equipment, and materials).

If a task requires specialized equipment or materials, the Contract Monitor or his designee may approve reimbursement at cost for such equipment or materials. Such approval must be granted by the Contract Monitor or his designee in writing prior to the Contractor incurring these costs. All outside expenses (third party charges, specialized equipment rentals and materials, etc.) will be reimbursed at cost.

Approved travel, such as non-routine or travel to field sites, shall be reimbursed in accordance with the State of Louisiana Policy and Procedure Memoranda (PPM) 49 – General Travel.

Proposers should provide an estimated cost with a detailed estimate of the number of hours with the proposed labor rates and individual personnel names, specialized equipment or materials costs, and travel costs to accomplish the SOW. Slotting of proposed labor rates to individual personnel is negotiable and requires justification based on the individuals' qualification (experience) and the personnel classification prior to issuance of a Task Order. In addition, the proposer shall provide a budgetary total cost estimate with detail of the proposed labor, specialized equipment or materials costs, and travel costs necessary to reach a Final EIS (Record of Decision) considering the SOW, the attached Document Matrix, and the Proposers' EIS project experience. These budgetary cost estimates are for information only and will not be used in the evaluation process as shown in Sections 2.1 through 2.2.

Compensation to the Contractor for services rendered in connection with this contract shall be Task Order based. Compensation to the Contractor for services rendered in connection with this contract shall be based on negotiated work-hours using the "Required Rate Schedule" for the actual work performed.

m. Sub-Contractors:

Proposers **shall** include a statement if the Proposer plans to self-perform all work, otherwise the Proposer **shall** identify all Sub-Contractors necessary to conduct the work,

including the percentage of project to be accomplished. Persons who are not full time employees of the Proposer shall be considered as Sub-contractors. For Sub-Contractor(s), the Proposer should include letters of agreement to undertake their portion of the proposed work. A statement of self-performance or a list of Sub-Contractors is required for Acceptance of this Proposal.

n. **Insurance:**

The proposal should include a certificate of insurance as proof that Proposer has in effect limits of insurance required by the Sample Contract. If selected as a Contractor, the Proposer shall provide certificates of insurance as proof of coverage at the time of contract negotiation.

B. VOLUME II – FINANCIAL INFORMATION (SEPARATE VOLUME) (ONE COPY)

Demonstration of Financial Capability is required for Acceptance of this Proposal. Financial information is used for determination of responsibility (See Section 1.16), and not as evaluation criteria. In Volume II, proposals shall include evidence demonstrating the Proposer’s financial capability to carry out this project. Evidence shall include either #1 or #2 below:

1. Financial Statements (preferably audited or reviewed by an independent CPA) for the past 3 years.
2. If three years of financial statements are not available, proposer shall state the reason and shall provide a letter from the proposer’s bank and/or other financial companies stating financial status/standing with the bank or financial company (on bank/financial company letterhead).

***Letters from Proposers declaring their own financial capability will not be accepted.**

1.6.1 Number of Copies of Proposals

One hard copy of Volume I and Volume II (Cost) of the proposal shall be submitted and 4 additional hard copies of Volume I should be submitted to the RFP Coordinator at the address specified. One (1) additional copy of the Volume 1 portion of the proposal shall be submitted in an electronic format (i.e. CD, flash drive). At least one (1) copy of the proposal shall contain original signatures of those company officials or agents duly authorized to sign proposals or contracts on behalf of the organization. A certified copy of a board resolution granting such authority should be submitted if proposer is a corporation. The copy of the proposal with original signatures will be retained for incorporation in any contract resulting from this RFP.

	Volume I	Volume II
Hard copy	1 required, 4 additional requested copies	1 copy
Electronic copy	1 copy	Proposers should not submit any electronic copies of Volume II.

1.6.2 Legibility/Clarity

Responses to the requirements of this RFP in the formats requested are desirable with all questions answered with as much detail as practicable. The Proposer's response should demonstrate an understanding of the requirements. Proposals prepared simply and economically, providing a straightforward, concise description of the Proposer's ability to meet the requirements of the RFP are also desired. Each Proposer shall be solely responsible for the accuracy and completeness of its proposal.

1.7 Confidential Information, Trade Secrets, and Proprietary Information

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated by the State as "confidential" in accordance with Louisiana Public Records Act (La. R.S. 44:1, et seq.), and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of the paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of the contract, or is rightfully obtained from third parties.

The contractor shall agree to be bound by the Memorandum of Understanding (MOU) provided in the Scope of Work. The MOU establishes an understanding regarding the responsibilities of the parties in the preparation of the EIS between the contractor, CEMVN, and CPRA. Only information which is in the nature of legitimate trade secrets or non-published financial data shall be deemed proprietary or confidential, in accordance with Louisiana Public Records Act (La. R.S. 44:1, et seq.). Any material within a proposal identified as such must be clearly marked in the proposal and will be handled in accordance with the Louisiana Public Records Act (La. R.S. 44: 1, et seq.),and applicable rules and regulations.

Any proposal marked as confidential or proprietary in its entirety shall be rejected without further consideration or recourse.

1.8 Pre-Proposal Conference

A non-mandatory Pre-proposal conference shall be held on October 24, 2016 at the LaSalle Building at 617 North Street, 1st Floor, LaBelle Room at 1:00 pm.

The purpose of the conference shall be for Proposers to obtain clarification of the requirements of the RFP and to receive answers to relevant questions. Any Proposer intending to submit a proposal should have at least one (1), but not more than three (3) duly authorized representatives attend the Pre-Proposal Conference.

Although impromptu questions will be permitted and spontaneous answers will be provided during the conference, the only official answer or position of the State will be stated in writing in response to written questions. Therefore, potential Proposers should submit all questions in writing even if an

answer has already been given to an oral question. After the conference, questions will be researched and the official response will be distributed in writing and/or posted on the Internet.

1.8.1 Proposer Inquiries

Written questions via fax or email regarding RFP requirements or Scope of Services must be submitted to the RFP Coordinator as listed below.

Allison Richard, Coastal Resources Program Specialist

Coastal Protection and Restoration Authority

Fax: 225-242-3532

Email: CPRAContracts@la.gov

The State will consider written inquiries and requests for clarification of the content of this RFP received from potential Proposers. Written inquiries must be received by 3:00 PM CST on the date specified in the Schedule of Events. The State shall reserve the right to modify the RFP should a change be identified that is in the best interest of the State.

Official responses to all questions submitted by potential Proposers will be posted by the date listed in the Schedule of Events.

Only the RFP Coordinator has the authority to officially respond to a Proposer's questions in writing on behalf of the State.

1.9 Errors and Omissions in Proposal

The State will not be liable for any errors in proposals. The State reserves the right to make corrections or amendments due to minor errors identified in proposals by State or the Proposer. The State, at its option, reserves the right to seek clarification of any proposal for the purpose of identifying and eliminating minor irregularities or informalities.

1.10 Changes, Addenda, Withdrawals

State shall reserve the right to change the schedule of events or revise any part of the RFP by issuing an addendum to the RFP at any time. Addenda, if any, will be posted at <https://www.cfrd.louisiana.gov/osp/lapac/pubMain.cfm>, and www.coastal.la.gov/resources/doing-business-with-cpra/contracts-and-grants/

It shall be the responsibility of the Proposer to check the website for addenda to the RFP, if any.

1.11 Withdrawal of Proposal

A Proposer may withdraw a proposal that has been submitted at any time up to the date and time the proposal is due. To accomplish this, a written request signed by the authorized representative of the Proposer must be submitted to the RFP Coordinator.

1.12 Waiver of Administrative Informalities

The State shall reserve the right, at its sole discretion, to waive minor administrative informalities contained in any proposal.

1.13 Proposal Rejection/RFP Cancellation

Issuance of this RFP in no way shall constitute a commitment by the State to award a contract. The State shall reserve the right to accept or reject, in whole or part, all proposals submitted and/or cancel this RFP if it is determined to be in the State's best interest.

1.14 Ownership of Proposal

All materials submitted in response to this RFP shall become the property of the State. Selection or rejection of a proposal shall not affect this right.

1.15 Cost of Offer Preparation

The State shall not be liable for any costs incurred by Proposers prior to issuance of or entering into a contract. Costs associated with developing the proposal, preparing for oral presentations, and any other expenses incurred by the Proposer in responding to this RFP shall be entirely the responsibility of the Proposer and shall not be reimbursed in any manner by the State.

1.16 Determination of Responsibility

Determination of the Proposer's responsibility relating to this RFP shall be made according to the standards set forth in LAC 34:V.2536. The State must find that the selected Proposer:

- Has adequate financial resources for performance, or has the ability to obtain such resources as required during performance;
- Has the necessary experience, organization, technical qualifications, skills, and facilities, or has the ability to obtain them;
- Is able to comply with the proposed or required time of delivery or performance schedule;
- Has a satisfactory record of integrity, judgment, and performance; and
- Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- Proposers should ensure that their proposals contain sufficient information for the State to make its determination by presenting acceptable evidence of the above to perform the contracted services.

1.17 Prime Contractor Responsibility with use of Sub-Contractors

The State shall have a single Proposer or a Prime Contractor as the result of any contract negotiation, and that Prime Contractor shall be responsible for all deliverables specified in the RFP and proposal. This general requirement notwithstanding, Proposers may enter into Sub-Contractor arrangements, however, the Proposer shall acknowledge in their proposals total responsibility for the entire contract. Information required of the Proposer under the terms of this RFP shall also be required for each Sub-Contractor. The Prime Contractor shall be the single point of contact for all subcontract work. Unless provided for in the contract with the State, the Prime Contractor shall not contract with any other party for any of the services herein contracted without the express prior written approval of the State.

1.18 Evaluation

The review team will be designated by the State to determine the Proposal most advantageous to the State.

For those proposals that have met the requirements of Section 1.5, the administrative review team will determine point allocation for the Hudson/Veteran Small Entrepreneurship Program and Cost.

After completion of the administrative review team evaluation, the proposals will be reviewed by the technical review team, taking into consideration Firm Experience, Experience of Personnel Assigned to the Project, and Approach and Methodology.

1.19 Oral Discussions/Presentations

The State, at its sole discretion, may require all Proposers reasonably susceptible of being selected for the award to provide an oral presentation of how they propose to meet CPRA's objectives. Commitments made by the Proposer at the oral presentation, if any, will be considered binding. Based upon information received in the presentation, using the same criteria used for initial scores, original scores that were assigned in the initial evaluation may be adjusted.

1.20 Selection and Notice of Intent to Award

The technical review team will compile the scores and present to the Executive Director the responsive and responsible Proposer with the highest score.

The State will notify the successful Proposer in writing and proceed to negotiate terms for a final contract. In accordance with the Council on Environmental Quality's regulations concerning NEPA at 40 CFR 1506.5(c), CPRA considers any Contractor or any Sub-Contractor firms conducting tasks associated with the MBSD Engineering Design or Design Review in support of Plans and Specifications performed concurrently with the EIS as having a potential conflict of interest.

Unsuccessful Proposers will be notified in writing accordingly.

The proposals received (except for that information appropriately designated as confidential in accordance with R.S. 44.1 et seq.), selection memorandum, list of criteria used with the weight assigned each criteria, scores of each proposal considered along with a summary of scores, and a narrative justifying selection shall be made available, upon request, to all interested parties after the "Notice of Intent to Award" letter has been issued.

Any Proposer aggrieved by the proposed award has the right to submit a protest in writing to the Chief Procurement Officer within 14 calendar days after the award has been announced by the agency. The award of a contract shall be subject to the approval of the Division of Administration, Office of State Procurement.

1.21 Contract Award and Execution

The State shall reserve the right to enter into a contract without further discussion of the proposal submitted based on the initial offers received.

The State shall reserve the right to contract for all or a partial list of services offered in the proposal.

The RFP and proposal of the selected Proposer shall become part of any contract initiated by the State.

The selected Proposer shall be expected to enter into a contract that is substantially the same as the sample contract included in Attachment 3. In no event shall a Proposer submit its own standard contract terms and conditions as a response to this RFP. The Proposer should submit with its proposal any exceptions or exact contract deviations that its firm wishes to negotiate. Negotiations may begin with the announcement of the selected Proposer. The MOU and OCI documents are non-negotiable.

If the contract negotiation period exceeds (30) business days or if the selected Proposer fails to sign the final contract within (30) business days of delivery, the State may elect to cancel the award and award the contract to the next-highest-ranked Proposer.

1.22 Right to Prohibit Award

In accordance with the provisions of R.S. 39:2192 any public entity shall be authorized to reject a proposal from, or not award the contract to, a business in which any individual with an ownership interest of five percent or more, has been convicted of, or has entered a plea of guilty or nolo contendere to any state felony or equivalent federal felony crime committed in the solicitation or execution of a contract or RFP awarded under the laws governing public contracts under the provisions of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, and all contracts under Title 39, Chapter 17 of the Louisiana Procurement Code including contracts for professional, personal, consulting and social services.

1.23 Payment

Payment terms shall be negotiated with the successful Proposer.

If specialized equipment or materials are required for task completion (e.g., boat rental and unique field sampling equipment), rates for those items will be negotiated and reimbursed at cost.

Travel expenses shall be reimbursed in accordance with the Division of Administration State General Travel Regulations, within the limits established for State Employees as defined in Division of Administration Policy and Procedure Memorandum No. 49.

1.24 Assignment

No contractor shall assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the contractor from assigning to a bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

1.25 Audit of Records

The State Legislative Auditor, agency, and/or federal auditors and internal auditors of the Division of Administration shall have the option to audit all accounts directly pertaining to the contract for a period of three (3) years from the date of the last payment made under this contract. Records shall be made available during normal working hours for this purpose.

1.26 Records Ownership

Ownership of documents, materials, and deliverables shall be in accordance with Article V of the attached MOU and with Article 17 of Attachment 3 to this RFP (Sample Contract).

All records, reports, documents, or other material related to any contract resulting from this RFP and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of the State and shall, upon request, be returned by Contractor to the State, at Contractor's expense, at termination or expiration of the contract.

1.27 Entire Agreement/Order of Precedence

This contract, together with the RFP and addenda issued thereto by the State, the proposal submitted by the Contractor in response to the State's RFP, and any exhibits incorporated herein by reference, shall constitute the entire agreement between the parties with respect to the subject matter.

In the event of any inconsistent or incompatible provisions, this signed agreement (excluding the RFP and the Contractor's proposal) shall take precedence, followed by the provisions of the RFP, and then by the terms of the Contractor's proposal.

1.28 Substitution of Personnel

The Contractor's personnel assigned to this Contract shall not be replaced without consent of CPRA and subject to the requirements of the MOU. Such consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that any State or Contractor personnel become unavailable due to resignation, illness, or other factors, excluding assignment to project outside this contract, outside of the State's or Contractor's reasonable control, the State or the Contractor shall be responsible for providing an equally qualified replacement in time to avoid delays in completing tasks. The Contractor will make every reasonable attempt to assign the personnel listed in his proposal.

1.29 Governing Law

This contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue for any action arising out of this contract shall be exclusively the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

1.30 Claims or Controversies

Any claim or controversy arising out of the contract shall be resolved by the provisions of Louisiana Revised Statutes 39:1672.2-1672.4.

1.31 Code of Ethics

Proposers shall be responsible for determining that there will be no conflict or violation of the Ethics Code if their company would be awarded a contract. If a Proposer suspects they may be in violation of the Ethics Code, a copy of an official ruling shall be provided in their Proposal. The Louisiana Board of Ethics shall be the only entity which can officially rule on ethics issues.

1.32 Corporate Requirements

If the Contractor is a corporation not incorporated under the laws of the State of Louisiana, the contractor shall have obtained a certificate of authority pursuant to R. S. 12:301-302 from the Secretary of State of Louisiana.

If the Contractor is a for-profit corporation whose stock is not publicly traded, the contractor shall ensure that a disclosure of ownership form has been properly filed with the Secretary of State of Louisiana.

1.33 Indemnification and Limitation of Liability

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the Contract.

The Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State and its Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by the Contractor, its agents, employees, partners or subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State. If applicable, the Contractor will indemnify, defend and hold the State and its Authorized Users harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any

copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at the Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State or its Authorized Users may require the Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) the Authorized User's unauthorized modification or alteration of a Product, Material or Service; ii) the Authorized User's use of the Product in combination with other products not furnished by the Contractor; iii) the Authorized User's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if the Contractor believes that it may be enjoined, the Contractor shall have the right, at its own expense and sole discretion as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace the item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then to provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, the Contractor's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due to the Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

PART II: EVALUATION

Accepted proposals as defined in Section 1.5 will be evaluated based on information provided in the proposal. Proposals will be evaluated and scored using the criteria and scoring as outlined in this RFP.

<i>CRITERIA</i>	<i>MAXIMUM SCORE</i>
<i>Firm Experience</i> – Experience of the Proposer (Prime and Sub-Contractors) in coastal restoration, civil works, and NEPA/EIS documentation, or other large scale projects. Proposer should submit a sampling of representative projects.	25
<i>Experience of Personnel Assigned to the Project</i> – Proposer should identify, and provide qualifications of personnel assigned to project and their relevant experience.	25
<i>Approach and Methodology</i> —Proposer should address the specific requirements of this RFP, the Scope of Work, including Project Management tasks and Schedule.	20
<i>Hudson/Veteran Small Entrepreneurship Program</i>	10
<i>Cost</i>	20
<i>TOTAL MAXIMUM SCORE</i>	100

2.1 Firm Experience

The following criteria will be utilized for consideration by the evaluation team for scoring.

2.1.1 Relevant experience preparing NEPA documents for similar projects

Relevant large-scale coastal restoration/civil works projects, specifically including experience with conducting 3rd party EIS and NEPA documentation within the last five (5) years, including the proposed staff for this EIS role for these projects. The information should include the agency and client contact information.

2.1.2 Thorough working knowledge, understanding and experience of NEPA, CEQ and associated regulations implementing NEPA

Evidence of a thorough understanding of and work experience with CEQ NEPA regulations and NEPA Implementation Procedures for the USACE Regulatory Program and all other applicable federal laws, regulations, and Executive Orders

2.1.3 Effective method for assessing cumulative effects

Evidence of an understanding of an effective method for assessing cumulative effects.

2.1.4 Data compilation and data gaps

Evidence of the technical expertise necessary to accomplish the resource data adequacy review and to present the information in a thorough manner within the EIS.

2.1.5 Alternative and impact analyses

Evidence of an ability to clearly describe and distinguish future without project from the Proposed Action and its potential environmental impacts.

2.1.6 Creativity in addressing and solving complex problems or situations

Evidence of creativity in addressing and solving complex problems or situations.

2.1.7 Effectively coordinate input

Evidence of the project team's ability to effectively coordinate input from the USACE and cooperating agencies, the public, and the various other federal, state, tribal, and local agencies that may comment on or be involved with the EIS.

2.2 Experience of Personnel Assigned to the Project

The following criteria will be utilized for consideration by the evaluation team for scoring.

2.2.1 Working relationship(s)

Evidence that the project manager and team members have a good working relationship with CEMVN and cooperating agencies.

2.2.2 Experience

Personnel qualifications and experience with regards to this RFP and Scope of Work.

2.2.3 Management of complex projects

Qualifications and experience in managing and completing complex NEPA and EIS documents on time and within budget.

2.3 Approach and Methodology

The following criteria will be utilized for consideration by the evaluation team for scoring.

2.3.1 Understanding of this Scope of Work, NEPA regulations, and preparation of an EIS

A clear understanding of the Scope of Work, tasks and sequence of tasks involved, NEPA process, and adherence to NEPA regulations/guidelines.

2.3.2 Schedule

The Proposer can develop and complete the EIS within the contracted schedule as required within the Scope of Work.

2.3.3 Budget

The methods, plans, and tools that will be used to track, control, manage, and report project costs within the contracted budget.

2.3.4 Quality

The quality control procedures that will be implemented by the Proposer's deliverables.

2.3.5 Critical Path Identification

The Proposer's understanding of critical path items, tasks, and implementation of these items as required with the Scope of Work.

2.4 Veteran-Owned and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Participation

Ten points of the total evaluation points on this RFP shall be reserved for Proposers who are themselves a certified Veteran or Hudson Initiative small entrepreneurship or who will engage the participation of one or more certified Veteran or Hudson Initiatives small entrepreneurships as subcontractors.

Reserved points shall be added to the applicable Proposers' evaluation score as follows:

Proposer Status and Reserved Points

- Proposer is a certified small entrepreneurship: Full amount of the reserved points
- Proposer is not a certified small entrepreneurship but has engaged one or more certified small entrepreneurships to participate as subcontractors or distributors. Points will be allocated based on the following criteria:
 - the number of certified small entrepreneurships to be utilized
 - the experience and qualifications of the certified small entrepreneurship(s)
 - the anticipated earnings to accrue to the certified small entrepreneurship(s)

2.5 Cost Evaluation

Cost ratings (CR) will be determined using the following formula:

For cost evaluation purposes, all hourly rates will be averaged. The Proposer with the lowest rate schedule average (LRSA) will receive 20 points. All other proposals will be rated by multiplying the maximum possible points (20) by a fraction that consists of the lowest rate schedule average (LRSA) as numerator and the rate schedule average of the Proposer being evaluated (PRSA) as the denominator.

$$CR = (LRSA/PRSA) \times 20$$

Where: CR = Computed cost score (points) for Proposer being evaluated
LRSA = Lowest rate schedule average
PRSA = Rate schedule average of Proposer being evaluated

ATTACHMENT 1: DOCUMENT MATRIX

Programmatic or Parent Documents	Document Title	Prepared By	Date	Summary
	Deepwater Horizon Oil Spill: Final Programmatic Damage Assessment and Restoration Plan (PDARP) and Final Programmatic Environmental Impact Statement (PEIS)	Deepwater Horizon Natural Resources Damage Assessment Trustees	2016	Lead federal agency: NOAA. Document includes injury assessment, restoration plan, proposed alternatives and their environmental impacts, Trustee preferred alternative.
	Record of Decision for the Deepwater Horizon Oil Spill: Final Programmatic Damage Assessment and Final Programmatic Environmental Impact Statement	Deepwater Horizon Natural Resources Damage Assessment Trustees	2016	Lead federal agency: NOAA. Trustees' Selected Alternative for the restoration plan employs a comprehensive, integrated ecosystem approach to best address ecosystem injuries. Selected alternative is a comprehensive integrated restoration portfolio that emphasizes broad ecosystem benefits that can be realized through coastal habitat restoration in combination with resource-specific restoration. ROD sets forth basis for Trustees' decision to select this alternative.
Alternatives				
	Delta Building Diversion at Myrtle Grove Alternative Modeling	Moffat & Nichol	2008	Modeling of four (4) different Myrtle Grove diversion scenarios in conjunction with three appropriate diversion regimes at Davis Pond. Existing condition runs with only nominal diversions at Myrtle Grove and Davis Pond, and scenario runs with double-high Myrtle Grove diversion and high Davis Pond diversion also run. (23 appendices to doc)
	Numerical Modeling for LCA Medium Diversion at Myrtle Grove with Dedicated Dredging: Model Application to Base, Future Without Project, and Future With Project Conditions	FTN	2014	Two-dimensional, vertically averaged hydrodynamic and transport model of Barataria Basin was calibrated and applied using Resource Modeling Associates' RMA-2 and RMA-11 software to simulate hydrodynamics, salinity transport, and water temperature in basin to simulate base (existing), future without project, and future with project conditions to aid LCA Medium Diversion at Myrtle Grove with Dedicated Dredging Project Delivery Team in selecting a TSP.

