

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT
AND
THE COASTAL PROTECTION AND RESTORATION AUTHORITY
AND
GEC, Inc.
FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into this 15 day of February, 2017, 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, GEC, Inc. (hereinafter "TPC") represented by R. Scott Knaus.

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 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 CEQ'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. CEMVN 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 CEMVN 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 CEMVN 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 ten (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 CEMVN 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 CEMVN 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 United States Army Corps of Engineers, 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 United States Army Corps of Engineers, 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 thirty (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: R. Scott Knaus
GEC, Inc.
8282 Goodwood Boulevard
Baton Rouge, LA 70806

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 ten (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 thirty (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

NE [Redacted]
BY: [Redacted]
Colonel, U.S. Army
District Engineer

DATE: 26 Jan 17

COASTAL PROTECTION AND RESTORATION AUTHORITY

BY: [Redacted]
MICHAEL R. ELLIS
Executive Director

DATE: 1/6/17

[THIRD PARTY CONTRACTOR]

BY: [Redacted]
R. Scott Khaus

Title: Sr. Vice President

Date: 1/11/17

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 (“CEMVN”) 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.

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.

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 US Army Corps of Engineers 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 ten (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 two (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 ten (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 thirty (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 five 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 CEMVN 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 USACEs 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

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

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?

0.0 % For the current fiscal year – from / / to / / .

0.0 % For the preceding fiscal year – from / / to / / .

0.0 % 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: R. Scott Knaus

Printed Name: R. Scott Knaus

Title: Senior Vice President

Organization: G.E.C., Inc.

Date: 11/15/2016

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

After being duly sworn, I R. Scott Knaus, certify that as Senior Vice President and the authorized agent and representative of G.E.C., Inc. (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: [Redacted Signature]

Printed Name: R. Scott Knaus

Title: Senior Vice President

Organization: G.E.C., Inc.

Date: November 15, 2016

Parish/County of East Baton Rouge

State of: Louisiana

Signed and sworn to before me this 16 day of November, 2016,
by [Redacted Signature]

(Notary Seal) Notary Public

Printed Name: MARSHA EVANS
 Notary Public - Louisiana
Livingston Parish
Notary ID 69211

Title: _____

Residing at: Livingston Parish

My Commission Expires: does not expire

OCI DISCLOSURE INFORMATION

As instructed in the Mid-Barataria Sediment Diversion Third-Party EIS RFP, G.E.C., Inc. (GEC) is submitting the following information related to Organizational Conflicts of Interest (OCI) Questionnaire. The information in the GEC questionnaire submitted applies to all GEC affiliates.

Major Types of Business conducted by GEC

- Transportation-related Civil, Structural and Electrical Engineering
- Environmental Sciences and Engineering
- Coastal Restoration and Engineering

Names and Major Types of Business of GEC affiliates

- Noble Consultants, Inc.
 - Coastal Engineering and Planning
- Coastal Technology Corporation
 - Coastal Engineering and Planning
- Construction Optimization Engineers, Inc.
 - Construction Optimization & Inspection
- 9357 Interline, LLC
 - Real Estate Leasing
- F & A Support, Inc.
 - Financing

Neither GEC nor any of **GEC's Affiliates** have an apparent Conflict of Interest with the production of the Mid-Barataria Sediment Diversion Third-Party EIS or the CPRA project. Below are the proposed subcontractors on the GEC team and statements from them with any apparent Conflicts of Interest.

Applied Coastal - has no apparent conflicts of interest relative to the above-referenced Project (MBSD EIS).

Chenier - does not have any apparent conflicts of interest regarding the MBSD EIS.

Dynamic Solutions - has no apparent conflict of interest on the Mid-Barataria Sediment Diversion Project.

Edge - Edge certifies that, to the best of their 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 proposed work; and bear on whether I have (or the 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.

Fields Environmental Consulting - has no apparent conflict of interest on the Mid-Barataria Sediment Diversion Project.

Geo-Acuity - has no apparent Conflicts of Interest with the MBSD EIS or CPRA Project

Industrial Economics - has no apparent conflict of interest on the Mid-Barataria Sediment Diversion Project.