	MBSD Alternative 1, Base Design Report 30% Basis of Design	HDR	2014	Presentation of a design to optimize hydraulic efficiency for a 75,000 cubic feet per second design flow and documents existing conditions at the time of the analysis, background on the data collection effort, and other background material used to support the basis of design. (total of 8 appendices)
	Alternatives Screening Framework Memorandum	HDR	2014	Summary of background information, project's purpose and need, and previous planning studies to substantiate need for location of proposed MBSD at River Mile 60.7.
	Future Without Project Memorandum	HDR	2014	Focused on Barataria Basin. Includes preliminary list of projects to include in FWOP for no-action alternative, preliminary descriptions of FWOP conditions in Barataria Basin, and a preliminary list of projects for consideration to include in the cumulative impact analysis.
	MBSD Value Engineering Report 30% Basis of Design	HDR	2014	Consideration of design alternatives to the base project design (4 appendices)
	Mississippi River Hydrodynamic and Delta Management Study (MRHDMS): Assessment and Analysis of Alternatives	TWIG	2016	50-year simulations for alternatives that include implementation of proposed restoration strategies, including large sediment diversions intended to deliver river water and sediment to Barataria Bay and Breton Sound. Hydrodynamics (water level and salinity), wetland emergent marsh type and submerged aquatic vegetation (SAV), and landscape change results are discussed. Total of 10 production runs.
	Mid-Barataria Sediment Diversion Primer	CPRA	2016	Summary of alternatives analysis (location, flow, and structure) since 1996 for a Mississippi River diversion located at Myrtle Grove
Historic & Existing Conditions	Mississippi River Hydrodynamic and Delta Management Study HEC-6T Sediment Study The Existing and Future Without Project Conditions	BCG Engineering	2013	Interim draft report. Computational sedimentation study that simulates sedimentation processes on the Mississippi River between Tarbert Landing, RM 306.3 Above Head of Passes and the jetties of Southwest Pass, RM -18.0 Below Head of Passes. Provides water discharges and sediment concentrations, by particle size, which could be diverted into proposed sediment diversion intake channels. Simulation period is 50 years.
	Mississippi River Hydrodynamic and Delta Management Study Appendix A	BEM	2015	Historic and Existing Conditions of Barataria, Breton Sound, Pontchartrain and Mississippi River Delta basins. Prepared for the USACE-CPRA cost shared Mississippi River Hydrodynamic and Delta Management Study feasibility study and draft EIS.

H&H Modeling	Myrtle Grove Delta Building Diversion Modeling Effort in Support of the LCA Medium Diversion at Myrtle Grove With Dedicated Dredging Project Data Collection, Preliminary Design and Modeling Initiative	CPRA, NGOs	2011	Purpose was to bring best science and modeling into the planning process, to modify the diversion to maximize the capture of sediment and build land, to assess the potential impacts, positive and negative, of the modified diversion, and answer stakeholder questions. Specific objectives: evaluate design flows, evaluate river side concerns, determine optimum location to maximize sediment capture, complete a conceptual design of diversion structure, and evaluate basin side impacts.
	Numerical Simulations and Data Analysis Report Analysis of Storm Surge and Wave Reduction by Restoration Projects in Barataria Basin, Louisiana	Arcadis	2013	ADCIRC and unSWAN modeling to evaluate potential benefits of landscape features and optimize design criteria of coastal restoration projects in terms of providing protection to inland regions from surge and waves. (includes appendices)
	Upper Barataria Risk Reduction Modeling Phase 2—Rainfall & Storm Surge Combined Effects Modeling	TWIG/ Arcadis/ RAND	2014	Prepared for 2017 Master Plan update. Focus on improving understanding of flood risk without projects in place. Evaluated flood hazards for a combination of storm surge and rainfall. Economic analysis focuses on identifying an upper bound on potential risk reduction by ignoring possibility of induced flooding in front of the proposed levee alignments, including on the west bank of the Greater New Orleans protection system, and by assuming the alignments fully eliminate risk on the project interiors.
	Hydraulic Report 30% Basis of Design and Value Engineering	HDR	2014	Basin hydrodynamics and tailwater analysis, diversion capacity, sediment transport and scour potential, and inlet performance.
	Mid-Barataria Sediment Diversion Report	TWIG	2014	Delft3D and FLOW 3-D modeling focused on the near-field outfall (receiving basin) of MBSD and limited to an 8 sq mi basin area near the mouth of the outfall channel. (prepared under BA-153)
	LCA MRHDM Study Multidimensional Modeling Local Applications of Delft-3D Model	TWIG	2015	Once validated, the models were used to perform detailed analysis of each diversion site (Upper Breton, White Ditch, Myrtle Grove, and Bonnet Carre Spillway) and provide insights on the ability of diversions to capture sediment efficiently, and on the response of the river to such extraction of water and sediment. Models were used to analyze individual diversions as well as interaction between two adjacent diversions.
Wetlands &	Nitrogen and Phosphorous	CH2M Hill	2013	Technical memorandum for the Louisiana Nutrient Management Strategy.

Water Quality	Removal Estimates for Existing and Planned River Diversions			First-order, area-based model to provide a range in the nitrogen and phosphorous removals that could occur with the full implementation of existing and proposed river diversions from the Mississippi and Atchafalaya rivers to understand existing landscape performance. Does not account for future added benefits with increased land-building from diversions or marsh creation. Provides annual removal estimates of nitrate-nitrite (NO _{2/3}), total nitrogen (TN), and total phosphorous (TP) and accounts for monthly changes in climate variables, nutrient inputs, and hydraulic loading.
	Potential Waters of the U.S., Including Wetlands Memorandum	HDR	2014	On-site evaluation and delineation of waters of the U.S., including wetlands, for proposed channel footprint and expanded desktop delineation of a portion of the project's immediate outfall. (prepared under BA-153)
	CRMS Vegetation and Salinity Memorandum	HDR	2014	Evaluation of CRMS vegetation data to provide baseline mapping of existing conditions in Barataria Basin, baseline vegetation mapping in project outfall, establish and map salinity trends in the basin, and provide recommendations for additional monitoring needs for aquatic and environmental conditions. (prepared under BA-153)
	Water Quality Resources Summary of Findings Draft Memorandum	HDR	2014	Desktop review of publicly available water quality data collected from areas in the lower Mississippi River and Barataria Basin in the vicinity of the Mid-Barataria Sediment Diversion. (prepared under BA-153)
	Master Plan Vegetation Model Technical Report	ULL & NWRC		Prepared for the 2012 Comprehensive Master Plan for a Sustainable Coast
	Davis Pond River Diversion Project: Pre and Post Diversion Trends for Salinity Intrusion and Nutrient Removal Final Report	Dynamic Solutions	2015	Study evaluated performance effectiveness of Davis Pond to attain project goals for control of salinity intrusion in Barataria Basin, removal of nutrients and sediment within Davis Pond, and improvement of water quality exported to the Gulf of Mexico. Data collected from 1997-2012 used to evaluate impact of Davis Pond on pre- and post-diversion spatial and temporal patterns of salinity, nutrients, sediment and other water quality parameters in Barataria Basin.
Fisheries	Modeling Relationships between the Abundance of Fishery Species, Coastal	University of New Orleans,	2007	Relationships between densities of selected fishery species and categorical patterns of marsh-water at a landscape scale in the Barataria Basin. Relationships then used to develop a tool for assessing potential

	Wetland Landscapes, and Salinity in the Barataria Basin, Louisiana	NMFS		effects of landscape-scale restoration projects, such as a river diversion at Myrtle Grove, on fishery resources. Project examined relationships using fishery-independent data and sampling conducted across designated land-water patterns. Prepared for CWPPRA BA-33
	Analysis of Fisheries—Independent Data for Evaluation of Species Distribution Responses to the Davis Pond Freshwater Diversion	Dynamic Solutions	2011	Evaluation of abundance data of five important commercial and recreational fishery species to determine if there have been any changes in the abundance patterns and distributions in the Barataria Basin. Objective of report is to evaluate species pattern over monitoring period before construction of the Davis Pond Diversion was completed and since the diversion has been in operation. Results from the analysis can be used for comparison with similar data collected on the fishery species under future conditions to evaluate the additive effects of the coastal restoration efforts on the species within the basin.
	U.S. Fish and Wildlife Service Aquatic Impact Assessment for the Louisiana Coastal Area Study, Medium Diversion at Myrtle Grove	Dynamic Solutions	2013	Data and methods used for model set-up in Barataria Basin. Per request from USFWS & USACE, report describes 1) all work accomplished under scope of work, 2) work not completed under scope of work, and 3) a list of lessons learned and future recommendations for modifying and improving the existing CASM to help guide USACE, CPRA, USFWS, & NMFS in future requests pertaining to aquatic impact assessments for coastal protection and restoration projects.
	Development of the CASM for Evaluation of Fish Community Impacts for the Mississippi River Delta Management Study Model Setup, Calibration and Validation for Existing Conditions	Dynamic Solutions	2016	Simulates the daily dynamics of the food web over 1995-2010 for existing conditions and over a 50-year time period for evaluating diversion alternatives for the Delta. Master Plan model data were used for calibration and validation of the CASM. Chl-a concentrations generated by the Delft model used to drive primary production in the production run simulations performed after calibration and validation.
	Delta Management Fish and Shellfish Ecosystem Model	George Mason University	2016	Objective is to determine how select combinations of large-scale restoration projects such as proposed river diversions in the lower Mississippi River Deltaic Plan may affect the distribution and biomass of fish over decades relative to future without action, in addition to evaluating potential trends in the future with action. Ecosystem model simulates biomass and distribution of fish and shellfish species, and

				landings of targeted fisheries species, as a result of a select combination of river diversion management simulations.
	Delta Management Study fisheries model results interpretation and synthesis	CPRA	2016	A document to aid in the interpretation of EWE and CASM model results relative to simulated changes to the ecosystem and estuarine food webs, and to compare and contrast the general results of the two models based on their different structures. The document is not intended to be an exhaustive treatise, but presents and discusses a sample of relevant model output.
	LSU Connection to the Coast Linking Commercial Fishing to Coastal Communities	Economics & Policy Research Group, LSU	2016	Summarizes historical data related to Louisiana commercial fishing activity with a focus of land-based operations, areas fished and the link between the two. Data provide historical context that can be used to investigate how commercial fishing activity has changed over time or study how this activity may adapt to future change.
Biological Assessment	Paddlefish and Sturgeon Entrainment by Dredges: Swimming Performance as an Indicator of Risk	ERDC	2005	Assessment of potential entrainment related losses of paddlefish and sturgeons from dredging operations using measures of swimming performance as descriptors of risk.
	Protected Species Memorandum	HDR	2014	Desktop review of USFWS Information, Planning, and Conservation System, LDWF Louisiana Natural Heritage Program's online database, and NMFS online database (prepared for BA-153)
	Entrainment Studies of Pallid Sturgeon Associated with Water Diversion in the Lower Mississippi River	ERDC (USACE)	2013	Prepared for LCA Program. Study to monitor potential entrainment of pallid sturgeon in existing diversions and provide information to evaluate risk of future entrainment. Objectives of study were to document and quantify sturgeon entrainment in existing diversions compared to adjacent river reaches; estimate population size of pallid sturgeon in river reaches associated with diversions; and develop population viability models of pallid sturgeon to analyze impacts of entrainment-based "take" by water diversions.
Socioeconomic	Economic Evaluation of Land Loss in Louisiana	LSU & RAND	2015	Potential economic implications of Louisiana's land loss through a spatial analysis that layered future land loss and storm surge scenarios from the 2012 Coastal Master Plan onto today's economy. Report is for the entire coastal zone. (prepared for Master Plan)
	Coastal Louisiana Risk	RAND	2012	Use of Coastal Louisiana Risk Assessment (CLARA) Model to assess degree

	Assessment Model Technical Description and 2012 Coastal Master Plan Analysis Results			to which various projects help coastal communities avoid or reduce damage from hurricanes.
Cultural Resources	Draft Phase I Cultural Resources Survey of the Proposed Site	HDR	2014	Phase I cultural resources survey within the limits of the proposed diversion channel. (prepared for BA-153)
Navigation	Impact on the Navigation of Ships on the Mississippi River	Water Simulation Technology Inc.	2014	Ship maneuvering study on a full bridge simulator using ships representative of the deep-draft traffic operating in the mid-Barataria reach of the Mississippi River. Simulation conducted at the Maritime Institute of Technology and Graduate Studies. (prepared for BA-153)
Soils	Delta Building Diversion at Myrtle Grove Morphological Modeling	Moffat & Nichol	2011	Analysis of land-building potential if BA-33 project modified to act as a sediment diversion. Extensive data collection efforts, sediment transport analyses, numerical modeling and physical modeling of the Mississippi River presented; preliminary design of the diversion structure and conveyance channel used for study was completed by others.
	HEC-6T Sediment Study Allocation of Water and Sediment Resources Myrtle Grove Diversion for Land Building	Mobile Boundary Hydraulics, PLLC	2012	Computational sedimentation model study that simulates sediment processes in the Mississippi River between Tarbert Landing (RM 306.3 AHP) and the jetties of Southwest Pass (RM -18.0 BHP). Provides water discharges and sediment concentrations, by particle size, that could be diverted into the intake channel of the proposed structure. Simulation period is 50 years. Computations also predict impact of the diversion on geomorphology of the Mississippi River. (includes appendices)
	Mississippi River Hydrodynamic and Delta Management Study (MRHDM)—Geomorphic Assessment	ERDC (USACE)	2014	Objectives were to utilize all available data to document historical trends in hydrology, sedimentation, and channel geometry in the lower Mississippi River and summarize the local changes observed at locations where repetitive datasets exist and at key reaches. Tasks included data compilation, geometric data analysis, gage and discharge analysis, dredge record analysis, sediment data analysis, development of an events timeline, and integration of results.
	Mid-Barataria Sediment Diversion Geotechnical Report 30% Basis of Design	HDR	2014	Information on subsurface conditions in the project area to determine project's feasibility and to develop preliminary geotechnical recommendations to support 30% design. (Includes 5 appendices) (prepared for BA-153)

ATTACHMENT 2: CERTIFICATION STATEMENT

The undersigned hereby acknowledges she/he has read and understands all requirements and specifications of the Request for Proposals (RFP), including attachments.

OFFICIAL CONTACT. The State requests that the Proposer designate one person to receive all documents and the method in which the documents are best delivered. The Proposer should identify the Contact name and fill in the information below: (Print Clearly)

Date _____ Official Contact Name: _____

A. E-mail Address: _____

B. Phone Number with area code: () _____

C. US Mail Address: _____

Proposer shall certify that the above information is true and shall grant permission to the State or Agencies to contact the above named person or otherwise verify the information provided.

By its submission of this proposal and authorized signature below, Proposer shall certify that:

1. The information contained in its response to this RFP is accurate;
2. Proposer shall comply with each of the mandatory requirements listed in the RFP and will meet or exceed the functional and technical requirements specified therein;
3. Proposer shall accept the procedures, evaluation criteria, mandatory contract terms and conditions, and all other administrative requirements set forth in this RFP.
4. Proposer's quote shall be valid for at least 270 calendar days from the date of proposal's signature below;
5. Proposer understands that if selected as the successful Proposer, he/she will have **30** business days from the date of delivery of final contract in which to complete contract negotiations, if any, and execute the final contract document.
6. Proposer shall certify, by signing and submitting a proposal for \$25,000 or more, that their company, any subcontractors, or principals are not suspended or debarred by the General Services Administration (GSA) in accordance with the requirements in OMB Circular A-133. (A list of parties who have been suspended or debarred can be viewed via the internet at <https://www.sam.gov> .)

Authorized Signature: _____

Typed or Printed Name: _____

Title: _____

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

SIGNATURE of Proposer's Authorized Representative

DATE

ATTACHMENT 3: SAMPLE CONTRACT

STATE OF LOUISIANA

CONTRACT FOR CONSULTING SERVICES

BE IT KNOWN, that on this ____ day of _____, 2016, the **Coastal Protection and Restoration Authority**, State of Louisiana (hereinafter sometimes referred to as “CPRA”) and <contracting party> domiciled at <address>, <city>, <state>, <zip> (hereinafter referred to as “Contractor”), do hereby enter into a contract under the following terms and conditions:

1. PROJECT IDENTITY AND DESCRIPTION

Mid-Barataria Sediment Diversion Project (“MBSD Project” or “Project”). An Environmental Impact Statement (EIS) will be prepared to disclose and analyze the significant environmental impacts of the Project as required under the National Environmental Policy Act (NEPA) in accordance with the Council on Environmental Quality’s (CEQ) regulations for this Project.

2. TERM OF CONTRACT

This Contract shall begin on <begin date> and shall terminate on <end date>.

3. GOAL

Completion of an Environmental Impact Statement (“EIS”) for the Mid-Barataria Sediment Diversion (“MBSD”) Project in compliance with the Council on Environmental Quality’s (“CEQ”) regulations for implementing NEPA and NEPA Implementation Procedures for the USACE Regulatory Program.

4. OBJECTIVES

To provide consulting services for the preparation of a third-party EIS for the MBSD to satisfy the NEPA compliance portion of USACE’s public interest review on permit number MVN-2012-02806-EOO.

5. PERFORMANCE MEASURES

The performance of the Contract will be measured by the State Project Manager, authorized on behalf of the State, to evaluate the contractor’s performance against the criteria in the Scope of Work (SOW).

The submission of satisfactory Monthly Monitoring Reports is required. Performance measures for this contract shall include Contractor’s timely and successful completion, submission, and performance of any work product being sought and provided through this agreement, consistent with the provisions, goals and objectives of this contract.

6. SCOPE OF WORK

Contractor shall provide the necessary personnel, materials, services and facilities to perform the work as set forth in the RFP (Appendix A) and the Proposal (Appendix B), attached hereto and made a part hereof.

7. COMPENSATION

In consideration of the services described above, CPRA hereby agrees to pay the Contractor a maximum fee of <amount>.

8. NOTICE TO PROCEED

The Contractor shall proceed with the work upon receipt of an executed contract signed by duly authorized representatives of both parties, and until it has been approved by the Division of Administration, Office of State Procurement.

9. CONTRACT MONITOR

<Name> of CPRA, or his designee, will act as the Contract Monitor (hereinafter sometimes referred to as "Contract Monitor") for this project, to provide liaison between Contractor and CPRA, and to perform various duties which are specifically provided for in this Contract.

10. PAYMENT TERMS

Payments are predicated upon successful completion and written approval by the State of the described tasks and deliverables as provided in Appendices A and B. Payments will be made to the Contractor after written acceptance by the State of the payment task and approval of an invoice. Payment will be made only on approval of the Contract Monitor, _____, or her designee.

During the execution of tasks contained in the Scope of Services, the Contractor may submit invoices, not more frequently than monthly. The payment terms are as follows:

Monthly invoice for actual costs incurred in accordance with the rate schedule in Appendix B (Proposal). Invoices for progress payments, with supporting documentation, detailing the fees charged and allowable costs to be reimbursed as set forth in Appendices A and B shall be based upon actual costs incurred and shall be submitted monthly with progress reports.

Rate sheets will include a negotiated labor rate, and shall be inclusive of all costs associated with labor, overhead, administrative costs, software, account management, and any other costs associated with the provision of services (including, but not limited to, standard equipment, computers, field sampling supplies, office supplies, copies, cameras, personal protective equipment, and materials).

All outside expenses (third party charges, equipment and material rentals, etc.) will be reimbursed at cost. If a task requires specialized equipment or materials, the Contract Monitor or his designee may approve reimbursement at cost for such equipment or materials. Such approval must be granted by the Contract Monitor or his designee in writing prior to the Contractor incurring these costs.

Travel shall be reimbursed in accordance with the State of Louisiana Policy and Procedure Memoranda (PPM) 49 – General Travel.

Compensation to the Contractor for services rendered in connection with this contract shall be Task Order based. Compensation to the Contractor for services rendered in connection with each Task Order shall be based on negotiated work-hours using “Required Rate Schedule” mentioned above for the actual work performed on the Task Order, time and materials or negotiated lump sum.

The final invoice shall be submitted within thirty (30) days following expiration of the Contract.

The Contractor shall submit invoices in accordance with the Instructions contained in Appendix D.

The Contractor will not be paid more than the maximum amount of the Contract.

Ten percent (10%) of fees approved by the State Contract Monitor to be paid shall be withheld as retainage pending successful completion of the contract. Upon completion of all tasks contained within the (SOW) to the satisfaction of the State, any amounts previously withheld as retainage will be paid.

11. FISCAL FUNDING

The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of the Contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the Contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Contract, the Contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

Contractor shall be fully liable for the actions of its agents, employees, partners, subcontractors, and other persons under its control, and shall fully indemnify and hold the State harmless from suits, actions, damages, and costs of every name and description relating to personal injury and/or damage to real or personal tangible property, caused by Contractor, its agents, employees, partners, subcontractors, or other persons under its control, without limitation, except that Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act by the State, and its agents, employees, partners, subcontractors, or other persons under its control.

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties herein.

13. INSURANCE

Insurance shall be placed with insurers with an A.M. Best’s rating of no less than A-: VI. This rating requirement shall be waived for Worker’s Compensation coverage only.

Contractor's Insurance: The Contractor shall not commence work under this Contract until he has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the Insurance Company written or countersigned by an authorized Louisiana State agency, shall be filed with the State of Louisiana for approval. The Contractor shall not allow any subcontractor to commence work on his subcontract until all similar insurance required for the subcontractor has been obtained and approved. If so requested, the Contractor shall also submit copies of insurance policies for inspection and approval of the State of Louisiana before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days' notice in advance to the State of Louisiana and consented to by the State of Louisiana in writing and the policies shall so provide.

Compensation Insurance: Before any work is commenced, the Contractor shall maintain during the life of the contract, Workers' Compensation Insurance for all of the Contractor's employees employed at the site of the project. In case any work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in work under the contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide for any such employees, and shall further provide or cause any and all subcontractors to provide Employer's Liability Insurance for the protection of such employees not protected by the Workers' Compensation Statute.

Commercial General Liability Insurance: The Contractor shall maintain during the life of the Contract such Commercial General Liability Insurance which shall protect him, the State, and any subcontractor during the performance of work covered by the contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the Contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them, or in such a manner as to impose liability to the State. Such insurance shall name the State as additional insured for claims arising from or as the result of the operations of the Contractor or his subcontractors. In the absence of specific regulations/provisions, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of no less than \$1,000,000.

Errors and Omissions: If applicable, the Contractor shall be responsible to maintain Errors and Omissions coverage with limits of no less than \$1,000,000.00. This Errors and Omissions coverage must be maintained throughout the entirety of the term of this Contract.

Licensed and Non-Licensed Motor Vehicles: The Contractor shall maintain during the life of the Contract, Business Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. Such insurance shall cover the use of any non-licensed motor vehicles engaged in operations within the terms of the Contract on the site of the work to be performed thereunder, unless such coverage is included in insurance elsewhere specified. Such insurance shall name the State as additional insured for claims arising from or as the result of the operations of the Contractor or his subcontractors.

Subcontractor's Insurance: The Contractor shall require that any and all subcontractors, which are not protected under the Contractor's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of the Contractor.

14. CLAIMS FOR LIENS

The Contractor shall be solely liable for and shall hold CPRA harmless from any and all claims or liens for labor, services or material furnished to the Contractor in connection with the performance of its obligations under this Contract.

15. TAXES

Contractor hereby agrees that the responsibility for payment of taxes from the funds thus received under this Contract and/or legislative appropriation shall be Contractor's obligation and identified under Federal Tax Identification Number _____.

16. COST RECORDS

CPRA, through the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration Auditors shall be entitled to audit the books, documents, papers and records of the Contractor and any subcontractors which are reasonably related to the Contract.

The Contractor and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and shall make such materials available at their respective offices at all reasonable times during the contract period and for five (5) years from date of final payment under this Contract, for inspection by CPRA, Legislative Auditor and/or the Office of the Governor, Division of Administration auditors, and copies of thereof shall be furnished if requested.

17. OWNERSHIP

Ownership of documents and materials in connection with this Contract shall be in accordance with Article V of the MOU and as follows:

USACE shall have sole ownership rights, including copyright ownership, over any draft work product resulting from the preparation of the EIS, including but not limited to, all data, reports, information, manuals, and computer programs, or other written, recorded, photographic, or visual materials or other deliverables in draft form produced during the preparation of the EIS. Such documents and materials shall be deemed government works for purposes of the Copyright Act (*see* 17 U.S.C. 105).

USACE and the State shall have dual ownership rights and use over any documents and materials which are designated as final documents, materials, and deliverables, including any and all documents and materials attached to or referenced by final deliverables. CPRA shall retain sole ownership and control over any CPRA Contract-required deliverables including but not limited to, progress monitoring reports, invoices, and payment-related documents and materials.

The Contractor shall not retain ownership interest in any work product, draft or final, resulting from this Contract.

In addition, at any time during the Contract period, the State shall have the right to require the Contractor to furnish proof of completed work and progress in connection with this Contract within five (5) days of receipt of written notice issued by the State.

18. AUDITORS

It is hereby agreed that the Legislative Auditor of the State of Louisiana, and/or the Office of the Governor, the Office of the Louisiana Inspector General, and/or Division of Administration auditors shall have the authority to audit all records and accounts of the Contractor which relate to this Agreement in accordance with La. R.S. 24:513.

19. ASSIGNABILITY

Contractor shall not assign any interest in this Contract by assignment, transfer, or novation, without prior written consent of the CPRA. This provision shall not be construed to prohibit the Contractor from assigning its bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to CPRA.

20. SUCCESSORS AND ASSIGNS

This Contract shall be binding upon the successors and assigns of the respective parties hereto.

21. NO THIRD PARTY BENEFICIARY

Nothing herein is intended and nothing herein may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a party to this Agreement.

22. CODE OF ETHICS

The contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 *et seq.*, Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this contract. The contractor agrees to immediately notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this contract.

23. COMPLIANCE WITH STATE AND FEDERAL LAW

The Contractor and any subcontractors must comply with applicable Federal labor laws covering non-Federal construction, including but not limited to, the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c) and to the extent if applicable 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act) (formerly 40 U.S.C. 276a *et seq.*). Contractor further agrees, in the case of any equipment and/or product authorized to be purchased under this Contract, to comply with the Buy American Act 41 U.S.C. 8301-8305 (formerly 41 U.S.C. 10a-10c).

Further, the Contractor and its employees, subcontractors and agents shall agree to comply with all applicable Federal, State, and Local laws, policies, and ordinances, in carrying out all provisions of this Contract.

24. CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM

This Contract and employees working on this Contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by Section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and Federal Acquisition Regulation (F.A.R.) 3.908.

The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the F.A.R.

The Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts over the simplified acquisition threshold.

25. DISCRIMINATION CLAUSE

The contractor agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Contractor agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran status, political affiliation, disability, or age in any matter relating to employment. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

26. DISADVANTAGED BUSINESS ENTERPRISES

The Contractor agrees to ensure that Disadvantaged Business Enterprises ("DBEs") have the maximum opportunity to participate in the performance of this contract and any subcontracts for supplies, equipment, construction, or services that may be let. In this regard, the Contractor shall take all necessary steps to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform services relating to this Contract. (Attachment C)

The following good faith efforts for utilizing DBEs are required:

- A. Solicitations for products or services shall be sent to firms/individuals listed as DBEs.
- B. Where feasible, divide total requirements into smaller tasks to permit maximum DBE participation.
- C. Where feasible, establish delivery schedules which will encourage DBE participation.
- D. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBD) and the U.S. Small Business Administration to identify DBEs.

- E. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- F. Require that each party to a subcontract takes the affirmative steps outlined here.

The Contractor shall submit to the Project Manager a quarterly procurement summary detailing purchases from DBE vendors. This report shall be made using the Procurement Summary Form attached hereto as Attachment C, and submitted within fifteen (15) days following the end of each calendar quarter for the duration of the Contract.

Furthermore, for the full terms of the Contract, the Contractor agrees to abide by all regulatory requirements which are issued pursuant to these laws by any federal agency whose funds have been used to finance this Contract, and which is in effect as of the beginning date of the contract term. Additionally, the Contractor agrees to abide by all applicable State and Federal laws, policies, and regulations that govern the use of Disadvantaged Business Enterprises.

27. VETERANS AND HUDSON INITIATIVES

CPRA fully participates in and encourages contractor participation in the Hudson Initiative. The State of Louisiana Veteran and Hudson Initiatives are designed to provide additional opportunities for Louisiana-based small entrepreneurships (sometimes referred to as “LaVets” and “SEs” respectively) to participate in contracting and procurement with the state. A certified Veteran-Owned and Service-Connected Disabled Veteran-Owned small entrepreneurship (LaVet) and a Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) entrepreneurship are businesses that have been certified by the Louisiana Department of Economic Development. All eligible contractors are encouraged to become certified. Eligible contractors are also required to make it clear in their proposal that they are certified by attaching a certification document. Qualification requirements and online certification are available at <https://smallbiz.louisianaforward.com>.

29. SUBCONTRACTORS

The Contractor agrees to obtain written approval from CPRA prior to subcontracting any part of the services specified in Attachment A. The Contractor shall include, in any subcontract, the provisions contained in this Contract. The Contractor shall submit requests for approval, accompanied by copies of proposed subcontracts, to the CPRA Project Manager. The Contractor further agrees to guarantee and be liable to CPRA for all services performed under any such subcontract.

30. CERTIFICATE OF DEBARMENT / SUSPENSION STATUS

Contractor certifies with its execution of this agreement that it is not suspended, debarred or ineligible from entering into contracts with any department or agency of the Federal Government or of the State of Louisiana, or in receipt of notice of proposed debarment or suspension.

Contractor agrees to secure from any contractor(s) and subcontractor(s) for the captioned project certification that such contractor(s) and subcontractor(s) are not suspended, debarred or declared ineligible from entering into contracts with any department or agency of the Federal

Government or of the State of Louisiana, or in receipt of a notice of proposed debarment or suspension.

Contractor shall provide immediate notice to the CPRA in the event of it or its contractor(s) or any subcontractor(s) being suspended, debarred or declared ineligible by any department or agency of the Federal Government or of the State of Louisiana, or upon receipt of a notice of a proposed debarment or suspension, either prior to or after execution of this agreement.

Upon receipt of notice of suspension, debarment, or declaration that Contractor or its contractor(s) or any subcontractor(s) is/are ineligible to enter into contracts with any department or agency of the Federal Government or of the State of Louisiana, either prior to or after execution of this agreement, CPRA reserves the right to review cause for said debarment, suspension, or declaration of ineligibility, and to terminate this Contract pursuant to the terms of the article in this agreement entitled TERMINATION FOR CAUSE, or take such other action it deems appropriate under this Contract.

31. TERMINATION FOR CAUSE

The CPRA may terminate this Contract for cause based upon the failure of the Contractor to comply with the terms and/or conditions of the Contract; provided that the CPRA shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have either corrected such failure or, in the case of such failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the CPRA may, at its option, place the Contractor in default and the Contract shall terminate on the date specified in such notice. The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the CPRA to comply with the terms and conditions of this Contract; provided that the Contractor shall give the CPRA written notice specifying the CPRA's failure and a reasonable opportunity for the CPRA to cure the defect.

Notwithstanding the above, the Contractor will not be relieved of liability to the CPRA for damages sustained by the CPRA by virtue of any breach of the Contract by the Contractor, and the CPRA may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the CPRA from the Contractor is determined.

32. TERMINATION FOR CONVENIENCE

The CPRA may terminate the Contract at any time by giving thirty (30) calendar days written notice to the Contractor of such termination or negotiating with the Contractor an effective date. The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

33. REMEDIES FOR DEFAULT

Any claim or controversy arising out of this Contract shall be resolved by the provisions of LSA - R.S. 39:1672.2-1672.4.

34. DISPUTES

Before any party to this Contract may bring suit in any court concerning any issue relating to this Contract, such party must first seek in good faith to resolve the issue through negotiation or

other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The exclusive venue for any suit arising out of this Contract shall be in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana.

35. AGREEMENT APPROVAL

This Contract shall not be effective until it has been approved and signed by duly authorized representatives of both parties and until it has been approved by the Division of Administration, Office of State Procurement.

36. AMENDMENTS

No amendment shall be effective unless it is in writing, signed by duly authorized representatives of both parties and until it has been approved by the Division of Administration, Office of State Procurement.

37. COMPLETE CONTRACT

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This Contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this Contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

38. ENTIRE AGREEMENT & ORDER OF PRECEDENCE

This contract together with the RFP and contractor’s proposal which are incorporated herein; shall, to the extent possible, be construed to give effect to all of its provisions; however, where provisions are in conflict, first priority shall be given to the provisions of the contract, excluding the Request for Proposals, its amendments and the Proposal; second priority shall be given to the provisions of the Request for Proposals and its amendments; and third priority shall be given to the provisions of the Contractor’s Proposal.

THUS DONE AND SIGNED AT Baton Rouge, Louisiana on the day, month and year first written above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this _____ day of _____, 2016.

WITNESSES SIGNATURES:

Coastal Protection and Restoration Authority

Signature

(Print Name)

Signature

(Print Name)

By: _____

Michael R. Ellis
Executive Director

WITNESSES SIGNATURES:

Signature

(Print Name)

Signature

(Print Name)

CONTRACTOR:

By: _____

(Print Name)

(Print Title)

APPENDIX C
Coastal Protection and Restoration Authority
Monitoring Report

Date _____ Contractor: _____ Contract No. _____

Contract Title: "Mid-Barataria Sediment Diversion EIS"

Project No: BA-0153

Project Name: _____ Invoice No. _____ Invoice Amount: _____

Total Contract Amount: _____ Balance: _____ Total Invoiced to Date: _____

I. WORK COMPLETED TO DATE (ACCORDING TO TYPE CONTRACT):

A. Percentage of work completed (include percentage completed and/or milestones accomplished).

B. Hourly (includes services performed and number of hours worked).

C. Scope of Services Outlined by Tasks (include tasks completed or portion of task completed to date).

D. Actual Costs Incurred

E. Fee Schedule

II. FOR EACH PROJECT A NARRATIVE OF IMPLEMENTATION PROGRESS INCLUDING:

A. Tasks and/or milestones accomplished (give dates):

B. Tasks and/or milestones not accomplished with explanation or assessment of:

1. Nature of problems encountered:

2. Remedial action taken or planned:

3. Whether minimum criteria for measure can still be met:

4. Likely impact upon achievement:

III. DELIVERABLES:

IV. OTHER DISCUSSIONS OF SPECIAL NOTE:

Contractor

Signature: _____ Date _____

Approval: _____ Date _____

CPRA Project Manager

APPENDIX D

Coastal Protection and Restoration Authority Instructions for Submitting Invoices

Invoices shall be submitted to the Coastal Protection and Restoration Authority (CPRA) **at the end of each calendar month**, whether or not a particular assignment is completed at that time. The Contracting Party ("Contractor") shall submit an itemization of all work performed, listing the name and number of the project, the date for work performed, hours down to the quarter of an hour, with specific reference to the nature of the work performed (e.g. drafting of expert reports, research, review of files, etc.).

Invoices shall be submitted in accordance with the Rate Schedule submitted in the Contractor's Proposal.

A monitoring report, **Appendix C**, attached hereto, must be completed and attached to the monthly invoice. When invoices are submitted at the end of each calendar month, you must indicate on **Appendix C** the amount of your contract, the amount billed to date and the remaining balance.

If your invoices are billed by each individual project that you have worked on, please include a summary sheet for that month for that invoice.

APPENDIX E

DBE PROCUREMENTS MADE DURING QUARTER

PERIOD ENDING (March, June, September, or December) **Month:** _____ **Year:** _____

REPORTS DUE: Fifteen (15) days following the end of each calendar quarter for the duration of the Agreement.

Procurement Made By		Business Enterprise		\$ Value of Procurement	Date of Procurement MM/DD/YY	Type of Product or Services [^] (Enter Code)	Name/Address/Phone Number of DBE Contractor or Vendor
Recipient	Other	Minority	Women				

¹Type of product or service codes:

1=Construction

2=Supplies

3=Services

4=Equipment

ATTACHMENT 4: Proposer (Firm) Qualifications Form for Acceptance of Proposal

Proposer (Firm) Qualifications Form for Acceptance of Proposal

Proposer	Proposer Requirements	Proposer Qualifications	Acceptance (Y/N)
Insert Proposer Name	Proposers shall have at least five (5) years of experience in NEPA analysis and preparation of Environmental Impact Statements at the time of proposal submission. Proposers shall demonstrate capacity to fulfill services and provide examples of relevant experience, in each of the following areas: Environmental Impact Statements for complex projects; requirements of 33 CFR Part 230, Appendix B; Data Analysis and Management; Biological Surveys; Wetland Delineation; Cultural Resources Management; Hazardous, Toxic, and Radioactive Waste (HTRW); Socioeconomics and Environmental Justice (EJ); Natural Resources Socioeconomics; Floodplain Management; and 404(b)(1) requirements.	Proposer shall insert a summary of their qualifications as required in Section 1.6 A.f. Proposer Qualifications Form for Acceptance of Proposal	To be completed by CPRA

Attachment 5: Minimum Personnel Qualifications Form for Acceptance of Proposal

Proposer:

Minimum Personnel Qualifications Form for Acceptance of Proposal

CPRA Position(s)	Degree / Specialty	Prime or Sub-Contractor	Individual(s)	Requirement	Qualifications, Degrees, Experience	Acceptance (Y/N)
Proposer to insert Required Rate Schedule Personnel Category, see Attachment 7. *** this is for information purposes only- not part of the cost evaluation	N/A	Proposer to Insert	Proposer to Insert Individual Name(s)	At least one individual of the Proposer (Prime) who shall be responsible for the day-to-day project management of Project tasks and the primary point of contact. This individual must have a minimum of five (5) years experience in the preparation of NEPA documents (i.e., complex Environmental Impact Statements, Environmental Assessments, etc.) for use by the USACE Regulatory Program in their evaluation of permit applications.	Proposer shall insert a summary of their qualifications, Degrees, and Experience as required in Section 1.6.A.g. This section shall be completed for each individual.	To be Completed by CPRA and confirmed by USACE
	N/A			At least one individual of the Proposer (Prime or Sub-Contractor) must have a minimum of ten (10) years in preparing EIS in accordance with NEPA; of which at least five (5) years experience is in the preparation of NEPA documents for use by USACE in the evaluation of civil works projects.		

Proposer:

CPRA Position(s)	Degree / Specialty	Prime or Sub-Contractor	Individual(s)	Requirement	Qualifications, Degrees, Experience	Acceptance (Y/N)
	Wetland Ecologist			At least one individual of the Proposer (Prime or Sub-Contractor) must be a Wetland Ecologist with a degree in Biological Science specializing in Wetland Ecology with a minimum of five (5) years experience in evaluating project impacts to wetland systems and marine, aquatic and plant habitats, and mitigation.		
	Wetland Biologist			At least one individual of the Proposer (Prime or Sub-Contractor) must be a Wetlands Biologist with an botany degree or environmental degree with a minimum of twenty (20) semester hours in Botany and a minimum of five (5) years experience in wetlands delineation and mitigation or a combination of five (5) years experience in wetlands delineation and mitigation and education with courses equivalent to a major in botany or basic plant science with a minimum of 24 semester hours in botany, including experience in vegetation and invasive species.		

Proposer:

CPRA Position(s)	Degree / Specialty	Prime or Sub-Contractor	Individual(s)	Requirement	Qualifications, Degrees, Experience	Acceptance (Y/N)
	Principal Investigator (Archaeologist)			<p>At least one individual of the Proposer (Prime or Sub-Contractor) who meets the qualifications of Professional Archaeologist as stated by, § 102. Minimum Qualifications for Professional Archaeologists, available for review on the Louisiana Division of Archaeology webpage http://crt.louisiana.gov/cultural-development/archaeology/state-legislation/title-25/index . This team member should also have completed a course on Section 106 of the National Historic Preservation Act offered by the Advisory Council or equivalent training, and meet the appropriate qualifications presented in Professional Qualification Standards (36 CFR 61 Appendix A), as well as the Secretary of the Interior’s Professional Qualifications Standards (48 FR 44738-44739).</p>		

Proposer:

CPRA Position(s)	Degree / Specialty	Prime or Sub-Contractor	Individual(s)	Requirement	Qualifications, Degrees, Experience	Acceptance (Y/N)
	H&H Engineer			At least one individual of the Proposer (Prime or Sub-Contractor) must be a Hydraulics and Hydrology (H&H) Engineer with a degree in engineering and a minimum of five (5) years of experience in flood modeling/routing, surface and subsurface hydrology, constituent transport, sediment transport, coastal H&H, fluvial deposition, deltaic deposition, water resources projects, and riverine and outfall management. Familiarity with Mississippi River deltaic processes specifically.		
	Geologist, Geomorphologist or Coastal Engineer			At least one individual of the Proposer (Prime or Sub-Contractor) must be a Geologist, Geomorphologist, or a Coastal Engineer with a degree in engineering, geology, geophysics, or science and a minimum of five (5) years of experience in riverine/coastal processes, coastal erosion, effects of saltwater intrusion, coastal restoration, geology of the Lower Mississippi River Valley, coastal and deltaic geology and geomorphology, fluvial		

Proposer:

CPRA Position(s)	Degree / Specialty	Prime or Sub-Contractor	Individual(s)	Requirement	Qualifications, Degrees, Experience	Acceptance (Y/N)
				deposition, and deltaic deposition. Familiarity with Gulf of Mexico processes specifically.		
	Marine Biologist			At least one individual of the Proposer (Prime or Sub-Contractor) must be a Marine Biologist with a degree in biology or biological science and a minimum of five (5) years of experience in marine mammals and their habitat, effects due to habitat changes, and familiarity with Gulf of Mexico marine species.		

Proposer:

CPRA Position(s)	Degree / Specialty	Prime or Sub-Contractor	Individual(s)	Requirement	Qualifications, Degrees, Experience	Acceptance (Y/N)
	Biologist			At least one individual of the Proposer (Prime or Sub-Contractor) must be a Biologist with a degree in biology or biological science and a minimum of five (5) years of experience in the assessment of project effects to threatened and endangered species and their critical habitats and in the preparation of Biological Assessments.		
	Economist			At least one individual of the Proposer (Prime or Sub-Contractor) must be an Economist with a degree in economics, math, or science and a minimum of five (5) years of experience in evaluating the value of environmental and natural resources assets due to changes in watershed management, land use, land divestiture, transportation (navigation, rail, highway), and environmental compliance options. The individual should be experienced in conducting economic impact analyses for NEPA documentation and Environmental Impact Statements.		

Proposer:

CPRA Position(s)	Degree / Specialty	Prime or Sub-Contractor	Individual(s)	Requirement	Qualifications, Degrees, Experience	Acceptance (Y/N)
	Civil Engineer			At least one individual of the Proposer (Prime or Sub-Contractor) must be a Civil Engineer with a degree in engineering.		
	Navigation Specialist			N/A		
	Environmental Justice Specialist			N/A		
	Public Involvement Specialist			N/A		

ATTACHMENT 6: SCOPE OF WORK

SCOPE OF WORK FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT REQUIRED FOR DEPARTMENT OF THE ARMY PERMITS

1. INTRODUCTION.

The Coastal Protection and Restoration Authority Board of Louisiana, through the Coastal Protection and Restoration Authority (CPRA), has submitted a Joint Permit Application to the Department of the Army (DA) under the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) (hereinafter Section 404), and Section 10 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 403) (Section 10) and a permission request under Section 14 (33 U.S.C. 408) (Section 408) of the Rivers and Harbors Act of 1899 to the U.S. Army Corps of Engineers (USACE), at the New Orleans District (MVN) for CPRA's proposed Mid-Barataria Sediment Diversion (Proposed Action).

An Environmental Impact Statement (EIS) will be prepared to disclose and analyze all significant environmental impacts of the Proposed Action as required under the National Environmental Policy Act (NEPA) in accordance with the Council on Environmental Quality's (CEQ) regulations found in 40 CFR Parts 1500-1508. This EIS will address the Public Interest Review requirements of 33 CFR Parts 320-332 including 33 CFR Part 325, Appendix B, 33 U.S.C. 408 and 40 CFR Part 230 (Section 404(b)(1) Guidelines), so that the EIS, when completed, will provide information required for an informed decision on the DA permit application and Section 408 permission request. Any additional information required for the Section 408 permission request beyond the completed final EIS will not be done by the selected third party contractor (TPC).

The Proposed Action generally consists of the placement of a sediment diversion through a portion of the federal Mississippi River and Tributaries (MR&T) Project mainline levee on the right descending bank of the Mississippi River (River) at approximately River Mile 60.7 and through the future New Orleans to Venice (NOV) Hurricane Protection Levee, extending into the mid-Barataria Basin in Plaquemines Parish, Louisiana. The Proposed Action is proposed to reconnect and reestablish the natural or deltaic sediment deposition process between the Mississippi River and Barataria Basin to deliver sediment, freshwater, and nutrients to reduce land loss rates and sustain wetlands.

2. PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT REQUIRED; USE OF THIRD PARTY CONTRACTOR.

Appendix B of 33 CFR Part 325, provides policy guidance on NEPA for the USACE Regulatory Program. The USACE's general regulatory policies are defined in 33 CFR Parts 320-325 and 332. In its regulatory capacity, the USACE is neither a proponent nor an opponent of projects seeking federal approvals; rather, as identified in 33 CFR Sec. 320.19(a)(1), USACE conducts a "public interest review" that seeks to balance a proposed action's favorable impacts against its detrimental impacts. Additionally, as

identified in 33 CFR Sec.325.2(a)(6), the USACE is also required to review actions in accordance with regulations developed by the United States Environmental Protection Agency (USEPA) under Section 404(b)(1) of the Clean Water Act (33 USC. Sec. 1344[b][1]) (hereinafter 404(b)(1) Guidelines). The USACE's permit review and decision making process triggers a requirement for environmental review under NEPA. Based upon the description of the Proposed Action and other information provided by the CPRA, and an initial assessment of the Proposed Action, the USACE has determined that the permit and permission decisions for the Proposed Action constitute a "major federal action significantly affecting the quality of the human environment," based on the context of impacts and the intensity of impacts of the Proposed Action, thereby requiring the preparation of an EIS.

MVN filed a Notice of Intent to prepare an EIS which was published in the Federal Register in accordance with 40 C.F.R. § 1507.3(e) and 33 C.F.R. § 230, Appendix C on October 4, 2013.

Government-wide regulations implementing NEPA, promulgated by the CEQ, expressly permit the use of third-party contractors in the preparation of an EA or an EIS. 40 CFR 1506.5(c); USACE Regulatory Guidance Letter No. 05-08 dated 7 Dec 2005, "*Environmental Impact Statements- Third Party Contracting*"; 33 C.F.R. 325, Appendix B, paragraph 8(f); and CEQ July 23, 1983 Memorandum. CEQ regulations provide that agencies using third-party contractors to aid in the preparation of environmental documents will be responsible for selecting the third-party contractors, will provide the third party contractors with guidance and supervision in the preparation of the document, and will independently evaluate the document before approval. 40CFR 1506.5(c) provides for use of third-party contracts in the preparation of an EIS by a USACE qualified contractor paid for by the Applicant (CPRA), but who is supervised directly by the USACE District Engineer or his/her designated representative (40 C.F.R. 1506.5(c)).

This Scope of Work identifies the tasks and services to be performed by the TPC to prepare the EIS for the Proposed Action.

3. GENERAL INFORMATION ON THE PROPOSED ACTION.

CPRA proposes to construct and operate a sediment diversion structure through a portion of the federal Mississippi River and Tributaries (MR&T) Project mainline levee on the right descending bank of the Mississippi River, approximately at River Mile 60.7 in the vicinity of the town of Ironton, LA and the Phillips 66 Alliance Refinery and approximately 8 miles east of the town of Lafitte in Jefferson Parish, LA. Sediments, freshwater, and nutrients would be conveyed from the Mississippi River through the sediment diversion structure in the MR&T levee, into an approximate 2-mile long and 1600 foot wide gravity conveyance channel leading to an outfall area in the mid-Barateria Basin in Plaquemines Parish, Louisiana. A pump station will be constructed and operated in the northwestern portion. The outfall area is south of the Bayou Dupont Sediment Delivery project (BA-39), the Mississippi River Long Distance Sediment

pipeline (BA-43EB), and the Bayou Dupont Marsh and Ridge Creation (BA-48). A portion of the gravity conveyance structure would be located within the right-of-way of the Louisiana Department of Transportation and Development (LaDOTD) Highway 23. The Proposed Action would require the relocation and replacement of segments of Louisiana Highway 23 and also a portion of the New Orleans & Gulf Coast Railway Company line. The mid-Barataria Basin, is suffering from significant land loss—approximately 75,000 acres between 1985 and 2010, with projected loss by 2060 ranging from 105,000 to 150,000 acres. Historically, Mississippi River overbank flooding deposited sediment, freshwater, and nutrients in the Barataria Basin during annual flooding cycles, building land and sustaining wetland habitats. Levees and Mississippi River channelization have altered natural fluvial interaction and sediment transport from the river into the basin, removing the source of sediment and freshwater that built and maintained wetlands relative to subsidence and sea level rise. In addition, recent hurricane events and the Deepwater Horizon (DWH) oil spill have exacerbated land loss impacts in the Basin. The purpose of the Proposed Action is to reconnect and reestablish the natural or deltaic sediment deposition process between the Mississippi River and the Barataria Basin; the Proposed Action is intended to provide a long-term resilient, sustainable strategy to reduce land loss rates and sustain injured wetlands through the delivery of sediment, freshwater, and nutrients. The Proposed Action has been recommended for construction in the first implementation period of the approved Louisiana’s Comprehensive Master Plan for a Sustainable Coast (2012 State Master Plan) as a large-scale, long-term restoration feature. The TPC shall be required to refine and provide a detailed description of the Proposed Action as part of the preparation of the EIS.

3.1 Purpose and Need of the Proposed Action.

Although USACE is responsible for defining the overall purpose of the Proposed Action, CPRA’s needs and the type of project being proposed will be considered by USACE. The overall purpose of the Proposed Action should be specific enough to define the CPRA’s needs, but not so restrictive as to constrain the range of alternatives that must be considered under the 404(b)(1) Guidelines.

CPRA has developed the following preliminary statements of the purpose and need for the Proposed Action which the TPC shall refine and finalize:

(1) Purpose. CPRA states that the purpose of the Proposed Action is to reconnect and reestablish the natural or deltaic sediment deposition process between the Mississippi River and the Barataria Basin.

(2) Need. CPRA states that the Proposed Action is needed as a long-term resilient, sustainable strategy to reduce land loss rates and sustain DWH injured wetlands through the delivery of sediment, freshwater, and nutrients.

3.1.1 USACE Scope of Analysis Relative to Purpose and Need as outlined in 33 CFR Part 325, Appendix B, Section 9.b.(4). USACE is responsible to identify the “basic” project purpose to determine a project’s water dependency and if the project requires

access or proximity to, or siting within, a special aquatic site. The basic purpose of the Proposed Action is the fundamental, essential, or irreducible purpose of the Proposed Action. If the basic purpose is not water dependent, the presumption is that practicable alternative sites or designs that do not affect special aquatic sites are available. USACE must also identify the "overall" project purpose to identify and evaluate practicable alternatives as part of the analysis done under the Section 404(b)(1) guidelines [40 CFR 230.10(a)(2)]. While NEPA requires the evaluation of a reasonable range of alternatives, the 404(b)(1) guidelines require USACE to evaluate practicable alternatives. "An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." [40 CFR 230.10(a)(2)]. USACE will use a reasonably and objectively formulated and stated project purpose and need, after taking into account the "purpose and need" provided by CPRA. Defining the purpose and need is addressed in 33 CFR 325, Appendix B, paragraph 9(b)(4), as well as the Council on Environmental Quality's (CEQ) regulations at 40 CFR 1502.13.

4. GENERAL SCOPE OF WORK FOR ENVIRONMENTAL IMPACT STATEMENT.

The TPC's Scope of Work (SOW) is to prepare an EIS which evaluates the environmental effects and impacts that could occur with the construction and implementation of the Proposed Action, including at the direction and approval of USACE, complying with all procedural requirements for delivering a final EIS, together with Record of Decision (ROD) documents for the Proposed Action. Such documents shall be sufficient to meet the requirements of the NEPA and all other applicable environmental laws, regulations, requirements and policies. The Proposed Action may require one or more Records of Decision: (1) Section 404 Clean Water Act Permit; (2) Section 10 Permit, and (3) 33 U.S.C. 408 permission. Any additional information required for the Section 408 permission request beyond the completed final EIS will not be done by the TPC.

This SOW consists of the primary services required by the TPC to conduct the required level of environmental scoping, analyses, and evaluations to be used in developing a Draft and Final EIS, and Draft ROD(s) for use by USACE in reaching final decisions on the requested permits and permissions. All incidental, ancillary, and necessary services required to support the primary services of the SOW are deemed to be included in the SOW without such services being expressly specified or enumerated. This SOW is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

The purpose of an EIS is to identify, evaluate and publicly disclose the environmental effects of a major federal action to help inform agency decision-making. The impacts to be considered and discussed in the EIS must be done so in proportion to their significance. The EIS must include all known or reasonably foreseeable impacts (40 C.F.R. § 1508.7), and devote an appropriate level of effort to the evaluation of effects (adverse and beneficial) based on the context and intensity of such impacts. This effort

includes the analysis, evaluation, and documentation of the proposed alternatives and their direct, indirect, and cumulative impacts, in accordance with the provisions of the NEPA, the Clean Water Act (CWA), 33 CFR Part 325 Appendix B, and all other applicable environmental/cultural resource laws, implementing regulations and Executive Orders. Additionally, this includes any analyses, evaluations, and documentation for alternatives including but not limited to, all direct and indirect impacts of the Proposed Action, under all operational scenarios, and on an individual basis and on a cumulative basis, as outlined in EC 1165-2-216, Policy and Procedural Guidance for Processing Requests to Alter USACE Civil Works Projects Pursuant to 33 USC 408 (30 September 2015).

Generally, the TPC is responsible for researching, obtaining, compiling, and reviewing the necessary data, analyses, documentation, literature, technical publications and previous environmental studies or reports and findings; conducting fieldwork and preparing technical studies in support of the EIS; assisting USACE with public meetings/hearings; and preparing the NEPA documents, including reproduction, distribution/public posting and mailings. Any information furnished to USACE under this SOW is subject to the Freedom of Information Act (5 U.S.C. 552). In the preparation of the EIS, the TPC shall research and evaluate any and all information that could support the public interest review as identified in 33 CFR 320-332, as well as other environmental criteria set forth in CWA Section 404(b)(1) Guidelines, and any additional evaluation requirements in the EC 1165-2-216 and other applicable USACE guidance and regulations.

The TPC must submit all draft and final documents, deliverables, work products, and other materials and findings prepared by or on behalf of the TPC directly to USACE without first filtering the information through others, specifically including but not limited to CPRA. The TPC shall ensure that the information in the EIS, including the NEPA alternatives analysis, allows for the evaluation of alternatives as required under the Section 404(b)(1) Guidelines, the public interest review, and the applicable NEPA EIS requirements. The goal of integrating the NEPA alternatives analysis and the Section 404(b)(1) alternatives analysis is to gain efficiencies, facilitate agency decision-making and avoid unnecessary duplication.

An Environmental Laws Table is attached hereto as **Exhibit A**. A short list of some of the key laws and regulations applicable to the EIS process, and documents provided by CPRA for USACE's consideration are listed as follows:

1. Applicable federal, state, parish, city laws and regulations.
2. National Environmental Policy Act, 1970 (NEPA) (42 USC Sec. 4321.)
3. Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500 through 1508)

4. Magnuson-Stevens Fishery Conservation and Management Act, 1976 (16 USC Section 1801, et seq.)
5. Endangered Species Act (16 USC Section 1531 et seq.)
6. The Clean Water Act (33 USC Section 1344, referred to as Section 404)
7. The Clean Air Act (42 USC Section 7401, et seq.)
8. Environmental Justice, Executive Order 12898, 11 February 1994
9. Department of Army, Engineer Regulation, ER 200-2-2 (33 CRF 230)
10. Coastal Zone Management Act of 1972, 6 U.S.C. §1451 et seq.
11. Fish and Wildlife Coordination Act of 1958, 16 U.S.C. §661 et seq.
12. National Historic Preservation Act (Section 106) (NHPA) of 1966, 16 U.S.C. §470 et seq.
13. Marine Mammal Protection Act (16 U.S.C. § 1362).
14. Oil Pollution Act of 1990 (33 U.S.C. §2701 et seq.)
15. Executive Order 11988 Floodplain Management
16. Marine Protection, Research, and Sanctuaries Act of 1972
17. Council on Environmental Quality on March 6, 2012 (as may be amended from time to time) entitled *Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act*.
18. EC 1165-2-216 30 September 2015, with Appendices A through I
19. USACE Memorandum dated 27 May 2015 SUBJECT: Alterations to Federally Constructed Projects within the Mississippi Valley Division.
20. USACE Memorandum for Commanders, MSC, and District Commands, dated 2 September 2015, SUBJECT: Updated Implementation Guidance for Section 1006 of the Water Resources Reform and Development Act of 2014 and Guidance on the Use of Funding Agreements within the Regulatory Program
21. Natural Resource Damage Assessment (NRDA) Regulations (15 C.F.R. 990)

22. *The Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement* (DWH PDARP/PEIS) published on February 16, 2016.

A summary of the specific tasks of this SOW are described below (this list is not all inclusive). The SOW includes, but is not limited to, the following basic work elements:

1. Preparation of Detailed EIS Schedule.
2. Kick-off Meeting.
3. Preparation of the Public Involvement Plan and Management Strategy.
4. Maintenance and updating of electronic mailing lists; Creation and maintenance of EIS Proposed Action website.
5. Data gathering and compilation (including maintenance of bibliography of references and data sources).
6. Conduct Scoping Process and Prepare Scoping Report (including coordination and conduct of public meetings, as well as coordination of in-progress review meetings).
7. Preparation of Draft EIS generally. [40 CFR 1502.9(a)] (including proposed table of contents, executive summary, proposed appendices, reports, tables and figures).
8. Development of Alternatives. For purposes of this SOW, the term "Proposed Action" and the "Requester's (CPRA) Preferred Alternative" shall be one and the same. This Section of the EIS shall include the Proposed Action, No Action Alternative, and Other Alternatives. The Alternative Criteria and Screening Section shall describe the potentially affected environment in which the Base No Action Alternative, Proposed Action, and the other alternatives would occur.
9. Conduct Analysis of Affected Environment and Environmental Consequences. This Section of the EIS includes but is not limited to: resources not affected and not further considered; construction impacts; water resources (floodplains, hydrology, wetlands, and water quality of groundwater); biological resources (vegetation, fish and wildlife, threatened and endangered species, critical habitat, and invasive species); physical resources (air quality; coastal resources; hazardous, toxic and radioactive waste and materials; visual quality and aesthetics; and geology and soils); cultural resources; socioeconomics; unavoidable adverse environmental effects, etc.
10. Identification and Analysis of Cumulative Impacts Section of the EIS which presents the results of the analysis that identified the potential for cumulative effects within a local and regional context.

11. Preparation of Mitigation Measures for the EIS, if warranted.
12. Preparation of Supporting Technical Appendices for the EIS.
13. Preparation of Consultation and Coordination Section of the EIS which describes how the EIS was developed in coordination with other state and federal agencies, tribal entities, and the public, and includes a distribution list of the individuals and organizations that will receive the EIS.
14. Preparation of References Section of the EIS citing a list of references that were used during the evaluation and analysis for the EIS and which are cited in the EIS text.
15. Preparation of other Appendices, Tables, and Figures for the EIS.
16. Review and Delivery of the Draft EIS and Final EIS.
17. Preparation of Preliminary Draft and Final Draft RODs.
18. Prepare monthly progress reports.
19. Conduct monthly progress meetings.
20. Preparation of the Administrative Record.

5. MODIFICATIONS TO SCOPE OF WORK.

During the preparation of the EIS, if USACE determines that revisions to this SOW are necessary, USACE will provide written notification to CPRA of the revisions required and CPRA will be responsible for modifying the Contractor's Contract as needed. The TPC shall work under the direction and control of USACE, although CPRA shall fund the TPC's work. USACE will consider any comments provided by CPRA in the decision-making on the revised SOW; however, USACE is solely responsible for all final decisions. Should CPRA not make the modifications to the SOW requested by USACE, USACE, at its sole discretion, may suspend work on the EIS until such time as the modifications are made by CPRA.

6. MEMORANDUM OF UNDERSTANDING & CONFLICT OF INTEREST DISCLOSURE CERTIFICATIONS.

The complexity and the independent nature of the NEPA process requires a common understanding of the roles of USACE, the CPRA, the TPC, and other interested persons, agencies, and organizations. The role of CPRA (as the applicant) is the same as it would be if the process were being entirely performed by USACE personnel, with no CPRA financing of the preparation of the EIS. To ensure and maintain the integrity of the NEPA process, communication strategies and protocols have been formulated in

a Memorandum of Understanding (MOU) to be executed by USACE, the CPRA and the TPC. The MOU will set forth general policies and practices necessary to preserve the independence and integrity of the evaluation and decision-making processes. The MOU shall set forth, among others things, the method of communicating between the parties and the procedures for the submission, review, comment, revision, and approval of all documents to be prepared pursuant to this SOW. The TPC shall submit all draft documents directly to USACE without providing or disseminating any copies to CPRA or any other person or entity. The TPC will coordinate with USACE for USACE's final independent review and approval of each document.

Pursuant to the Council of Environmental Quality Regulations at 40 CFR 1506.5, all Proposers submitting proposals to prepare an EIS must execute an Organizational Conflict of Interest (OCI) Certification to be included with their proposal specifying that the Proposer does not have financial or other interest in the outcome of the EIS.

A statement explaining the OCI, an OCI Questionnaire, and the OCI Certification forms must be signed by the TPC prior to the TPC commencing any work on the EIS.

7. DETAILED DESCRIPTION OF TASKS.

7.1 Preparation of Detailed EIS Schedule.

Task 1. The TPC, with USACE assistance, shall develop a Detailed EIS Schedule for the entire NEPA process for the Proposed Action. The EIS Schedule will be developed and maintained, through coordination and consultation with USACE, in Microsoft Project® software. The EIS Schedule shall include the 408 Review Plan Schedule as provided by USACE. The written draft of the EIS Schedule will be presented by the TPC to USACE for review and approval 10 business days prior to the Kick-off Meeting or as otherwise agreed to by the parties pursuant to the MOU. The EIS Schedule shall set forth the milestones, phases, and critical path(s) of the tasks and deliverable and other efforts required to complete the EIS together with dates for each milestone in the Schedule. The USACE approved EIS Schedule will be used by the TPC to manage work on the EIS and by USACE to monitor the progress of the work of the TPC on a monthly basis. A copy of the EIS Schedule, with any revisions or updates, and status of the EIS milestones will be presented by the TPC in the monthly progress reports. The TPC shall also prepare a preliminary list of resources to be reviewed and/or utilized for the preparation of the EIS for discussion at the Kick-off Meeting together with the initial approved EIS Schedule.

7.2 Kickoff Meeting.

Task 2. Following the issuance of the Notice to Proceed (NTP), the TPC will participate in an EIS Preparation Kickoff Meeting to be held at the USACE Office in New Orleans, Louisiana. The Meeting will include TPC staff, USACE, CPRA, and any cooperating and commenting agencies. The meeting attendees will be identified by USACE in consultation with the TPC once the NTP has been issued. The TPC shall prepare and

send letter(s) inviting cooperating agency(s) to participate in the EIS process and the kick-off meeting. The roles and responsibilities of cooperating agencies will be established through a letter agreement, memorandum of understanding, or other means to ensure a clear understanding of expectations.

The TPC will develop a draft agenda for the Kick-off Meeting for review and approval by USACE. The TPC will distribute the final approved agenda to all meeting participants a minimum of 2 business days prior to the Kickoff Meeting or as otherwise agreed to by the parties pursuant to the MOU. At the Kick-off Meeting, the TPC shall present a draft of the EIS Schedule. CPRA shall present an overview of the history and status of the EIS and provide attendees with an electronic copy of all reports and studies conducted to date.

The topics to be discussed at the Kickoff Meeting shall include, but not be limited to: the preliminary list of resources prepared by the TPC to be reviewed and/or utilized for the preparation of the EIS; comments on the EIS Schedule including the proposed location(s) and date(s) for the public scoping meetings; the identification of critical issues relative to the EIS; a discussion of EIS milestones and deliverables; and the identification of issues that could affect the EIS Schedule. The TPC must be prepared to ask for clarification on any of the requirements of this SOW, expectations for the EIS, requirements of the technical studies to support the EIS, and the intended scope of the Public Involvement Plan. Within 10 business days after the Kickoff Meeting, the EIS Schedule shall be finalized in accordance with the MOU.

7.3 Public Involvement Plan.

Task 3. The TPC will closely coordinate with USACE in the preparation of a detailed Public Involvement Plan (PIP). USACE will provide the TPC with existing contact lists, the names of interested parties, and available mailing lists. The PIP must include a public participation strategy, an electronic public mailing list generation plan, and other details that will help ensure successful public involvement. The PIP should focus on the use of electronic media to minimize production of paper documents, but be cognizant of individuals and groups who do not have access to electronic media. Within 30 calendar days of the Kickoff Meeting, and/or as agreed upon in the EIS Schedule, the TPC will submit a Draft PIP to USACE in accordance with the MOU. The PIP shall be finalized in accordance with the MOU and transmitted by the TPC to CPRA and all cooperating agencies. The TPC will incorporate the PIP into the EIS. Details of actions to be implemented as part of the PIP are summarized below.

7.3.1 Identification of Stakeholders. The PIP shall include information in the public participation strategy on how the TPC will identify all interested stakeholders for inclusion in the electronic public mailing list and how the TPC will ensure that adequate cross-sections of the public are represented, including interested individuals, environmental organizations, non-governmental organizations, major industries and utilities, academic institutions, libraries, the general public, local agencies, state agencies, federal agencies, Native American tribes, and elected officials. The PIP will

also identify how publications and website access will accommodate minority populations.

7.3.2 Electronic Public Mailing List. The PIP will describe the development and maintenance of an electronic mailing list.

7.3.3 Preparation of Meeting Plans for Public Scoping/Public Hearings. The PIP shall include a template to be used in the development of the Meeting Plans for public scoping meetings and public hearings. The PIP shall include a list of the types of information to be included in the Meeting Plans which shall include at a minimum, the proposed meeting dates, times, locations, draft agenda topics, list of suggested handouts and other meeting materials, identification of facilitators, detailed meeting logistics, diagrams of the meeting set-up, and a media public relations plan. For Meeting Plans associated with public scoping meetings and public hearings, the TPC shall review the Plans to determine if any additional information needs to be included in the PIP and/or in the Meeting Plans. Any presentation materials developed and/or delivered by or on behalf of the TPC must be reviewed and approved by USACE in advance of the scoping meeting/public hearings.

7.3.4 Preparation of Public Notices for Public Scoping Meetings, Public Hearings and Filing of NEPA Documents. The PIP shall describe a process to be followed for issuing public notices throughout the EIS process. At a minimum, public notices will be issued concurrent with filing of the DEIS and FEIS, respectively. The DEIS public notice will include the Notice of Availability (NOA) of the NEPA document and the schedule and locations for DEIS public hearings. The FEIS public notice will include the NOA of the FEIS. The public notice for the RODs will include the signed RODs. Public notices will be drafted by the TPC using a USACE template and submitted to USACE for review, approval, and release to the media by USACE. Draft public notices will be submitted in time to accommodate processing by USACE for publication (minimum 30 calendar days prior to scheduled meetings or release of NEPA documents). A minimum of 5 public notices will be prepared by the TPC: (1) three weeks prior to the public scoping meetings; (2) concurrent with filing of the DEIS; (3) concurrent with filing the FEIS; and (4) concurrent with issuance of the ROD(s). The TPC shall prepare draft newspaper notices prior to all public scoping and public comment meeting(s)/ hearing(s) and, upon approval by USACE, make arrangements to publish newspaper notices in newspapers local to the meeting/hearing venues. For cost purposes, assume at least three newspapers of general circulation in the vicinity of the Proposed Action area and up to 15 notices in the local Proposed Action area.

7.3.5 Public Scoping Meetings. The PIP will identify a strategy for conducting public scoping meetings; at a minimum, the public scoping meetings will follow the USACE format for public scoping meetings and will be held on dates, times, and at locations approved by USACE.

7.3.6 Periodic Meetings with Identified Stakeholders. The PIP will incorporate means and methods to engage with specific identified stakeholder groups, ex: navigation industry, commercial fishermen, etc., as directed by USACE.

7.3.7 Conducting Public Hearings. The PIP will identify a strategy for conducting public hearings. At a minimum, the public hearings will follow the USACE format for public hearings and will be held during the 45-day public comment period on the DEIS.

7.3.8 Executive Order 12898, Environmental Justice Concerns. The PIP will incorporate means and methods to include minority and low income populations within the public involvement program. All public documents, notices, and meetings will be concise, understandable and readily accessible to the public.

7.3.9 Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The PIP will comply with and incorporate the requirements of Executive Order 13045.

7.3.10 Section 508, Rehabilitation Act (as amended in 1998) Consideration of Accessibility. The PIP will comply with and incorporate Section 508 requirements regarding accessibility for making electronic and information technology accessible to people with disabilities.

7.4 Maintain Electronic Mailing Lists; Create & Maintain EIS Proposed Action Website.

Task 4. The TPC will establish and maintain an electronic public mailing list of all federal, state, and local agency points-of-contacts (POCs), other participating organization points of contact, and active public mailing lists for the EIS. The electronic public mailing list shall include all interested or affected agencies, names and addresses of adjacent property owners identified in the DA applications, interested parties, State legislative and federal Congressional representatives, news media, public libraries throughout the Proposed Action area, and individuals commenting during the scoping process and/or public review of the DEIS. The public mailing lists will be used for distribution of NOAs for the DEIS and FEIS, public hearing announcements, news releases, other notices to the public, and distribution of the DEIS and FEIS. The distribution lists for the DEIS and FEIS will denote whether these documents will be provided in hard copy or in electronic format (i.e., DVD). The mailing lists will be continually edited and updated by the TPC to include those individuals responding to the scoping publications, other correspondence, and those individuals who attend future public workshops or meetings; and to delete those requesting removal from the list, changes in addresses, undeliverable addresses, etc. Periodically (i.e., prior to each notice), the TPC will coordinate with USACE to ensure both the list maintained by USACE and the TPC's list are reconciled. The TPC will provide electronic versions of the mailing lists and printed mailing labels to USACE upon request. The TPC shall also establish and maintain an EIS Proposed Action website. The TPC shall regularly update the EIS Proposed Action website with information in order to be responsive to changing conditions, tracking progress and milestones, or as requested by USACE.

7.5 Data Gathering and Data Compilation.

Task 5. The TPC shall independently collect and analyze data as directed by USACE, including baseline data identified by CPRA and/or other qualified governmental agencies, and any data or other outputs produced by future work by CPRA or other qualified sources. This information may include previously published environmental documents, technical reports, studies, and other available information or documentation. The TPC will research, gather, and evaluate all available information on the Proposed Action and the surrounding area, the extent of which will be refined during the scoping process. This information shall include engineering, environmental, and alternatives analyses. The information on existing projects should include at a minimum, engineering design, operation plans, safety procedures, environmental assessments, and cumulative impact assessments which address the operation of diversions and other projects, individually and as a system, in coordination with all past, present, and reasonably foreseeable future actions, including but not limited to, navigation, flood risk management, hurricane storm damage risk reduction, and ecosystem restoration projects, over the full range of operational conditions.

As part of the data compilation process, the TPC will review existing documents and create a summary of alternatives already studied, and alternative screening criteria to be used in the alternatives formulation and screening process. Throughout the preparation of the EIS, the TPC shall maintain communications with key resource and regulatory agencies and will compile and evaluate all data collected or provided by these agencies. If used to support the EIS, including any technical reports and appendices, these resources will be incorporated into the list of references and resources to be maintained for, and included if necessary, in the EIS. The TPC shall conduct site visits to become familiar with the entire Proposed Action area and to ground-truth any collected data used to support the EIS. The TPC will develop/procure and maintain GIS layers of the required rights-of-way and other layers needed for all alternatives.

Prior to beginning work on the EIS, the TPC will prepare and submit to USACE a list of informational resources that provide existing environmental data, Project Proposed Action and public interest concerns at the Proposed Action location and within the surrounding area, including any historical studies and technical reports that are available and which could potentially support the development of the EIS. The TPC is responsible for reviewing collected materials including, but not limited to: reviewing the same or different primary sources for technical background information, asking for cooperating agency review/input, and, seeking out and using information received from other government agencies and from non-government sources during the scoping and review processes for the preparation of the EIS. Based on the review of this information, information gathered during scoping activities, and identification of additional information from other approved sources, the TPC will prepare a summary of additional information needed, data gaps, and guidance required to proceed with the preparation of the EIS. Such data needs and gaps will be presented to USACE by the TPC on an on-going, as needed basis.

The TPC will serve as the repository for all reference documents throughout the EIS process. The information collected by the TPC shall be included in the Administrative Record at the conclusion of the EIS (see Task 7.20). The TPC will track progress and continue coordination with USACE and other data sources to obtain EIS-needed data on a timely basis. USACE, as necessary or appropriate, will provide assistance with agency coordination. USACE will advise the TPC of the information requirements and periodically meet to provide the USACE's views regarding the adequacy of the data that are being developed and the acceptability of the overall direction of the environmental analysis.

7.6 Scoping Process and Scoping Report.

Task 6. Scoping Process and Scoping Report.

7.6.1 Scoping Process (definition). Scoping is the process of determining the extent of issues to be examined in an EIS and for identifying the significant issues that may need to be addressed. Scoping ends when issues and alternatives to be addressed in an EIS have been clearly defined, which could occur up through the final stages of preparing the draft EIS. During this time, there could be one or more scoping meetings to assist in this process. The TPC will document and maintain information about the entire scoping process.

7.6.2 Scoping Meetings. The PIP will identify a strategy for conducting public scoping meetings. At a minimum, the public scoping meeting(s) will follow the USACE format for public scoping meetings and will be held on date(s), times, and at locations approved by USACE.

7.6.2.1 Meeting Dates. There may be one or more scoping meetings during the conduct of the EIS. For each scoping meeting (or group of scoping meetings), the TPC will develop a meeting plan to be finalized in accordance with the procedures stated in the MOU. The TPC will be responsible for arranging any necessary scoping meetings.

7.6.2.2 Meeting Plans. For each scoping meeting (or group of meetings), the TPC will submit to USACE a "Scoping Meeting Plan" that outlines all the steps to arranging and implementing the scoping meetings. The Plan will include, but is not limited to, a proposal on the number of scoping meetings necessary for the Proposed Action, potential dates, and potential venue options, diagrams of the meeting site set-ups, security plans, proposed agenda, all necessary tasks, and the person responsible for each task. The TPC will be responsible for all costs associated with the public scoping meetings such as venue renting/use, video and/or audio rental, printing/distribution of handouts/display boards, providing security, translators, and hiring facilitator/transcribers and other items identified in the Scoping Meeting Plan. The TPC will coordinate with USACE to implement the Scoping Meeting Plan.

7.6.3 Scoping Report. Following the conclusion of the formal scoping process, a Scoping Report shall be prepared by the TPC, within thirty (30) calendar days from the close of scoping. The Scoping Report is used to document significant issues to be evaluated in the EIS and dismiss those that are not significant (refer to 40 C.F.R. § 1501.7(a)(2)). The Scoping Report shall summarize the meeting discussions, substantive issues raised and all other public input obtained through the scoping coordination efforts. The Scoping Report shall include all written and verbal testimony (transcripts) offered into the record by the meeting participants. The Scoping Report is a summary of the entire scoping process. The TPC will prepare and/or revise the Scoping Report following the conclusion of each public Scoping Meeting.

7.6.3.1 Scoping Report Outline. The TPC will use the USACE approved Scoping Report template. The Scoping Report will include a transcript of the meeting and tabulation of public comments received.

7.6.3.2 Scoping Report Review Process. The TPC will submit a draft Scoping Report to USACE for review and comment. Once approved, the Scoping Report will be summarized in the EIS and the Scoping Report will be incorporated into the EIS as an Appendix. USACE will post the final Scoping Report on the EIS Proposed Action website and the TPC will mail the final USACE approved Scoping Report or a notice of its availability to the agencies and interested parties.

7.6.4 Revised SOW for modification to Contract. Upon finalizing the Scoping Report, and reviewing existing studies and documents, the TPC will revise the SOW, including but not limited to, identifying any additional technical reports determined to be necessary to support the EIS. The TPC will submit the draft revised SOW to USACE for approval. Once approved, USACE will inform CPRA of the revisions and CPRA will be responsible for modifying the Third-Party TPC's contract in accordance with this scope of work.

7.7 Preparation of Draft EIS Generally.

Task 7. The TPC will prepare the EIS using information contained in the Scoping Report, the supporting technical appendices, the results of impact evaluations and analyses performed on the practicable alternatives, and any instructions provided by USACE following finalization of the Scoping Report in accordance with 33 CFR 325, Appendix B.

An Executive Summary overview of the entire DEIS will be prepared that captures the salient and important features of the major sections of the DEIS. The Proposed Action characteristics, including the Proposed Action setting and Proposed Action facilities will be presented. The alternatives analysis will be summarized along with the environmental setting of the Proposed Action. The impact characterization will include activities associated with both construction and operation of the facilities, and include both direct and indirect along with cumulative impacts.

The TPC will provide a detailed but concise description of the Proposed Action including but not limited to: the various components of the Proposed Action, the size of Proposed Action (Project) footprint, a description of how construction would take place, and activities associated with operation and maintenance. Maps and figures should include the layout of the Proposed Action, as well as other existing infrastructure including roads, railroads, pipelines, transmission lines, residences, recreational facilities, retail and commercial establishments, churches, schools, hospitals and other public buildings. Information on structure relocations will be identified and evaluated for all alternatives, as appropriate. The USACE Regulatory PM will independently review all documents prepared by the TPC prior to their public release, as required by 40 C.F.R. § 1506.5(a). Final approval on how comments are addressed throughout the review process is the sole responsibility of USACE. The TPC, USACE and cooperating agencies as appropriate, will review a draft Table of Contents, prepared by the TPC, to ensure all areas of impact are evaluated. The TPC, USACE, and cooperating agencies (as appropriate) will also review the criteria for determining significance as defined by USACE, to ensure consistency in the TPC's evaluation of impacts. Pre-decisional language is not permitted in the EIS. All sentences that speak of the proposed action and/or potential impacts must use conditional language (i.e., "would" rather than "will").

7.8 Development of Alternatives.

Task 8. The NEPA requires USACE to consider a reasonable range of alternatives in the EIS (40 CFR 1502.14(a)) that are feasible and accomplish the underlying purpose and need that would be satisfied by the proposed Federal Action (permit issuance). The alternatives analysis should be thorough enough to use for both the public interest review and the 404(b)(1) guidelines (40 CFR Part 230) where applicable. Such alternatives should be evaluated only to the extent necessary to allow a complete and objective evaluation of the public interest and a fully informed decision regarding the permit application. The EIS must also include an evaluation of the No Action Alternative, which serves as a basis for comparison for the evaluation of the action alternatives.

The Alternatives Section of the EIS shall describe the process and methodology that was used to develop, evaluate, and eliminate potential alternatives based on the purpose and need of the Proposed Action. The models used in Alternative development should be described in detail.

The Alternatives Section shall include an explanation of how alternatives were selected for detailed analysis, the reasons why some alternatives were eliminated from consideration, and an explanation of how the alternatives meet the purpose for the Proposed Action. EISs are required to include alternative designs or locations for the Proposed Action that are reasonable, would result in fewer environmental impacts, and achieve the purpose and need of the Proposed Action.

The TPC will prepare an Alternatives Section of the draft EIS, which shall include but not be limited to: (1) a detailed description of the Proposed Action, the features,

location, background; (2) a statement defining the Proposed Action as the CPRA's preferred alternative; (3) descriptions of other alternatives determined to be practicable by the CPRA; (4) description of the screening analysis used; (5) discussion of alternatives that were considered but eliminated from further consideration and reasons for elimination; (6) detailed discussion of the alternatives to be fully analyzed in the EIS; (7) the design criteria for the Proposed Action and the final array of alternatives to the Proposed Action;

The detailed description of the Proposed Action shall include a description of all features of the Proposed Action and also include the details of the locations and dimensions of features and, operations and maintenance. Also include in the description of the Proposed Action and the Analyzed Alternatives, details of the Proposed Action; the manner of water diversion, the amount (acres) and type of land building expected in the near/intermediate and long-term; and the useful life of the Proposed Action.

This task will include coordination meetings with USACE, all cooperating agencies and, if appropriate the commenting agencies and/or CPRA, as approved by USACE. This task will involve revisiting and refining the "basic" and "overall" purpose and need of the Proposed Action. This task may also involve reviewing and refining, if necessary, the screening criteria for alternatives, the alternative methods of implementation, and the alternatives at other sites as appropriate, and documenting the logistical and technical reasons (constraints) that make an alternative not practicable.

7.9 Analysis of Affected Environment and Environmental Consequences.

Task 9. A detailed discussion of the affected environment and environmental consequences of the Proposed Action will follow requirements of 40 CFR 1502.15 and 1502.16 which *shall include, but not be limited to*, such matters as: (1) effect on wetlands; (2) fish and wildlife; (3) water quality; (4) historic, cultural, scenic, recreational values; (5) coastal zone; (6) socioeconomics (community cohesion, population, employment, public health and safety, economics, and housing, environmental justice); (7) navigation; (8) traffic and transportation (evaluate impacts on traffic, transportation, highways, bridges, roads, railways, etc., within the Proposed Action area); (9) public services, utilities and service systems (impacts on utilities such as electric power lines, water and sewer systems, inundation, needs for relocation, modification, alteration, abandonment, relocation); (10) water supply and conservation; (11) prime and unique farmland; (12) climate change; (13) sea level rise; (14) sediment transport and channel bed stability; (15) floodplain management and; (16) energy conservation and development.

The EIS shall disclose and analyze all significant environmental impacts of the Proposed Action as required under the NEPA in accordance with the CEQ's regulations found in 40 CFR Parts 1500-1508. The three types of impacts to be addressed in the EIS include: (1) *direct impacts* which are those effects that are caused by the action and occur at the same time and place; (2) *indirect impacts* which are those effects that are

caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. and (3) *cumulative impacts* which are the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions (40 CFR § 1508.7).

7.10 Identification and Analysis of Cumulative Impacts.

Task 10. NEPA requires the inclusion of a cumulative effects analysis in an EIS. CEQ's guidelines for evaluating cumulative effects emphasize the growing evidence that "the most devastating environmental effects may result not from the direct effect of a particular action, but from the combination of individually minor effects of multiple actions over time" (CEQ, 1997). The purpose of the cumulative effects analysis is to ensure that a decision on the proposed action is not made in isolation without considering other past, present, and future influences on the affected resources. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.6).

A cumulative impacts analysis will be conducted that consists of a detailed quantitative analysis of impacts. The Cumulative Impacts Analysis Section of the EIS will include a list of identified past, present and reasonable foreseeable future actions. Reasonably foreseeable future actions are to be identified as those projects for which DA permit applications have been submitted to USACE and/or projects for which Engineering and Design (E&D) are being conducted. To help inform the District Commander's consideration under the Sections 404 and 10 regulatory permitting processes, or the appropriate Decision Maker's consideration under the Section 408 process, a public interest review will be conducted that consists of a qualitative analysis of impacts of: past, present, and reasonably foreseeable future actions and impacts of diversions and ecosystem restoration actions not identified as reasonably foreseeable future actions. It is envisioned that this analysis will rely upon readily available information and will not likely require field data collection efforts.

As part of the cumulative impacts analysis, the EIS must identify area(s) in which the effects of the Proposed Action will be felt; the effects that are expected in the area(s) from the proposed action; past, present, and reasonably foreseeable future actions that have or that are expected to have impacts in the same area; the impacts or expected impacts from these other actions; and the overall impact(s) that can be expected if the individual impacts are allowed to accumulate.

7.11 Mitigation Measures.

Task 11. Appropriate mitigation for environmental impacts will be identified by USACE in coordination with cooperating agencies. Potential and appropriate mitigation measures

shall be identified per 33 CFR 320.4. Depending on potential impacts, scope may be modified to develop appropriate mitigation measures.

7.12 Preparation of Supporting Technical Appendices.

Task 12. Probable impacts of the Proposed Action on the public interest must be considered with the benefits expected to accrue from the Proposed Action compared against reasonably foreseeable detriments. Impacts to be considered in the public interest determination include but are not limited to: conservation, economic development, historic properties and cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation.

In order to support the NEPA decision-making process, the TPC shall ensure that all technical documentation and materials necessary to address specific resource areas to support the EIS are accurate and acceptable. Once the scoping process is complete and prior to revising the TPC's SOW, a finalized list of technical appendices will be proposed by the TPC and submitted for approval to USACE. During development of the technical appendices, critical path information needs shall be identified by the TPC and incorporated into the EIS Schedule. Below is preliminary information on some of the technical appendices that will be required for the EIS:

7.12.1 Wetland Delineation Report and Analysis of Impacts on Water & Coastal Resources and Compliance with Executive Order 11990, Protection of Wetlands. For each practicable alternative carried forward in detail within the EIS, CPRA will provide a USACE issued jurisdictional determination (JD) and its wetland delineation report. The TPC will incorporate this information into the EIS as an appendix and summarize the appendix in the main EIS document.

7.12.2 Cultural Resources Investigation Report. USACE will obtain documentation, data, and materials from CPRA to provide to the TPC for review and a determination as to whether the technical documentation and materials are sufficient to prepare the required report and analysis. The TPC will provide a written analysis to USACE on the sufficiency of the information and, if determined to be insufficient, will provide a list of the deficiencies and a recommendation on a path forward to USACE. USACE will notify the Contractor on whether to proceed forward with this information as-is or whether USACE will submit an information data request to CPRA for the necessary information. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document.

This report will be completed in partial fulfillment of USACE responsibilities under Executive Order 13175, NEPA, and Section 106 of the National Historic Preservation Act and meet the standards of the Division of Archaeology, Louisiana Office of Cultural Development. The area of potential effects to be investigated will be determined by USACE through consultation with the SHPO and federally-recognized Tribes. Additional

details regarding the cultural resources investigation and report preparation will be provided following the outcome of the scoping process.

7.12.3 Coordination with USACE's Tribal Liaison. Government-to-Government consultation with federally-recognized Tribes will be conducted in accordance with Executive Order 13175, NEPA, and Section 106 of the National Historic Preservation Act will be conducted by USACE. USACE's Tribal Liaison shall be engaged early and often to ensure USACE's consultation obligations are fulfilled. The TPC will obtain and review specific information on the Proposed Action to provide to USACE's Tribal Liaison to facilitate the consultation with federally-recognized Tribes. Once data sufficient to support this coordination effort has been obtained, USACE will proceed with the consultation. The TPC will support USACE for this task, as needed.

7.12.4 Coordination with USACE's Archaeologist. Consultation with the SHPO, federally-recognized Tribes, and other consulting parties, in accordance with NEPA and Section 106 of the National Historic Preservation Act, will be conducted by USACE. The USACE archaeologist shall be engaged early and often to ensure compliance with Section 106 of the National Historic Preservation Act and its implementing regulations. Once data sufficient to support this coordination effort has been obtained, USACE will proceed with the consultation. The TPC will support USACE for this task, as needed.

7.12.5 Endangered Species Act Biological Assessment Report. Under Section 7 of the Endangered Species Act (ESA) as amended, 50 CFR Part 402.12, and implementing regulations, Federal agencies are required to consult with US Fish and Wildlife Service (USFWS) and/or the NMFS to ensure their actions do not jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat. The evaluation of potential effects on Threatened and Endangered (T&E) species and/or its designated critical habitat from the proposed alternatives shall be discussed.

The TPC will prepare a Draft Biological Assessment (BA) in accordance with the ESA. At a minimum, the BA will address all federally threatened, endangered, proposed, and candidate species potentially affected for each of the alternatives for the Proposed Action. The BA shall be prepared based on currently collected field data and in accordance with the guidance and templates identified and/or provided by USACE, in consultation with USFWS and NMFS during the EIS process.

7.12.6 Essential Fish Habitat (EFH) Assessment. Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat ("EFH") requires an assessment of the impacts. The Assessment shall evaluate the impacts on species type, life stage, and abundance; based upon existing, publicly available information, potential changes to habitat types and sizes; and assess potential indirect impacts to fisheries that may result from changes in water movement, sediment transport, and shoreline erosion. More details on what will be needed will be provided following the outcome of the scoping process. The TPC will prepare an EFH assessment using either EFH Mapper or the GIS Data set provided by NOAA (<http://www.habitat.noaa.gov/protection/efh/habitatmapper.html>). The TPC will draft the

required consultation letter, per guidance:

(http://www.habitat.noaa.gov/pdf/efhconsultationguidancev1_1.pdf) and templates provided by USACE, and submit the draft letter to USACE for review and approval. USACE will send the finalized letter with any necessary documentation to NMFS. The TPC will incorporate this letter, NMFS response letters and subsequent correspondence into the EIS as an Appendix.

7.12.7 Hydrology/Hydraulic Report. USACE will obtain documentation, data, and materials from CPRA to provide to the TPC for review and a determination as to whether the technical documentation and materials are sufficient to prepare the required report and analysis. The TPC will provide a written analysis to USACE on the sufficiency of the information and, if determined to be insufficient, will provide a list of the deficiencies and a recommendation on a path forward to USACE. USACE will notify the TPC on whether to proceed forward with this information as-is or whether USACE will submit an information data request to CPRA for the necessary information. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document. In general, the report will include details of an analysis of the existing hydrologic features and the effects of the various alternatives on the natural hydrologic system. This will include an evaluation of LiDAR data and identifying drainage basins, as well as identifying the effects on any of the existing hydraulic structures. Also included in the report will be maps identifying specific hydrologic and hydraulic features unique to each alternative alignment. At a minimum, this Report shall look at both Basin and River side impacts, salinity, induced flooding of marsh and communities, and shoaling. More details on what will be needed for this Report will be provided following the outcome of the scoping process.

7.12.8 Commercial and Recreational Fisheries and Aquaculture Assessment. Coastal resources in the area of the Proposed Action include habitat for coastal fisheries and aquaculture. The TPC shall prepare a Commercial and Recreational Fisheries Assessment identifying and evaluating the commercial and recreational fisheries in the area of the Proposed Action and impacts of the Proposed Action. More details on what will be needed will be provided following the outcome of the scoping process.

7.12.9 Socioeconomic Analysis. USACE will obtain documentation, data, and materials from CPRA to provide to the TPC for review and a determination as to whether the technical documentation and materials are sufficient to prepare the required report and analysis. The TPC will provide a written analysis to USACE on the sufficiency of the information and, if determined to be insufficient, will provide a list of the deficiencies and a recommendation on a path forward to USACE. USACE will notify the TPC on whether to proceed forward with this information as-is or whether USACE will submit an information data request to CPRA for the necessary information. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document. More details on what will be needed will be provided following the outcome of the scoping process.

7.12.10 Flood Hazards Evaluation Analysis. USACE will obtain documentation, data, and materials from CPRA to provide to the TPC for review and a determination as to whether the technical documentation and materials are sufficient to prepare the required report and analysis. The TPC will provide a written analysis to USACE on the sufficiency of the information and, if determined to be insufficient, will provide a list of the deficiencies and a recommendation on a path forward to USACE. USACE will notify the TPC on whether to go forward with this information as is or whether USACE will submit an information data request to CPRA for the necessary information. Once data sufficient to support this report has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and summarize the information in the main EIS document.

7.12.11 Water Quality Report. USACE will obtain documentation, data, and materials from CPRA to provide to the TPC for review and a determination as to whether the technical documentation and materials are sufficient to prepare the required report and analysis. The TPC will provide a written analysis to USACE on the sufficiency of the information and, if determined to be insufficient, will provide a list of the deficiencies and a recommendation on a path forward to USACE. USACE will notify the TPC on whether to proceed with this information as-is or whether USACE will submit an information data request to CPRA for the necessary information. Once sufficient data has been obtained, USACE will direct the TPC to incorporate the additional data into the EIS as an appendix and to summarize the information in the main EIS document.

7.12.12 Hazardous, Toxic and Radioactive Waste Report. The TPC will use existing information (desktop review) to conduct the necessary HTRW analysis and prepare a report. Once approval is obtained from USACE, the TPC will incorporate the report into the EIS as an Appendix and to summarize the information in the main EIS document.

7.12.13 Environmental Justice (EJ) Report. Executive Order 12898, known as the Federal Environmental Justice Policy, requires that federal agencies identify and address disproportionately high and adverse human health or environmental effects on minority or low-income populations that result from their programs, policies, or activities. The Executive Order also tasks federal agencies with ensuring that public notifications regarding environmental issues are concise, understandable, and readily accessible. As stated in EPA guidance, disproportionately high and adverse effects encompass both human health and environmental effects. Informed judgment needs to be exercised as to what constitutes “disproportionate” as well as “high and adverse.” Compliance with environmental justice requirements is also guided by Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, national origin, age, sex, or disability in programs and activities receiving federal financial assistance (Office of the Law Revision Counsel 2010). The TPC shall prepare an Environmental Justice Report using existing documentation, identifying and evaluating the EJ communities in the area and identify any potential impacts to those communities. The Report shall identify the methodology used by the TPC in characterizing existing minority and low income population conditions in the area of the Proposed Action. The analysis shall identify the potential for the alternatives to result in disproportionately high and adverse effects on minority or low-income populations. The analysis shall evaluate the potential effects of

the action alternatives and the No Action Alternative on environmental justice populations in and near the Proposed Action area. More details on what will be needed will be provided following the outcome of the scoping process.

7.12.14 Other Supporting Reports. Green House Gas (GHG) emissions resulting from the alternatives of the Proposed Action will be evaluated to determine how they may impact global climate change. The EIS shall evaluate the assessment of the effect of sea level rise on the Proposed Action area and provide an evaluation of how these predicted climate change impacts would affect the alternatives of the Proposed Action.

USACE will identify any additional analyses or reports that may be needed to conduct an evaluation of other concerns identified during the scoping process for incorporation into this SOW. USACE will coordinate with CPRA for conducting these additional studies/reports. If the TPC is determined responsible for the additional studies, the scope will be reviewed and approved by USACE and included in the modified SOW submitted to CPRA.

7.13 Preparation of Consultation and Coordination Section of EIS.

Task 13. This Section describes how the EIS was developed in coordination with other state and federal agencies, tribal entities, and the public, and will include a distribution list of the individuals and organizations that will receive the EIS.

7.14 Preparation of References Section of EIS.

Task 14. This Section includes a list of references that were used during the evaluation and analysis for the EIS and which are cited in the EIS text.

7.15 Preparation of Remaining Sections/Contents of EIS

Task 15. Preparation of other Sections of the EIS. The format of the Draft EIS should follow the recommended format outline by 40 CFR 1502.10 to include the preparation of an abstract, list of preparers, list of agencies, organizations, and persons to whom copies of the statement are sent; Index. Appendices, Tables, Figures.

7.16 Review, Approval, and Delivery of Draft EIS and Final EIS.

Task 16.

7.16.1 Initial Section Reviews. The TPC will submit an electronic draft of each section of the EIS to USACE and once approved by USACE, the TPC will incorporate that section into the EIS.

7.16.2 Preliminary Draft EIS (PDEIS). The TPC will prepare the PDEIS for technical review and provide it electronically in Microsoft® Word format. The TPC shall ensure that all changes made during this review are tracked and provide USACE with three

printed copies. Following the incorporation of USACE review comments on the revised (i.e., second version) Preliminary Draft EIS, the TPC will prepare a pre-final camera-ready DEIS. Upon the USACE's review and approval of the pre-final (camera-ready) Draft EIS, the TPC will produce a PDF version and hard copies (e.g., CDs or paper), as needed, in preparation for the official e-filing with EPA Headquarters and public circulation of the Draft EIS.

7.16.3 Submitting Draft EIS (DEIS). The TPC shall prepare and submit the DEIS for final approval after fully addressing all comments made on the PDEIS including comments made during the PDEIS Review Meetings. The TPC shall provide electronic copies of the DEIS to USACE along with a draft of the transmittal letter that will need to accompany the DEIS to EPA Headquarters (EPA HQ) for the official Federal Register filing. Once the DEIS is approved by USACE for distribution, the TPC will provide to USACE a finalized pdf(s) of the DEIS and Appendices in the format proscribed in "e-NEPA Electronic Submittal of Environmental Impact Statements to EPA" (<http://www.epa.gov/compliance/nepa/submiteis/e-nepa-guide-on-registration-and-preparing-an-eis-for-electronic-submission.pdf>). USACE will electronically upload the DEIS to the EPA website. USACE will also upload the DEIS to the EIS Proposed Action website. The TPC will prepare (print and burn CDs) and distribute the DEIS to those on the approved distribution list. EPA only publishes on Fridays and the DEIS must be received by EPA the Friday before it is published. The TPC shall follow the distribution requirements and guidelines identified in the approved PIP and in accordance with 40 CFR 1506.10(c) for circulating and distributing the DEIS for comment. It is estimated that the TPC will need to provide a minimum of 20 compact disks (CDs) for distribution to USACE, EPA Headquarters, EPA Region 6 Office, cooperating and commenting agencies, CPRA, adjacent property owners, and up to 20 hard copies for libraries in the Proposed Action area contingent upon changes to the mailing list. Those on the distribution list must receive the DEIS by the date that the EPA publishes in the Federal Register. In addition, here are some subtasks that need to be accomplished before, during, and after the release of the DEIS:

7.16.3.1 DEIS Notice of Availability (NOA). The TPC will prepare and submit a Draft NOA of the DEIS for review and approval by USACE MVN in accordance with 40 CFR 1506.9 and 1506.10(a), and notice provided to the public per 40 CFR 1506.6(b). A copy of the DEIS shall be submitted to HQUSACE with the draft DEIS transmittal letter 33 CFR Part 325 Appendix B. The Draft NOA will be submitted to USACE. The NOA will announce the availability of the DEIS to the public and give the date, time, and locations of the upcoming DEIS public hearings. USACE will finalize the NOA and submit it to EPA for issuance in the Federal Register at the same time the DEIS is submitted to EPA for filing. Once the NOA is published in the Federal Register, the TPC will email or mail the NOA to each person on the electronic public mailing list as requested by that person (estimated to be a minimum of 50 1-page hard-copies).

7.16.3.2 DEIS Comment/Response Matrix. The TPC will develop a Comment/Response Matrix ("Matrix") using a spreadsheet format that allows for the insertion of a comment identifier, section number, line number, and a response. For each comment received

during the public comment period for the DEIS, including those received as part of the public hearings, the TPC will provide a proposed response adjacent to that comment. The TPC will facilitate the collection, tracking, and coding for all these comments. Comments collected through hard copy comment forms, by e-mail, or by regular mail will be scanned and input into the Administrative Record using a consistent naming format that is easily searched electronically. The TPC will submit the completed Matrix to USACE containing the proposed responses. As part of this process, the TPC will conduct a DEIS Comment/Response Matrix Review Meeting following delivery of the document to provide a forum to discuss the proposed responses and request clarification. The TPC will compile all comments, revise the Matrix, and then meet with USACE and the cooperating agencies to resolve any outstanding issues. Once all issues are resolved, the TPC will submit the finalized Matrix to USACE for final approval.

7.16.4 Conducting DEIS Public Hearing(s). The TPC will coordinate with USACE to determine the number of public hearing(s) necessary, date, location, and specific needs for each public hearing, including translators. The goal of the hearings will be to solicit input from the public, stakeholders, non-governmental organizations, and federal, state, and local agencies regarding the DEIS. All of the actions involving the public hearings shall be defined in the PIP and will be in accordance to 33 CFR Part 327 and 40 CFR 1506.6. Some of the actions to be implemented are summarized below:

7.16.4.1 Logistics of Public Hearings. The public hearings will be held in the vicinity of the Proposed Action area at locations to be proposed by the TPC and approved by USACE. The TPC will schedule the public hearings to occur within 30 calendar days of the release of the DEIS. The actual dates for the hearings will be approved by USACE. The TPC will arrange and secure meeting facilities for the public hearings, develop all meeting materials (e.g., agendas, handouts, presentations, posters), and conduct the public hearings as directed by USACE.

7.16.4.2 Pre-Brief of the Public Hearings. Prior to the public hearings, the TPC will present draft meeting plan and proposed presentations to USACE. All other materials to be used at the public hearings will be described. The TPC will also summarize and be prepared to explain the follow-up activities that will be pursued after the public hearings.

7.16.4.3 Facilitation of Public Hearing(s). The TPC will organize and coordinate the public hearings to solicit from the attendees comments regarding the DEIS. All stakeholders and parties who choose to be a part of the NEPA process shall have equal access to the information presented during a public hearing (or meeting) as well as be given a reasonable means to communicate testimony, statements and opinions to the USACE for inclusion in the public record. Based on the demographics of the participants expected to attend the public hearing/meeting, USACE will assess the need for an interpreter to be present at the hearing/meeting. If an interpreter is determined appropriate, the TPC shall be responsible for making all necessary arrangements, including contractual requirements and payments. The TPC will be responsible for all

logistical arrangements related to the hearings, including the public address system, visual aid projectors, displays, registration of attendees, and a court reporter.

7.16.4.4 Public Hearings Comments. The TPC will incorporate all comments received during the public comment period for the DEIS, including those received as part of the public hearings, into the DEIS Comment/Response Matrix and provide proposed responses for those comments. The TPC will provide USACE with the original copies of all the comments and searchable digital transcripts of all comments received and recorded at the public hearing.

7.16.4.5 Public Hearings Transcripts. The TPC will provide a hard and an electronic copy of the transcript(s) of the DEIS public hearings to USACE when completed. The TPC will make copies of written comments received and forward the originals to USACE. E-mails will be forwarded electronically to USACE.

7.16.5 Final EIS (FEIS). The TPC will prepare the FEIS with the direction and oversight of USACE and in accordance with 40 CFR Part 1503.4(c); 33 CFR 230.19(c) and shall submit the FEIS to USACE. The TPC will incorporate the Matrix into the FEIS. The TPC will provide electronic copies of the FEIS to USACE for final approval along with a draft of the transmittal letter that will need to accompany the FEIS to EPA Headquarters for the official Federal Register filing. Once the FEIS is approved by USACE for distribution and the TPC receives the signed transmittal letter from USACE, the TPC will provide an electronic version to USACE to electronically upload the FEIS to EPA website as well as prepare and distribute the FEIS to those on the approved distribution list. EPA only publishes on Fridays and the FEIS must be received by EPA the Friday before it is published. The TPC will follow the distribution requirements and guidelines identified in the approved PIP for distributing the FEIS for comment. It is estimated that the TPC will need to provide approximately 50 CDs for distribution to USACE, EPA Headquarters, EPA Region 6 Office, cooperating and commenting agencies, CPRA, adjacent property owners, and 20 hard copies to libraries in the Proposed Action area contingent upon changes to the mailing list. Those on the distribution list must receive the NOA and/or a copy of the FEIS by the date that the EPA publishes in the Federal Register. Please note that hard-copies of the FEIS may require a CD for its appendices. The TPC will follow the same steps identified in the approved PIP for distributing the DEIS for comment.

7.16.5.1 FEIS Notice of Availability. The TPC will prepare a Draft NOA of the FEIS per USACE guidelines and in accordance with 40 CFR 1506.10(a). The Draft NOA will be submitted to USACE with the draft FEIS transmittal letter. USACE will finalize the NOA and submit it to EPA for issuance in the Federal Register. The TPC can submit the FEIS to EPA once USACE advises them to do so. Once the NOA is published in the Federal Register, the TPC will mail a hard-copy and/or email the NOA to people on the official mailing list. The TPC will follow all requirements approved in the PIP to assure complete public involvement.

7.16.5.2 Responses to FEIS Comments. Following the end of the FEIS comment period, any comments received on the FEIS will be addressed by the TPC, in draft and final letter format, after coordination with USACE. Final letters of response will be

provided, as needed, to USACE in electronic format; and will be prepared and forwarded by USACE on USACE letterhead, as needed. All originals of the letters will be forwarded to USACE.

7.16.5.3 Final Coordination Meeting. A Final Coordination Meeting will be held between the TPC and USACE after the comment period for the FEIS has been completed to approve responses to comments and revisions to the FEIS, and to resolve any outstanding issues. Any required changes to the FEIS will be made by the TPC within 30 calendar days of this final meeting. This meeting will also ensure that the Administrative Record is fully documented, and all affected parties are in agreement.

7.17 Preparation of Preliminary Draft and Final Draft Records of Decision.

Task 17. The TPC shall prepare two draft and draft final ROD(s). USACE will prepare the final ROD(s) in accordance with 40 CFR 1506.10(b) and 33 CFR Part 325, Appendix B, Par 18, and will be responsible for issuing and releasing the final RODs to the public. The final RODs cannot be issued until 90 days after the publication of the DEIS or 30 days after the publication of the NOA of the FEIS whichever is later in time. The TPC shall draft two special public notices to be submitted to USACE at the Final Coordination meeting and the approved final special public notices shall be published on the EIS Proposed Action website. The TPC will email or mail a hard-copy of the issued ROD(s) to each person and entity on the official mailing list.

7.18 Progress Reports.

Task 18. The TPC shall prepare and submit monthly and weekly Progress Reports on the status of the EIS to USACE via email and provide periodic briefing reports on the EIS upon request of USACE.

7.18.1 Monthly Progress Reports. The TPC will utilize Microsoft Project® software outputs, e.g., Gantt charts, as part of the monthly Progress Reports. The monthly Reports will contain an accurate, up-to-date account of all major work accomplishments and outstanding issues. The Reports will include a list of remaining milestones to be accomplished as a reminder of participation requirements forthcoming. Completion of work prescribed by this SOW will be documented in these Progress Reports. The Reports shall include, but not be limited to the following:

- A text summary of progress by task
- Problem areas/unresolved issues
- Variances
- Significant events scheduled for the next month
- Schedule time line
- Any additional comments
- Needs list
- Copy of updated Comments for the EIS, as necessary
- Copy of the updated Microsoft Project® Schedule, as necessary

7.18.2 Weekly Progress Reports. The TPC will be required to submit weekly progress reports to the USACE Regulatory PM. These reports will summarize the previous week's activities and outline the activities proposed for the upcoming week.

7.18.3 Periodic Briefing Reports. The TPC may be required to prepare draft periodic briefing reports, as needed.

7.19 Meetings.

Task 19. Throughout the EIS process, the TPC will coordinate, organize and attend regular meetings in order to be aware of, note, address, and provide resolution to needed actions or concerns relating to the preparation of the EIS and the tasks in this SOW.

7.19.1 Monthly Progress Meetings/ Conference calls with USACE. The TPC will coordinate and lead monthly meetings or conference calls with USACE, cooperating agencies, commenting agencies, and CPRA to be held at USACE's New Orleans District Office or another venue if approved by USACE. These meetings will focus on the overall progress of the EIS preparation and actions needed to further the goals of the Proposed Action such as submission of various sections of the EIS for review, other documents such as the technical reports, or preliminary drafts of the entire EIS. The TPC will prepare and distribute meeting minutes following each meeting. The recorded meeting minutes and the monthly progress reports can be combined into one document to reduce duplication of information.

7.19.2 Periodic Meetings with USACE. The TPC will be required to attend up to six periodic 1-day meetings, in addition to the monthly progress meetings upon request by USACE to review and discuss the progress and/or any problems or concerns that may arise. The TPC may also request periodic meetings with USACE. These meetings will require meeting minutes on a case-by-case situation that could be incorporated into the weekly progress reports.

7.20 Administrative Record.

Task 20. The Administrative Record ("AR") is a collection of the entirety of the information and data relied on to prepare the EIS. The record includes all data, information and analyses, either generated by other sources or obtained from other sources, used to support the analysis and documentation. The AR index will evolve over the course of the EIS development. The TPC should organize all data and information to compose the record in a current, accessible file, indexed by topic; propose an initial index for review and approval by USACE with the first end-of-month progress report and before scoping occurs; include communications of all types (e.g., memoranda, internal notes, telephone conversation records, letters, e-mails, facsimiles, and minutes of meetings), as well as public outreach materials, such as newsletters, newspaper advertisements, and other public notices. All data and reference material

should be included as part of the AR. All references cited in the EIS should be traceable to the AR. The TPC shall maintain and keep up-to-date the administrative record throughout the entire EIS development process; and should submit the index and a summary of the contents of the Administrative Record as a part of each end-of-month progress report.

The TPC shall develop, manage, and maintain the AR for the Proposed Action based on the direction provided by USACE for the design, organization, indexing, preparation, and maintenance of the AR. All planning data, maps, files, reports, computer, audio or video tapes, and disks and other records will be made a part of the permanent AR. The TPC (and subcontractors) shall document the sampling, testing, field observations, literature searches, analysis, recommendation, and other work which provides source material for the analysis, and any supplements to them. The TPC (and subcontractors) shall also document all of the USACE's records in a similar and compatible manner. The documentation shall be assembled in some organizational system which will make it possible for the responsible official to refer conveniently to specific documents or pages within documents. The source documents shall be listed. The list shall show the date, author, addresses, subject, and document or page number. The list shall be an appendix to the analysis and used to incorporate by reference the items on the list in the analysis. The list shall be prepared on a current basis throughout the environmental analysis and documentation processes so that it reflects the following information for each document: date, document number, page number, author, addressee, issue, sub-issue, and by page number. Provision should be made for printing reports of the sorted information.

The AR is the paper trail that documents the USACE's decision-making process and the basis for its decision. The AR demonstrates USACE complied with the relevant statutory, regulatory, and agency requirements and shows that the USACE followed a reasoned decision-making process. Typically, an AR is developed using a database application. The AR is comprised of:

- Documents and records that were available to the decision-maker at the time the decision was made;
- Documents that do and do not support the final decision but were created or relied upon during the analysis of the decision;
- Privileged and non-privileged documents and records, policy documents, reference books and articles; and
- Documents related to actions taken on the implementation of the decision from the date of the decision to the current date. The AR should also include any Freedom of Information Act requests and responses regarding the USACE's decision.

Emails are treated like any other documents that contain relevant factual information, a substantive analysis, or that documents the USACE decision-making process. Emails that are to or from the USACE decision-maker, other agencies, stakeholders, interested parties or representatives from advocacy groups discussing the decision should also be included. Emails that contain both relevant and non-relevant information **must** be included in the AR. For example, emails that contain relevant information to the

decision-making process and personal comments about the author's weekend **must** be included, unless otherwise protected or privileged.

Every Document should include:

- The date.
- Title (if applicable).
- Author's name and Agency (if applicable) or organization.
- Recipient's name and Agency (if applicable) or organization.
- Page numbers.
- Identify any enclosures (Describe what is being enclosed in case the transmittal document is separated from the enclosures).

Draft Documents:

- Include any documents circulated to the public for comments.
- DO NOT include multiple copies of draft documents showing "cosmetic" type changes (punctuation, layout, rewording).
- If something is considered but not used, it must be part of the record, including draft GIS coverage and metadata that was released to the public.
- Reviewer's or specialist's comments that change the "content" or show a change in direction of the analysis.

The Administrative Record should also include:

Correspondence:

- Anything on letterhead is considered correspondence.
- Hard copy with an actual signature and dated on the date it was signed (do not date correspondence until it is signed).
- All enclosures and attachments.
- Internal memos and emails.

Meeting Notes:

- Date of meeting.
- List of attendees.
- Name of note taker.
- Concerns, solutions, or follow-up.
- Decisions made or actions items.

Computer-based Decision Support Documents:

- Computer model runs.
- Copy of or summary report of any computer models used for analysis.
- Meta data for GIS analysis.

Specialist Reports:

- Bibliography of all literature cited (and know where an available copy is located in case a full copy is needed).

- Step-by-step documentation of analyses.
- All worksheets, field notes, field data, studies, reports, model runs and background information, etc.
- All relevant monitoring questions and protocols.
- Summary of effects determination and the analyses used to support them.
- All documents incorporated by reference or “tiered” to.
- May include Project implementation documents if litigation is brought after Project implementation.

Reference Materials:

- Statutes, laws, and regulations citations.
- Bibliography of Literature cited.
- Related NEPA Documents.
- Maps.
- Photos.

Public Involvement:

- Telephone Call Records.
- Presentations to groups (printed or electronic PowerPoints including any video presentations).
- Meeting Notes.
- Lists of attendees.
- Mailing lists and related information.
- Public notices.

Environmental Compliance Documents:

- Scoping documents.
- Federal Register notices.
- Lists of individuals attending public or interagency meetings.
- Agreements with other cooperating agencies.

Endangered Species Act and National Historic Preservation Act Consultation Records:

- Meeting notes.
- Telephone records.
- Biological Assessments.
- Biological Opinions.
- Monitoring reports.
- Technical literature.
- Historic building surveys and reports.
- Archeological surveys and reports.
- If adverse effects to historic properties are present include effect determinations.

The above list is not-inclusive.

It is important to screen the AR to determine whether the USACE believes the documents or materials contain protected information such as attorney-client, attorney work product, Privacy Act (5 U.S.C. 552(a)), pre-decisional, deliberative or mental process (makes recommendations or expresses opinions on legal or policy matters), executive process, confidential business information, documents or information protected by other statutes (e.g. Native American artifacts), and documents protected by court order. The USACE attorney(s) will help with the final determination of privileged documents or materials. If documents or materials are determined to be privileged or protected, they need to be redacted or withheld. If redacting the documents or materials, you must black out the protected information so it cannot be read. If the document or material is withheld, it would continue to be identified as part of the AR but it would not physically appear in the AR. The index of the record must identify the documents or materials, reflect that they are being redacted or withheld, and state on what basis they are being redacted or withheld. A page should be inserted in the place of the withheld document or material and should identify the document or material and state the reason it is being withheld.

In the event of a challenge to the legality or adequacy of the USACE compliance with NEPA with respect to the proposal of the CPRA, the CPRA, the TPC and the TPC's professional personnel, and the subcontractors shall, at the CPRA's expense, make available to the USACE, all pertinent non-privileged information under their control, and to the extent reasonable, discuss such information with the USACE, and testify at deposition or trial regarding such information. The TPC shall, as requested, be prepared to assist USACE should legal actions or challenges during the NEPA process or to the Final EIS occur. The scope of work will be modified as necessary to accommodate the requirements of this section.

EXHIBIT A
ENVIRONMENTAL LAWS TABLE

<p>Abandoned Shipwreck Act of 1987 American Indian Religious Freedom Act of 1978 Anadromous Fish Conservation Act of 1965 Archaeological Resources Protection Act of 1979 Archaeological and Historical Preservation Act of 1974 Bald Eagle Protection Act of 1940 Clean Air Act of 1970 Clean Water Act of 1977 Coastal Barrier Improvement Act of 1990 Coastal Barrier Resources Act of 1982 Coastal Wetlands Planning, Protection, and Restoration Act of 1990 Coastal Zone Management Act of 1972 Coastal Zone Protection Act of 1996 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 Consultation and Coordination with Indian Tribal Governments (EO 13175) of 2000 Deepwater Port Act of 1974 Emergency Planning and Community Right-to-Know Act of 1986 Emergency Wetlands Restoration Act of 1986 Endangered Species Act of 1973 Environmental Quality Improvement Act of 1970 Estuaries and Clean Waters Act of 2000 Estuary Protection Act of 1968 Estuary Restoration Act of 2000 Exotic Organisms (EO 11987) of 1977 Farmland Protection Policy Act of 1981 Federal Actions to Address Environmental Justice in Minority Populations & Low-Income Populations (EO 12898, 12948) of 1994, as amended Federal Compliance with Pollution Control Standards (EO 12088) of 1978 Federal Emergency Management (EO 12148) of 1979 Federal Water Pollution Control Act of 1972 Federal Water Project Recreation Act of 1965 Fish and Wildlife Conservation Act of 1980 Fish and Wildlife Coordination Act of 1958 Flood Control Act of 1944 Floodplain Management (EO 11988) of 1977 Food Security Act of 1985 Greening of the Government Through Leadership in Environmental Management (EO 13148) of 2000 Historic Sites Act of 1935 Historical and Archaeological Data-Preservation Act of 1974 Indian Sacred Sites (EO 13007) of 1996 Invasive Species (EO 13112) of 1999 Land & Water Conservation Fund Act of 1965 Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended</p>	<p>Marine Mammal Protection Act of 1972 Marine Protected Areas (EO 13158) of 2000 Marine Protection, Research, and Sanctuaries Act of 1972 Migratory Bird Conservation Act of 1929 Migratory Bird Treaty Act of 1918 Migratory Bird Habitat Protection (EO 13186) of 2001 National Environmental Policy Act of 1969 National Historic Preservation Act of 1966 National Invasive Species Act of 1996 Native American Graves Protection and Repatriation Act of 1990 Neotropical Migratory Bird Conservation Act of 2000 Noise Control Act of 1972 Nonindigenous Aquatic Nuisance Prevention and Control Act of 1996 North American Wetlands Conservation Act of 1989 Oil Pollution Act of 1990 Outer Continental Shelf Lands Act of 1953 Pollution Prevention Act of 1990 Prime or Unique Farmlands, 1980 CEQ Memorandum Protection and Enhancement of the Cultural Environment (EO 11593) of 1971 Protection and Enhancement of Environmental Quality (EO 11991) of 1977 Protection of Children from Environmental Health Risks and Safety Issues (EO 13045) of 1997 Protection of Cultural Property (EO 12555) of 1986 Protection of Wetlands (EO 11990) of 1977 Reclamation Projects Authorization and Adjustments Act of 1992 Recreational Fisheries (EO 12962) of 1995 Resource Conservation and Recovery Act of 1976 Responsibilities of Federal Agencies to Protect Migratory Birds (EO 13186) of 2001 Rivers and Harbors Acts of 1899, 1956 River and Harbor and Flood Control Act of 1970 Safe Drinking Water Act of 1974 Submerged Land Act of 1953 Sustainable Fisheries Act of 1996 Toxic Substances Control Act of 1976 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) Water Resources Development Acts of 1976, 1986, 1990, 1992, and 2007 Water Resources Planning Act of 1965 Watershed Protection & Flood Prevention Act of 1954 Water Pollution Control Act Amendments of 1961 Wild and Scenic River Act of 1968 Wilderness Act of 1964</p>
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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT
AND
THE COASTAL PROTECTION AND RESTORATION AUTHORITY
AND
(THIRD PARTY CONTRACTOR)
FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this _____ day of _____, 2016, by and between the United States Army Corps of Engineers, New Orleans District (hereinafter “USACE”), represented by the U.S. Army Engineer, Col. Michael N. Clancy, New Orleans District (hereinafter “CEMVN”); the State of Louisiana, through the Coastal Protection and Restoration Authority (hereinafter “CPRA”), represented by its Executive Director, Michael R. Ellis; and the third party contractor, _____ (hereinafter “TPC”) represented by _____.

ARTICLE I- INTRODUCTION

A. The CPRA has submitted a Joint Permit Application for Department of Army (DA) permits under the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 403) (hereinafter collectively referred to as “Section 10/404”), and a request for permission under Section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 408) (hereinafter “Section 408”) to USACE for CPRA’s proposed Mid-Barataria Sediment Diversion (“Proposed Action”).

B. An Environmental Impact Statement (EIS) is a detailed written statement required by the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321, et seq. (NEPA) implementing regulations established by the Council on Environmental Quality (CEQ) for a major federal action significantly affecting the quality of the human environment. See 40 C.F.R. §1500 – §1508 and USACE procedures at 33 C.F.R., Part 325, Appendix B and 33 C.F.R. Part 230. The CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969, have defined "major federal action" to actions with effects that may be major in either denying or issuing a permit pursuant to one of the regulatory authorities and includes projects regulated or approved by federal agencies. 40 C.F.R. §1508.18.

C. USACE has determined that an EIS must be prepared and used in conjunction with other relevant materials, prior to making a decision on the CPRA Section 10/404 and Section 408 requests for permits and a permission (CPRA Applications) for the Proposed Action which is the subject of the EIS. USACE filed a Notice of Intent to prepare an EIS for the Proposed Action which was published in the Federal Register on October 4, 2013.

D. Government-wide regulations implementing NEPA, promulgated by the CEQ, expressly permit the use of third-party contractors in the preparation of an Environmental Assessment or an EIS. 40 CFR 1506.5(c); USACE Regulatory Guidance Letter No. 05-08 dated 7 Dec 2005, "*Environmental Impact Statements- Third Party Contracting*"; 33 C.F.R. 325, Appendix B, paragraph 8(f); and Question 16 of the CEQ's Forty Most Asked Questions Concerning QEQ's Environmental Policy Act Regulations. CEQ regulations provide that agencies using third-party contractors to aid in the preparation of environmental documents will be responsible for selecting the third-party contractors, will provide the third party contractors with guidance and supervision in the preparation of the document, and will independently evaluate the document before approval.

E. USACE, CPRA, and the TPC (collectively, "the parties") agree that the preparation and analysis of the EIS will utilize existing information and resource specialists to the greatest extent appropriate, will focus on key environmental issues, and will provide an opportunity for full participation by interested members of the public and governmental agencies consistent with all applicable legal requirements.

ARTICLE II- PURPOSE

A. The purpose of this MOU is to outline the roles, responsibilities, terms, conditions, procedures, requirements, communication methods and protocols that the TPC, CPRA, and USACE, agree to follow in the preparation of the EIS to ensure there are no conflicts of interest; to preserve impartial decision-making; and to prevent any impropriety or undue influence or the appearance thereof, in order to maintain integrity of the EIS process.

B. In accordance with USACE Regulatory Guidance Letter No. 05-08 dated 7 Dec 2005, CEMVN provided CPRA with the required information, and minimum TPC personnel requirements for the preparation of the EIS by the TPC. MVN was not involved in CPRA's procurement and contracting process and procedures, did not review any proposal or bid lists, and did not specify or choose the method of procurement. The TPC was selected by CPRA in accordance with State of Louisiana bid law, with the concurrence of MVN and in conformance with USACE's Regulatory Guidance, policy, and requirements pertaining to third party contracting, and the TPC has been determined to be fully acceptable to both CPRA and MVN to prepare the EIS.

C. CPRA has entered into a contract with the TPC (CPRA Contract) that is consistent with the terms of this MOU and the USACE-approved EIS Scope of Work (SOW). Pursuant to the CPRA Contract, CPRA shall pay the TPC for all services rendered in the preparation and development of the EIS.

D. For purposes of this MOU, the term "TPC" includes all agents, employees, representatives, independent contractors, consultants, subcontractors, and any other persons and entities performing any work or services or providing any labor or materials to the TPC for the work of this MOU and the CPRA Contract for the preparation of the EIS. All such persons and entities shall collectively be referred to herein as the "TPC".

E. The TPC shall conduct the environmental review process and prepare an EIS for the Proposed Action as an independent contractor working under the sole technical direction and supervision of USACE. The TPC will be directed and supervised by USACE to ensure that the requirements for the EIS are met and there is no conflict of interest. The TPC's work product(s) must meet all requirements in a timely manner, and be produced to the satisfaction of USACE. USACE has the ultimate responsibility to set, maintain, and control the schedule for completion of the EIS and related work, and may direct the TPC as necessary to ensure the required tasks, timelines, and deliverables' quality are acceptable. USACE will have complete control over the scope, content, and quality of the TPC's work, shall independently evaluate the TPC's work products, and shall have the ownership of the final EIS and the contents of the Administrative Record by the TPC in accordance with the CPRA Contract.

ARTICLE III- RIGHTS & RESPONSIBILITIES OF THE PARTIES

A. TPC Responsibilities.

- (1) The TPC, under the direction of USACE, is responsible for successfully performing and completing all work and tasks identified in the SOW approved by USACE and as specified in the CPRA Contract, unless otherwise expressly provided herein and in the SOW. The SOW is attached hereto as **Attachment "A"** and is incorporated by reference as if fully set forth herein.
- (2) Pursuant to the Council on Environmental Quality Regulations at 40 CFR 1506.5, third party contractors who will prepare an EIS must execute a disclosure statement specifying that the third party contractor does not have financial or other interest in the outcome of the final EIS. As part of its procurement, CPRA has required all proposers to submit a Proposer's Organizational Conflicts of Interest Disclosure Certification (OCI Disclosure Certification) in which each proposer specifies, consistent with NEPA regulations, that the proposer has no financial or other interest in the final EIS, except for remuneration specifically for preparing the EIS. The TPC has executed an Organizational Conflict of Interest (OCI) Certification, a copy of which is attached hereto as **Attachment "B"** and is incorporated by reference as if fully set forth herein. In addition, the TPC shall, contemporaneous with the execution of this MOU, execute an "On-Going OCI Obligations Certification". The form of the Certification is attached hereto as **Attachment "C"** and is incorporated by reference as if fully set forth herein.
- (3) In order to maintain and ensure impartiality in the EIS preparation, the TPC shall not obtain any materials or information needed for the preparation of the EIS directly from CPRA. All data and information shall pass through USACE to the TPC from CPRA and any other person or entity unless otherwise agreed to in writing by the TPC and USACE, and such writing shall be included in the Administrative Record.
- (4) The TPC may not communicate directly with CPRA on any matters except CPRA Contract required deliverables such as progress monitoring reports, invoices, and

payment-related matters. All other communications must take place with USACE staff present. If CPRA Contract matters involve EIS management or NEPA issues (EIS schedule, regulatory clock stop/start dates, outstanding data gaps, etc.), the communication must cease until USACE staff have been allowed to participate in the discussion. Any communication, contact, coordination, meetings, document review or consultation between the TPC and CPRA must be documented through e-mail, memoranda, conversation records, or other notes as appropriate. This documentation is the responsibility of the TPC and is to be compiled in the Administrative Record with dated copies provided to USACE and CPRA. Prior to initializing any communication between the TPC and CPRA, the USACE Primary Point of Contact or his/her authorized designee must be notified in writing.

(5) Throughout the effective period of the MOU and the CPRA Contract, the TPC will set up and maintain a password protected call-in number for use during regularly-scheduled management and technical calls. USACE shall be able to use this call-in number if necessary for all calls even if the TPC is not on the call. No other Project which is the subject of another proposed action by CPRA or a third party may use the same call-in number and password.

(6) The key members of the TPC EIS Team for the preparation of the EIS are set forth in **Attachment D** and those personnel shall remain on the TPC EIS Team throughout the EIS preparation process and the issuance of a Record of Decision, unless USACE consents to a personnel change.

(7) The TPC shall produce an EIS that meets USACE standards and fully assesses the potential environmental impacts of the Proposed Action. The EIS prepared by the TPC must conform to the Council on Environmental Quality requirements specified at 40 CFR §§ 1500 – 1508, and shall utilize the CEQ Guidance dated March 6, 2012, Subject: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act.

(8) The TPC shall prepare all documents using a writing standard provided by USACE or a style guide that ensures consistency in usage, terminology, and formatting throughout the documents. Documents that are not standardized or do not meet environmental technical writing standards, will be sent back to the TPC as unacceptable for review without further justification. The EIS shall be written in plain language, follow a clear format, and emphasize important impact analyses and relevant information necessary for those analyses. The TPC should consider incorporating reference materials into the EIS to avoid duplicative efforts but in so doing, must provide citations that clearly identify the incorporated materials in the EIS, and briefly describes the content including the identification of the referenced materials and the entity that prepared the materials.

(9) The TPC is responsible for reviewing collected materials including, but not limited to: reviewing the same or different primary sources for technical background information, asking for cooperating agency review/input, and, seeking out and using

information received from other government agencies and from non-government sources during the scoping and review processes for the preparation of the EIS.

(10) The TPC shall verify the accuracy, validity, integrity, and completeness of environmental information and notify USACE in writing of: (a) the sufficiency of information to identify the significance level of environmental impacts; (b) the sufficiency of supporting information to confirm CPRA's statements; (c) the sufficiency of information to respond to questions from federal, state and local agencies or from the public; (d) the sufficiency of information to develop alternatives analysis, including the "No Action" alternative; and (e) identify data gaps for USACE review.

(11) The TPC, with USACE assistance, shall develop a Detailed EIS Schedule for the entire NEPA process for the Proposed Action. The EIS Schedule will be developed and maintained, through coordination and consultation with USACE, in Microsoft Project® software. The EIS Schedule shall include the 408 Review Plan Schedule as provided by USACE. The written draft of the EIS Schedule will be presented by the TPC to USACE for review and approval 10 business days prior to the Kick-off Meeting or as otherwise agreed to by the parties pursuant to this MOU.

(12) All information, data, planning materials, studies, maps, files, reports, computer, audio or video tapes, and disks and other records obtained by the TPC shall be made a part of the permanent Administrative Record. Personal communications, meeting notes, and phone logs used as references by the TPC must be documented in the Administrative Record. Internet sources of information should be noted in the reference section of the EIS with the date the information was obtained and the person who obtained it. The TPC is responsible for maintaining an electronic database for the Administrative Record in order to minimize the time and effort required for the location and retrieval of record materials. The Administrative Record shall be organized and consistent and must minimize duplication of materials. The TPC shall update the Administrative Record continually throughout the MOU and the CPRA Contract term and shall transfer the Administrative Record to USACE upon request and once the final EIS is completed and prior to the issuance of the Record of Decision.

(13) The TPC shall maintain an ongoing review of potential environmental issues and assessment of the adequacy of the overall scope of the environmental analysis. The TPC is responsible for immediately advising USACE of any potential data gaps (data gap analysis) or analysis shortcomings and developing requests for additional information to be submitted to USACE in writing. Requests by the TPC for additional material, or for clarification of information, will be sent directly to USACE after a determination is made by the TPC that additional material or information is necessary. USACE will serve as the primary point of contact for all Federal and state agencies who wish to engage CPRA regarding data gaps or information requests.

(14) The TPC shall characterize existing environmental conditions, incorporate issues identified during scoping, assess the significance of the potential environmental effects of the Proposed Action and its alternatives (both locally and regionally), and, if necessary,

identify measures to minimize or mitigate such environmental effects consistent with the requirements of NEPA and its implementing regulations. The TPC shall also identify conflicting environmental requirements among Federal and state(s) laws, and recommend solutions to USACE, in writing, to resolve conflicts. If necessary, the TPC shall identify reasonable mitigation measures to resolve potentially significant environmental impacts; research the costs and benefits associated with implementation of each mitigation measure, and the degree to which significant environmental impacts will be avoided.

(15) During the process of finalizing the Scoping Report, correcting application deficiencies, and reviewing existing studies and documents, the TPC may discover tasks (i.e., additional technical reports required to support the EIS) that are necessary for the preparation and completion of the EIS, but which are outside of the SOW as specified in the CPRA Contract. These tasks may arise from internal review, through coordination with cooperating Federal or state agencies, or via public comment. In such event, the TPC shall prepare and submit a draft revised written SOW to MVN which shall contain an estimate of the impact on the schedule. The TPC shall not take any action on the task or tasks proposed to be added to the amended SOW. If MVN determines that the additional tasks are necessary and required, CEMVN shall provide CPRA with the proposed amended SOW and request CPRA to modify the CPRA Contract. Any alteration or modification of the CPRA Contract shall be made at CPRA's discretion and only in accordance with the terms and conditions contained in the CPRA Contract.

(16) The TPC shall prepare maps, drawings, and other graphic and visual renderings as requested by USACE showing the location of all features and facilities of the Proposed Action and related areas of disturbance and pertinent biological data. USACE staff will identify the scale of the maps as they become necessary throughout the normal processing of the EIS. At this time, USACE anticipates requiring the normal quad sheet range of maps.

(17) The TPC shall bring EIS related questions and issues to the attention of USACE in a timely manner for guidance from USACE. The TPC may not speak or make promises on behalf of USACE. All EIS preparation issues arising from performance of tasks and work in the SOW must be discussed with USACE prior to discussions by the TPC with cooperating agencies, CPRA, or others.

(18) The TPC should not cite to the CPRA Applications as an authoritative reference. If material is included from the CPRA Applications, it must be independently verified by the TPC using peer reviewed source references. The impact analysis portions of the EIS should not contain text or analyses that have been cut and pasted from the Applications. CPRA should provide all figures and tables from the CPRA Applications to USACE in electronic format suitable for editing. All tables and figures in the EIS must list a source of information other than the CPRA Applications.

(19) Pre-decisional language is not permitted in the EIS. All sentences that speak of the Proposed Action and/or potential impacts must use conditional language (i.e., "would" rather than "will").

(20) USACE generally does not state “no adverse impact” if there is a possibility, no matter how slight, of an impact. All instances of “no adverse impact” shall be brought to the attention of USACE in writing by the TPC.

(21) The TPC shall ensure the security of information by establishing a secure EIS Proposed Action website with limited access and shall be responsible for obtaining any necessary signed confidentiality agreements from all persons, entities, and subcontractors performing any work on the EIS.

(21) The TPC may not talk to members of the press and media about the Proposed Action or the EIS. The TPC may not publish articles, blogs, social media posts, or other publications about the Proposed Action or post comments on the EIS Proposed Action website without the prior written approval of USACE. The TPC may not represent themselves as agents of the USACE. The TPC may not make presentations about the EIS or the Proposed Action without the prior written approval of USACE.

(22) TPC shall observe, abide by, and comply with all USACE, NEPA, CEQ and other applicable federal regulations, laws, policies and guidance pertaining to preparation of the EIS and all processes relating thereto, including the work covered by this MOU, the SOW, the TPC’s Proposal and the CPRA Contract.

(23) The TPC shall indemnify and hold harmless the United States of America, the Department of the Army, the USACE, and all of their employees, agents, contractors, representatives, and personnel from and against any claims, judgments, or lawsuits arising from damages alleged to have been caused by, or attributed to the conduct of the TPC in connection with the preparation of the EIS and/or any work performed or services provided directly or indirectly related to the EIS or for the environmental services described within this MOU, the SOW, and the CPRA Contract, except for damages due to the fault or negligence of the USACE or its contractors.

B. USACE Responsibilities.

(1) USACE is the lead federal agency in the preparation of the EIS, is responsible for the management and coordination of the EIS, and for assuring compliance with all requirements of NEPA, CEQ regulations, and other federal laws, regulations and Executive Orders applicable to the conduct of the NEPA process. USACE shall ensure that the EIS is properly scoped, addresses relevant and significant environmental concerns, and analyzes a reasonable range of alternatives. USACE will perform its roles, responsibilities, and tasks in accordance with the SOW as well as this MOU.

(2) USACE will direct, monitor, oversee and supervise the TPC in the preparation of the EIS and analysis including, but not limited to, public review of the analysis, analysis of public comments, and decision documentation. In exercising this responsibility, USACE will endeavor to foster cooperation among other relevant agencies and to integrate NEPA requirements with other environmental review and consultation requirements in order to avoid duplication of efforts by such agencies. However,

USACE will not delegate to any other agency its authority over the scope and content of the EIS, the analysis, or approval authority.

(3) USACE may establish an interdisciplinary team to oversee the preparation of the EIS by the TPC. Although USACE staff will generally communicate with the TPC through the TPC's EIS project manager and deputy EIS project manager, USACE reserves the right to speak directly with any member of the TPC EIS team or ask that resource area leads participate in weekly or bi-weekly management meetings to discuss specific issues.

(4) In accordance with the SOW, USACE shall review CPRA's draft purpose and need statement and CPRA's stated needs and goals, to determine the basic and overall Proposed Action purposes. USACE will be responsible for preparation of the purpose and need for action, identifying issues to be carried forward for analysis, and developing a reasonable range of alternatives.

(5) In accordance with the SOW, USACE shall review CPRA's screening alternatives criteria (if any are proposed) and the alternatives developed and/or evaluated. USACE may request the incorporation of additional alternatives and/or provide changes and comments to identify alternatives to be analyzed in the EIS. USACE shall review and approve the draft and final range of alternatives and screening criteria in the EIS.

(6) In accordance with the SOW, and as required by NEPA, USACE will give full consideration to a "No Action Alternative" and other alternatives identified that are technically and economically feasible, and address the purpose and need and significant issues. CPRA's financing of the EIS will have no bearing on the consideration given to the "No Action" or other alternatives.

(7) If necessary, USACE shall directly request information from CPRA that the TPC requires for the preparation of the EIS. USACE shall independently evaluate all information reports, environmental and other data, analyses, studies and other documents submitted to USACE by CPRA and others, and may require that additional study or analyses be performed as necessary to comply with NEPA and applicable implementing regulations, as well as other applicable federal laws and regulations.

(8) USACE will provide comprehensive oversight of the EIS preparation process to verify that the TPC thoroughly considers existing data, environmental descriptions, and analyses available from CPRA and other sources, and that the TPC does not duplicate work already completed unless USACE determines that the existing work is not adequate for the purposes of the EIS. USACE and the TPC will jointly assess whether existing work must be modified or redone. USACE will require the TPC to provide adequate copies of all maps, reports, and draft documents to allow for a timely review.

(9) USACE shall make the final determination on the inclusion or exclusion of material in the EIS as to the content or relevance of any material, data, analyses, and conclusions in accordance with applicable laws and regulations.

(10) If appropriate, USACE may recommend modifications to CPRA for the Proposed Action to mitigate impacts to the environment. Upon concurrence from CPRA, modifications may be made to the Proposed Action to reduce or eliminate adverse effects. If any means, measures, or practices recommended by USACE are not incorporated into the Proposed Action, USACE may elect to analyze in detail an alternative that includes identified design features.

(11) As appropriate, USACE will be responsible for identifying and inviting cooperating agencies to participate in the development, consultation, and coordination of the EIS. In coordination with the TPC, USACE will arrange meetings and conference calls, as necessary, between USACE, CPRA, the TPC, and cooperating agencies.

(12) USACE will make final effects determinations and undertake consultations required by Section 7 of the Endangered Species Act of 1973, as amended, and Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. USACE will involve the TPC and CPRA in these consultations as appropriate. USACE is responsible for and will initiate and conduct consultation with Native American Tribes affected by the Proposed Action in compliance with the NHPA of 1966, as amended.

(13) USACE will make the final determination on the adequacy of the EIS, including ensuring that all pertinent environmental issues and impacts and reasonable alternatives and their impacts are adequately addressed in the EIS. USACE will determine any necessary modifications to the EIS as a result of public, cooperating agency, or CPRA submitted comments.

C. CPRA's Responsibilities.

CPRA shall compensate the TPC for work satisfactorily performed in the EIS SOW in accordance with the terms and conditions of the CPRA Contract. The TPC and CPRA agree that USACE is not obligated financially for any services rendered by the TPC relating to the development of the EIS for the Proposed Action.

(1) CPRA will be financially responsible for the development, coordination and completion of all TPC conducted cultural and historic clearances and biological surveys associated with the EIS as directed by the USACE. All associated field data, electronic information, and reports will be provided to and become property of the USACE. The final decision for all determinations, procedures, recommendations, methods, clearances and surveys will be made by the USACE in consultation with other agencies that have jurisdiction by law.

(2) CPRA will provide a complete description of the Proposed Action which is the subject of the EIS, including scope, purpose and need, and any alternatives identified by CPRA for USACE review.

(3) CPRA will participate in meetings, site-visits and conference calls as requested by USACE and shall respond to data requests and provide review comments within the EIS

schedule. If CPRA fails to meet the EIS schedule, USACE may adjust the EIS schedule to the extent necessary.

(4) CPRA will participate in the identification of means, measures, or practices that would reduce or eliminate impacts as requested by USACE, and if necessary, upon request of USACE, agrees to participate in the preparation of appropriate mitigation measures to resolve or reduce adverse impacts.

(5) CPRA will comply with all federal, state, and local laws and regulations and will obtain all required permits that apply to the Proposed Action which is the subject of the EIS.

(6) CPRA may not direct the interpretation, modification or inclusion of any data, evaluations, or other materials pertinent to the preparation of the EIS, either directly or indirectly through a third party. USACE will make the final determination on the inclusion or deletion of any material in the EIS.

(7) CPRA may communicate directly with the TPC *only* on CPRA Contract issues such as required progress monitoring reports, invoicing, and payment-related matters; all other communications with the TPC must take place with USACE staff present. If billing or CPRA Contract issues involve EIS management or NEPA issues, the communication must cease until USACE staff has been allowed to participate in the discussion.

(8) CPRA will be responsible for providing technical and environmental information that is needed for EIS preparation to USACE.

(9) CPRA shall review and provide comments on EIS documents to USACE in writing when requested to do so by USACE, and agrees to provide other data to USACE as requested in a timely fashion.

(10) In the event of a challenge to the legality or adequacy of USACE's compliance with NEPA with respect to the third party contracting process, the CPRA Contract, and/or CPRA's procurement and selection of the TPC, the parties agree to make available to each other and the state or federal government, all pertinent non-privileged information under their control, and to the extent reasonable, discuss such information with each other, and to testify at depositions or trials regarding such information, provided, however, that nothing in this paragraph shall prevent or limit in any way, any party's rights or interests under state or federal law.

(11) CPRA shall observe, abide by, and comply with all USACE, NEPA, CEQ and other applicable state and federal regulations, laws, policies and guidance pertaining to preparation of the EIS and all processes relating thereto, including the work covered by this MOU, the SOW, the TPC's Proposal and the CPRA Contract.

(12) CPRA shall indemnify and hold harmless the United States of America, the Department of the Army, the USACE, and all of their employees, agents, contractors,

representatives, and personnel from and against any claims, judgments, or lawsuits arising from damages alleged to have been caused by, or attributed to, the conduct of CPRA, including any agents, independent contractors, and subcontractors of CPRA, in connection with the preparation of the EIS and/or any work performed or services provided directly or indirectly related to the EIS or for the environmental services described within this MOU, the SOW, and the CPRA Contract, except for damages due to the negligence of the USACE or its contractors.

(13) CPRA agrees to provide written notice of any CPRA Contract termination to USACE. Termination of the CPRA Contract may only be made in accordance with the terms and conditions therein.

ARTICLE IV – PRIMARY POINTS OF CONTACTS

Within 30 calendar days after the execution of this MOU, each party shall designate a Principal Representative to serve as its primary point of contact on matters relating to this MOU and shall provide all other parties with the name, title/position, address, work telephone number, cell telephone number, fax number and email address. Additional representatives may also be appointed by the parties to serve as technical points of contact. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile or electronic transmission of any signed document and retransmission of any signed transmission shall be the same as the delivery of an original document.

Any request, demand, or other communication required to be given under this MOU shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the CPRA: Executive Director
Louisiana Coastal Protection and Restoration
Authority
P.O. Box 44027
Baton Rouge, LA 70804-4027

If to the CEMVN: District Engineer
U.S. Army Corps of Engineers
New Orleans District
7400 Leake Avenue
New Orleans, LA 70118

If to the TPC: **TO BE INSERTED**

A party may change the address to which such communications are to be directed by giving written notice to the other parties in the manner provided in this Article. Any request, demand, or other communication made pursuant to this Article shall be deemed

to have been received by the addressee at the earlier of such time as it is actually received or seven (7) calendar days after it is mailed.

ARTICLE V - COMMUNICATION PROTOCOL

A. Communication Generally:

Communication strategies and protocols have been established in this MOU, to ensure and maintain the integrity of the NEPA process, by precluding any source of bias in the formulation of the EIS, as well as by averting any potential appearance of improper influence. However, these protocols are not intended to be so restrictive as to eliminate all efficiency from the information exchange process. The following is not an exhaustive list of communication limitations and documentation procedures, but includes the general policies and practices necessary to preserve the independence and integrity of the EIS preparation, evaluation and decision-making processes. The parties will follow the following communication protocols during the development of the EIS:

(1) To the extent allowable by state or federal law, oral and written communications among USACE and the TPC shall be protected from disclosure to preserve the integrity of the deliberative process. Individuals who disclose this kind of information to the public and/or CPRA will be excluded from further participation in the analysis.

(2) USACE has final authority to provide technical instructions and guidance to the TPC relative to preparation of the EIS, compliance with federal laws, policies, regulations, and procedures, impact assessments, data interpretation, and conclusions. Direction to and of the TPC is the exclusive responsibility of USACE. The TPC may neither take nor request direction or guidance from CPRA, including any of CPRA's representatives, consultants, agents, and attorneys, other than as specified by the CPRA Contract and within this MOU, on any aspect of the EIS preparation.

(3) Unless otherwise agreed to, USACE shall be solely responsible for directly communicating the status of the EIS to CPRA. Any direct communication, contact, coordination, meetings, document review or consultation between the TPC and CPRA must be approved by USACE in writing in advance. Any type of contact or communication between the TPC and CPRA must be documented by the TPC through e-mail, memoranda, conversation records, or other notes as appropriate and be made part of the Administrative Record. This documentation is the responsibility of the TPC and a copy of these records shall be made available to USACE.

(4) CPRA may communicate directly with the TPC only on billing and CPRA Contract issues; all other communications must take place with USACE staff present. If progress monitoring reports, invoice, or payment-related CPRA Contract issues involve management or NEPA issues (EIS preparation schedule, regulatory clock stop/start dates, outstanding data gaps, etc.), the communications must cease until USACE staff is able to participate in the discussion along with TPC and CPRA.

(5) CPRA will not direct the interpretation, modification or inclusion of any data, evaluations, or other materials pertinent to the preparation of the EIS. USACE will make the final determination on the inclusion or deletion of any material in the EIS. CPRA will be permitted to comment on their purpose and need for the Proposed Action, the Proposed Action, and the technical and economic feasibility of alternatives to the Proposed Action: however, USACE will not provide CPRA with opportunity to review or comment on the environmental effects analysis or impact conclusions included within the document independent of a public comment period.

(6) Ex-parte communication refers to exchanges between CPRA and the TPC which are not otherwise disclosed, authorized or previously revealed to USACE. Ex-parte communications can be written or oral, are off-the-record, and deal with the merits of the EIS and the Proposed Action. Ex-parte communications between CPRA, non-governmental entities (e.g., NGOs, members of the public, industry stakeholders) and the TPC are strictly prohibited. If an ex-parte communication occurs, the TPC shall immediately report the ex-parte communication in writing to USACE.

B. The EIS SOW Deliverable Review Process:

The following process shall be followed for all draft and final documents, deliverables, work products, including but not limited to, agendas, minutes, notices, meeting and review plans, scoping reports, schedules, public and other notices, appendices, technical reports, supporting documents, and other publications, materials, and findings prepared by or on behalf of the TPC and prior to the finalization, approval and release of any document by USACE.

(1) The TPC must submit all draft and final documents, deliverables, work products, including but not limited to, agendas, minutes, notices, meeting and review plans, scoping reports, schedules, public and other notices, appendices, technical reports, supporting documents, and other publications, materials, and findings prepared by or on behalf of the TPC directly to USACE without first filtering the information through others, specifically including but not limited to CPRA and cooperating agencies.

(2) The TPC shall revise all draft and final documents as necessary from USACE's independent review and comment and submit the revised draft documents to USACE. After receiving written approval and authorization to release from USACE, the TPC shall submit the revised draft or final document to CPRA and cooperating agencies, for review and comment.

(3) CPRA and the cooperating agencies shall have a reasonable time based on the scope and complexity of the document and the comments and revisions to provide USACE with written comments and proposed revisions. The comment period will be established by USACE prior to the release of the draft or final document, including the means and methods of comment submissions and the comment deadline. Comments

and revisions not provided in writing will not be addressed or considered.

(4) Upon expiration of the comment period, the TPC and USACE shall evaluate the written comments received and the TPC, under the direction of USACE, shall draft proposed responses and/or identify issues with any comment(s). The TPC, in coordination with USACE, shall schedule a meeting with USACE, CPRA and the cooperating agencies to discuss all comments and attempt to resolve any issues.

(5) Following the meeting, the TPC in consultation with USACE, shall revise the draft or final document and submit the revised draft or final document to USACE.

ARTICLE VI - DOCUMENTS AND DELIVERABLES CREATED IN THE DELIBERATIVE PROCESS AND THE PREPARATION OF THE FINAL EIS

A. Public Disclosure of Documents and Materials:

The Parties to this MOU acknowledge that there will be some notes, drafts, and other deliberative documents produced during the course of drafting the EIS and related NEPA documents that are exempt from public disclosure under the Freedom of Information Act (FOIA). Generally, during the drafting of an EIS, the USACE has exercised its deliberative process exemption pursuant to 5 U.S.C. § 552(b)(5) for, but not limited to, the following documents: preliminary draft EIS chapters, comments to preliminary draft EIS chapters, draft documents relating to ESA consultation, and correspondences regarding ESA consultations. USACE will be responsible for responding to all public information requests pursuant to the FOIA and to the extent permitted by law, will maintain confidentiality of all information, documents, and materials used in the development of the EIS in accordance with FOIA, USACE policies, legal decisions, related regulations, and other applicable federal laws. If CPRA receives a public records request under Louisiana Public Records Act (La. R.S. 44:1, et seq.) for any documents covered under this paragraph, CPRA will provide notice to USACE within 10 business days of receipt of such request and CPRA may release any such documents in its possession unless USACE has asserted any and all applicable deliberative process exemptions within 20 business days of the mailing of such notice.

B. Ownership of Documents and Materials:

1. USACE shall have sole ownership rights, including copyright ownership, over any draft work product resulting from the preparation of the EIS, including but not limited to, all data, reports, information, manuals, and computer programs, or other written, recorded, photographic, or visual materials or other deliverables in draft form produced during the preparation of the EIS. Such documents and materials shall be deemed government works for purposes of the Copyright Act (See 17 U.S.C. 105).
2. USACE and the State shall have dual ownership rights and use over any documents and materials which are designated as final documents, materials, and deliverables, including any and all documents and materials attached to

or referenced by final deliverables. CPRA shall retain sole ownership and control over any CPRA Contract-required deliverables including but not limited to, progress monitoring reports, invoices, and payment-related documents and materials.

3. The Contractor shall not retain ownership interest in any work product, draft or final, resulting from this Contract.

ARTICLE VII - DISPUTE RESOLUTION

The parties agree that, in the event a dispute arises as to the performance of any function under this MOU, they will use their best efforts to resolve the dispute by informal means, including without limitation, mutually agreeable, non-binding alternative dispute resolution processes. If the alternative dispute resolution process has been utilized and has been exhausted, the parties may avail themselves of any remedies available at law or equity. The existence of a dispute shall not excuse the parties from performing their obligations under this MOU.

ARTICLE VIII - MODIFICATION AND AMENDMENT

In light of circumstances encountered during EIS development, modifications, amendments, and supplements to this MOU may be necessary. This MOU may be modified, amended, or supplemented in writing by mutual agreement of all three parties.

ARTICLE IX - NON-FUND-OBLIGATING DOCUMENT

This instrument is neither a fiscal nor a funds-obligation document. Any endeavor involving reimbursement or contribution of funds between the parties will be handled in accordance with applicable laws, regulations, and procedures including those for federal government procurement and printing. Such endeavors will be outlined in separate agreement(s) that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for non-competitive award to the cooperator of any contract or other agreement.

ARTICLE X - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the parties each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XI - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

ARTICLE XII – OBLIGATIONS OF FUTURE APPROPRIATIONS

The CPRA intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Louisiana where creating such an obligation would be inconsistent with Article 3, Section 16(A) of the 1974 Constitution of the State of Louisiana, as applicable.

ARTICLE XIII- EFFECT OF AGREEMENT

This MOU does not in any manner affect statutory authorities and responsibilities of the signatory parties. This MOU is not intended, nor may it be relied upon, to create rights in extrinsic persons or entities, enforceable in litigation with the United States, the State of Louisiana, or any party hereto.

ARTICLE XIV - EFFECTIVE DATE.

This MOU shall become valid only when signed by all parties. The effective date for this MOU shall be the date it is signed by the USACE, District Engineer for the New Orleans District.

ARTICLE XV – TERMINATION

A. This MOU may be terminated prior to expiration with the written consent of all three parties. Each party may initiate termination upon 30 calendar day's written notice to the other parties. During the intervening 30 calendar days, the parties agree to actively attempt to resolve any outstanding disputes or disagreements.

B. In the event this MOU is terminated and CPRA withdraws its Applications for the Proposed Action, USACE shall be under no obligation to initiate preparation of the EIS for the Proposed Action or to take any other action regarding NEPA and all other applicable Federal laws and regulations. CPRA understands that withdrawal of any Application or proposal by CPRA for the Proposed Action will end the NEPA process and in such event, CPRA will be responsible for costs incurred by the TPC in terminating the NEPA process.

C. In the event of termination, the TPC shall deliver to USACE and to CPRA, all non-proprietary and non-confidential documentation developed by or in possession of the TPC

in paper or electronic format. In addition, CPRA shall require the TPC to submit to USACE in paper or electronic format, the environmental work and analyses (i.e. field data, reports, GIS data etc.) done by the TPC prior to termination of the MOU and CPRA Contract.

D. USACE can recommend termination of this MOU and the CPRA Contract to CPRA, if the TPC, or any of its subcontractors: (a) Fails to commit sufficient resources for timely completion; (b) Fails or refuses to complete work tasks as specified by the MOU, SOW, or in the CPRA Contract; or (c) Fails to identify any pre-existing or new OCI(s).

E. Any recommendation by USACE to CPRA for contract termination must be made in writing with a copy provided to the TPC. In the event that the CPRA Contract is terminated by CPRA, CPRA will submit a recommendation to USACE on execution of a new contract with another third party contractor. However, CPRA must solicit and select a new third party contractor in accordance with Louisiana public bid law.

F. In the event of a termination prior to complete performance of the CPRA Contract and the completion of the entire SOW, the TPC will immediately transfer all Administrative Record materials and interim documents to USACE. If USACE has concerns related to performance of the TPC, USACE will submit those concerns in writing to CPRA for resolution. Any dispute resolution and termination of the CPRA Contract shall be made in accordance with the terms and conditions contained therein.

IN WITNESS WHEREOF, the parties have executed this MOU, which shall become effective upon the date it is signed by the District Engineer.

**THE U.S. ARMY CORPS OF ENGINEERS
NEW ORLEANS DISTRICT**

**COASTAL PROTECTION AND
RESTORATION AUTHORITY**

BY: _____

BY:

MICHAEL N. CLANCY
Colonel, U.S. Army
District Engineer

MICHAEL R. ELLIS
Executive Director

DATE: _____

DATE:

[THIRD PARTY CONTRACTOR]

BY: _____

[Printed Name]

Title: _____

Date: _____

ATTACHMENT "A"

SCOPE OF WORK

ATTACHMENT "B"

TPC EXECUTED ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION

EXHIBIT C ORGANIZATIONAL CONFLICTS OF INTEREST

All prospective third party contractors submitting proposals (Proposers) must submit as part of their proposal, a Proposer's Organizational Conflicts of Interest Disclosure Certification (OCI Disclosure Certification), in which the Proposer specifies, consistent with NEPA regulations, that they have no financial or other interest in the outcome of the Preparation of the Environmental Impact Statement (EIS) for CPRA's Mid-Barataria Sediment Diversion (Proposed Action), which subject of the Scope of Work for this solicitation. An Organizational Conflict of Interest (OCI) exists when the nature of the work to be performed may, without some restriction on future activities:

a) result in an unfair competitive advantage to a contractor; or

b) impair the contractor's objectivity in performing the CPRA contract work (the preparation of an EIS for the Proposed Action) which is the subject of this solicitation.

OCIs may exist where, in the opinion of USACE, the third-party contractor, its affiliates, and/or its key personnel have a past, present, or ongoing financial interest in the work to be covered by this third-party contract, or have an ongoing relationship with any entity or affiliate connected to the preparation of the EIS. The term "affiliates" means business concerns which are affiliates of each other when one concern or individual controls or has the power to control another, either directly or indirectly, or when a third party controls or has the power to control both. For example, an OCI may exist if the contractor:

a.) has been involved with CPRA in the preparation of the EIS or any actions connected with the preparation of the EIS before it is proposed to USACE, or while the final EIS is pending before USACE prior to the issuance of a Record of Decision; and/or

b.) has an ongoing relationship with the CPRA or any of the CPRA's affiliates; and/or

c.) would be called on to review its own prior work; and/or

d.) has a financial or other interest in the outcome of USACE's decision in either denying or issuing a permit for the Proposed Action (pursuant to one of the USACE regulatory authorities, i.e., Section 10/404 and/or Section 408) which is the subject of the EIS. The Council on Environmental Quality (CEQ) Regulations defines the term "financial or other interest" in the outcome "broadly to cover any known benefits other than general enhancement of professional reputation." *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (1981).

The executed OCI Disclosure Certification must be accompanied by the additional referenced statements explaining in detail the internal processes undertaken by the Proposer to conduct its internal OCI inquiry and review. Further, the OCI Disclosure

Certification should also be accompanied by a list of all entities, or affiliates thereof, that are connected to the proposed preparation of the EIS ("connected entities") with which the Proposer or its subcontractors have had a relationship (e.g., financial, contractual, personal, or organizational relationships, including any ownership interests) or are planning to have a relationship in the future concurrent with this Scope of Work, if any. The list must describe the nature of each such relationship; the period of the relationship; and the extent of the relationship (such as the value of financial interest of work, or the percent of total holdings or total work, etc.). It must also indicate any possible future financial and work transactions that may result from these relationships. Proposers must state whether or not they believe that the relationships detailed on the list are, or may be, an OCI, real or reasonably perceived, and if so, to what extent. If such a potential OCI is found, a detailed conflict mitigation plan to address and resolve the OCI should be included in the proposal. Any conflict mitigation plan proposed by the Proposer should describe the mechanism(s) to be used to minimize and/or appropriately isolate the effects of any subcontractors must follow the same procedures as above, including submitting an OCI Disclosure Certification and mitigation plan to resolve any real or reasonably perceived OCIs.

It is the policy of USACE to identify and avoid, or to mitigate, an OCI before concurring in the selection of a third party contractor. USACE will consider whether there are conflicting roles (including potential financial involvement) which might bias a Proposer's judgment in relation to its work for USACE, and whether the Proposer may be given an unfair competitive advantage. If the conflict cannot be resolved through a mitigation plan, the Proposer will be ineligible for further consideration prior to the evaluation of the responses to the RFP. USACE will evaluate the OCI Disclosure Certification and accompanying materials, including any disclosed potential OCI and related conflict mitigation plans, of any Proposers (and their subcontractors) that may be considered for provisional selection. USACE may seek additional information from the Proposer, or otherwise require changes or supplements to the OCI Disclosure Certification(s) and accompanying materials, in order to make an initial determination as to whether the Proposer and its subcontractors are capable of impartially performing the environmental services required under the contract.

The third-party contractor will also have a continuing obligation to identify any OCI, real or reasonably perceived, that may arise. An OCI may arise for any number of reasons, including changes in corporate identity (including changes in affiliation, structure, or ownership), changes to the contract, or offers of new work. If during the performance of its work the third-party contractor contemplates, discovers, or develops (whether or not by its own actions), a relationship (e.g., a financial, contractual, personal, or organizational relationship, including any ownership interest), with any connected entities, the third-party contractor must notify USACE and, if deemed necessary by USACE, develop a conflict mitigation plan. 40 C.F.R. Section 1506.5(c) prohibits a person or entity entering into a contract with a federal agency to prepare an EIS when that party has at that time and during the life of the contract, pecuniary or other interests in the outcomes of the proposal. Thus, a firm which has an agreement to prepare an EIS for a Proposed Action cannot, at the same time, have an agreement to perform the construction, nor could it be the owner of the construction site. However, if there are no

such separate interests or arrangements, and if the contract for EIS preparation does not contain any incentive clauses or guarantees of any future work on the Proposed Action, it is doubtful that an inherent conflict of interest will exist." *Guidance Regarding NEPA Regulations*, 48 Fed. Reg. 34,263, 34,266 (CEQ 1983).

OCI Questionnaire

If you answer "Yes" to any of the questions below, you must complete the OCI Disclosure Statement.

1. Will you (or your organization) be involved in the preparation of the Environmental Impact Statement ("EIS") which is identified in the Scope of Work for which this solicitation is seeking a third party contractor, in any manner other than preparing the EIS, if selected?

No.

Yes. The portion of the proposed Scope of Work; the proposed hours and dollar value; and the type of involvement are fully disclosed on the attached pages.

2. What is (are) the major type(s) of business conducted by you (or your organization)? Please reply on the attached pages.

3. Do you (or your organization) have any affiliates? All questions in the questionnaire apply to affiliates as well. Whenever possible, each affiliate should submit a separate questionnaire. However, in the event each affiliate does not submit a separate questionnaire (for instance, to avoid completing a large number of questionnaires), this questionnaire must incorporate information regarding all affiliates.

No.

Yes. The name and a description of the major type(s) of business that each affiliate conducts are disclosed on the attached pages.

4. Will any of the following be involved in the Scope of Work for which this solicitation is seeking a third party contractor to prepare an EIS: (a) any entities owned or represented by you (or your organization); (b) your organization's Chief Executive or any of its directors; or (c) any affiliates?

No.

Yes. A full disclosure and discussion is given in the attached pages.

5. Within the past 3 years have you (or your organization) had a direct or indirect

relationship (financial, organizational, contractual or otherwise) with any business entity that could be affected by the preparation of the EIS for the Proposed Action under this solicitation?

No.

Yes. List the business entity(ies) showing the nature of your relationship (including the dates of the relationship, and the dollar value of any financial relationship) and how it would be affected by the preparation of the EIS under this solicitation for the Proposed Action.

6. What percentage of your total income for the current and preceding fiscal years resulted from arrangements with any of the entities identified in Question 5 above?

% For the current fiscal year –from // to // .

% For the preceding fiscal year – from // to // .

% For the second preceding fiscal year – from / / to / / .

7. Do you (or your organization) currently have or have you had during the last 6 years any arrangements (for example, contracts and cooperative agreements) awarded, administered, or funded -- wholly or partly -- by the USACE or any other Federal agency which relate to the Scope of Work to be performed in this solicitation?

No.

Yes. A full disclosure and discussion is given on the attached pages.

8. Do you (or your organization) have or have you ever had any contracts, agreements, special clauses, or other arrangements which could prohibit you (or your organization) from proposing work to be performed in this solicitation or any portion thereof?

No.

Yes. A full disclosure and discussion is given on the attached pages.

9. Do you (or your organization) have any involvement with or interest (direct or indirect) in technologies which are or may be subjects of the contract, or which may be substitutable for such technologies?

No.

Yes. A full disclosure and discussion is given on the attached pages.

10. Could you (or your organization), in either your private or Federal Government business pursuits, find use for information acquired in the performance of the Scope of Work under this solicitation; such as: data generated under the contract? (b) Information concerning plans and programs? (c) Confidential and proprietary data of others?

No.

Yes. A full disclosure and discussion is given on the attached pages.

11. In performing the Scope of Work sought by this solicitation, would you (or your organization) evaluate or inspect your own services or products, or the services or products of any other entity that has a relationship (such as client, organizational, financial, or other) with you (or your organization)? This could include evaluating or inspecting a competitor's goods and services.

No.

Yes. A full disclosure and discussion is given on the attached pages.

12. To avoid what you perceive as a possible OCI, do you (or your organization) propose to: exclude portions of the Scope of Work sought by this solicitation; employ special clauses; or take other measures?

No.

Yes. A full discussion is given on the attached pages.

I hereby certify that I have authority to represent my organization and that the facts and representations presented on the pages of this questionnaire and on the pages of the attachment(s) to it and my OCI Disclosure Certification are accurate and complete.

Signature: _____

Printed Name: _____

Title:

Organization: _____

Date: _____

**COMPLETE EITHER THE REPRESENTATION CERTIFICATION OR
THE DISCLOSURE CERTIFICATION -- NOT BOTH**

OCI Representation Certification
(Proposer has no OCI-related information to report)

After being duly sworn, I _____, certify that as (title/position) and the authorized agent and representative of (name of third party contractor) (Organization), I have the express authority to execute this Certification on behalf of the Organization. I hereby certify [as a representative of my Organization], that, to the best of my knowledge and belief, no facts exist relevant to any past, present or currently planned interest or activity (financial, contractual, personal, Organizational or otherwise) that relate to the preparation of the Environmental Impact Statement for the Proposed Action which is the subject of the Scope of Work sought by this solicitation; and bear on whether I have [or my Organization and any of its affiliates has] a possible conflict of interest with respect to: (1) being able to render impartial, technically sound, and objective assistance or advice; or (2) being given an unfair competitive advantage. **I have also provided a detailed description of the internal processes undertaken to conduct our internal OCI review for the purposes of ensuring there are no such facts on the attached page(s).** I am submitting this Certification under penalty of perjury on behalf of myself, individually, and the Organization.

Signature: _____

Printed Name: _____

Title:

Organization: _____

Date: _____

Parish/County of: _____

State of: _____

Signed and sworn to before me this _____ day of _____,
20____, by _____.

(Notary Seal) Notary Public

Printed Name: _____

Title _____

Residing at: _____

My Commission Expires: _____

OCI Disclosure Certification
(Proposer has OCI-related information to report)

After being duly sworn, I _____, certify that as (title/position) and the authorized agent and representative of (name of third party contractor) (Organization), I have the express authority to execute this Certification on behalf of the Organization. I hereby certify [or as a representative of my Organization] that, to the best of my knowledge and belief, all relevant facts -- concerning past, present or currently planned interests or activities (financial, contractual, Organizational or otherwise) that relate to the proposed work and bear on whether I have [or the Organization has] a possible conflict of interest with respect to: (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage are fully disclosed on the attached page(s).** I am submitting this Certification under penalty of perjury on behalf of myself, individually, and the Organization.

Signature: _____

Printed Name: _____

Title: _____

Organization: _____

Date: _____

Parish/County of: _____

State of: _____

Signed and sworn to before me this _____ day of _____, 20____, by _____.

(Notary Seal) Notary Public

Printed Name: _____

Title _____

Residing at: _____

My Commission Expires: _____

**** Format the attachment as follows:**

- Divide the following data into four parts: organizational, contractual, financial, and other;
- The company, agency or organization in which there is a past, present, or currently planned interest or activity (financial, contractual, organizational or otherwise);
- Brief description of relationship;
- Period of relationship;
- Extent of relationship (e.g., value of financial interest of work; percent of total holdings, total work, etc.); and,
- Mitigation plan, as necessary.

ATTACHMENT "C"

TPC ON-GOING ORGANIZATIONAL CONFLICT OF INTEREST OBLIGATIONS

THIRD PARTY CONTRACTOR’S ONGOING OCI OBLIGATIONS CERTIFICATION

After being duly sworn, I _____, certify that as (title/position) and the authorized agent and representative of (name of third party contractor) (Organization), I have the express authority to execute this Certification on behalf of the Organization. I recognize that Organizational Conflicts of Interest (OCI) are an ongoing obligation of the Organization pursuant to the Council of Environmental Quality Regulations at 40 C.F.R. 1506.5 and the Coastal Protection and Restoration Authority (CPRA) Contract No. _____ (CPRA Contract) that my Organization was awarded for the preparation of an Environmental Impact Statement (EIS) for the proposed Mid-Barateria Sediment Diversion Project of CPRA.

On behalf of the Organization, I shall ensure that during the period of the CPRA Contract, the Organization shall continue to regularly make diligent inquiries regarding the finances and work of the Organization, the employees of the Organization, and the subcontractors of the Organization who perform work under the CPRA Contract, to ensure that no person or entity working on the CPRA Contract and/or the EIS has any financial or other interest in the outcome of the EIS or the CPRA Contract, and that the performance of the work pursuant to the CPRA Contract will not result in an unfair complete advantage to the Organization or impair the Organization’s objectivity in performing the work of the CPRA Contract. Should I, or the Organization, become aware of any real or reasonably perceived potential OCIs during the performance of the CPRA Contract, either I or another authorized agent or representative of the Organization, will advise CPRA, the CPRA Board, and USACE in writing of the actual or potential OCI, and the Organization shall propose a plan for mitigation or explain why none is needed. **I have provided a detailed description of the internal controls for ensuring an OCI does not arise during the preparation of the EIS and the CPRA Contract period on the attached page(s).** I am submitting this Certification under penalty of perjury on behalf of myself, individually, and the Organization.

Signature: _____

Printed Name: _____

Title: _____

Organization: _____

Date: _____

Parish/County of: _____

State of: _____

Signed and sworn to before me this _____ day of _____,
20____, by _____.

(Notary Seal) Notary Public

Printed Name: _____

Title _____

Residing at: _____

My Commission Expires: _____

ATTACHMENT "D"

TPC EIS PROJECT TEAM ROSTER WITH CONTACT INFORMATION

Attachment 7: Required Rate Schedule

<u>Personnel</u>	<u>Personnel Rate</u>
Principal	\$ /hr
Senior Project Manager	\$ /hr
Project Manager	\$ /hr
Senior Scientist	\$ /hr
Project Scientist	\$ /hr
Staff Scientist	\$ /hr
Senior Engineer	\$ /hr
Project Engineer	\$ /hr
Staff Engineer	\$ /hr
Scientific & Technical Editor/Writer	\$ /hr
Geographic Information Systems Analyst	\$ /hr
Science Outreach Communicator	\$ /hr
Administrative/Clerical	\$ /hr

The Proposer shall provide an hourly rate (a numerical value) for **each** of the staff classifications listed in the Required Rate Schedule.

Personnel Classification Descriptions:

Principal – Duties include, but are not limited to, responsibility for overall quality management of effort performed under this contract; resolve potential contractual concerns communicated by CPRA.

Senior Project Manager – Duties include, but are not limited to, responsibility for the overall direction, coordination, implementation, execution, control and completion of specific larger, more complex tasks within the authorized scope, schedule and budget.

Project Manager – Duties include, but are not limited to, responsibility for the overall direction, coordination, implementation, execution, control and completion of specific tasks within the authorized scope, schedule and budget.

Senior Scientist – Duties include, but are not limited to, providing senior level environmental science, science, or specialist consulting services.

Project Scientist – Duties include, but are not limited to, providing environmental science, science, or specialist consulting services.

Staff Scientist – Duties include, but are not limited to, performing assigned environmental science, science, or

specialist consulting services tasks.

Senior Engineer – Duties include, but are not limited to, providing senior level engineering consulting services.

Project Engineer – Duties include, but are not limited to, providing engineering consulting services.

Staff Engineer – Duties include, but are not limited to, performing assigned engineering consulting services.

Scientific & Technical Writer – Duties include, but are not limited to, the preparation of a wide range of written material (technical reports, presentations, brochures, etc.) for dissemination to technical and non-technical audiences.

Geographic Information Systems Analyst – Duties include, but are not limited to, providing guidance and services in geographic information systems and providing technical expertise on available technologies to improve business efficiency and productivity.

Science Outreach Communicator - Duties include, but are not limited to, the translation of scientific information into verbal and written communication appropriate for various stakeholder groups.

Administrative/Clerical – Duties include, but are not limited to, providing administrative and clerical support to ensure the efficient execution of the entire effort performed under this contract.