JESCO - has no apparent conflict of interest on the Mid-Barataria Sediment Diversion Project.

McBade - Ms. Pamela Gonzales-Granger, owner of McBade Engineering, was part of the thirty-percent design team for the MBSD Project with a previous employer. More recently, she was part of the CH2M Program Management Team for the MBSD Project contracted to CPRA. However, the contract for her services expired in June, 2016 and she has not worked on the effort since that time. Additionally, should she be asked to provide services specific to the Program Management role on the MBSD Project, and McBade is part of the GEC Team for the MBSD Third-Party EIS, such request would be declined.

RPI - Although not considered a conflict, RPI worked for NOAA and DOI/USFWS on the DWH PDARP/PEIS, however, all work on this was setting the framework for future specific restoration actions, but with no involvement with anything specific to MBSD. RPI does not think this would bias them towards any specific projects.

S&ME - S&ME employees Gerald Hauske, Angela Love, and Venu Tammineni worked on the thirty-percent design team for the MBSD Project in various capacities with previous employers. None of them have worked on the project since leaving those employers. Additionally, S&ME is on the CH2M team for the CPRA Environmental Services contract awarded in 2016. We have not provided any services to them under this contract. Should we be asked to provide services specific to their Program Management role on the MBSD Project, and we are part of the GEC Team for the MBSD Third-Party EIS, we would decline services to CH2M.

SWCA - has no apparent conflict of interest on the Mid-Barataria Sediment Diversion Project.

THIRD-PARTY CONTRACTOR'S ONGOING OCI OBLIGATIONS CERTIFICATION

After being duly sworn, I R. Scott Knaus, certify that as Senior Vice President and the authorized agent and representative of G.E.C., Inc. (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. 4400010455 (CPRA Contract) that my Organization was awarded for the preparation of an Environmental Impact Statement (EIS) for the proposed Mid-Barataria 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 competitive 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: [Redacted Signature]

Printed Name: R. Scott Knaus

Title: Senior Vice President

Organization: G.E.C., Inc.

Date: November 15, 2016

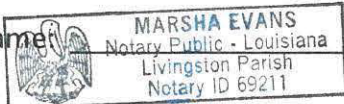
Parish/County of East Baton Rouge

State of: Louisiana

Signed and sworn to before me this 16 day of November, 2016,
by [REDACTED]

(Notary Seal) Notary Public

Printed Name MARSHA EVANS



Title _____

Residing at: Livingston Parish

My Commission Expires: does not expire

INTERNAL CONTROLS FOR OCI COMPLIANCE

The following details how G.E.C., Inc. will ensure that during the period of the CPRA contract, no person or entity working on the CPRA contract and or the EIS has any financial or other interest in the outcome of the contract or EIS, and that the work pursuant to the CPRA contract will not result in any unfair competitive advantage to GEC or impair GEC's objectivity in performing the work of the CPRA contract.

1. All GEC affiliates are headquartered in and run from the same location as GEC. GEC and its affiliates have common Board and marketing meetings, so all information is shared and presented at those times. Mr. Scott Knaus will monitor the meetings of GEC and its affiliates (and minutes if he cannot attend) to be sure that no future initiatives that could be considered a conflict are undertaken. Similarly, Mr. Knaus attends all Corporate Status and Staff Meetings, so he will be able to monitor any items that arise which could be considered a conflict.

2. GEC will conduct recurring MBSD EIS Management Team meetings with all appropriate subcontractors in attendance. The agenda of each meeting will include OCI, and each organization will be asked to go on record as having met the contract requirements for OCI.

3. As part of their regularly occurring responsibilities, GEC's MBSD EIS Management Team will:

- a. Identify any OCI issues on each TO proposal request
- b. Develop an appropriate OCI mitigation approach if necessary
- c. Coordinate the proposed OCI mitigation requirements with the Government Contracting Officer
- d. Ensure the coordinated OCI mitigation procedures are included in the TO
- e. On a regular basis, monitor effectiveness of OCI controls in use
- f. Maintain a list of all TOMP's or other tasking activities requiring additional OCI
- g. sensitive information controls, if any
- h. Investigate any OCI issues or concerns
- i. Recommend any additional OCI mitigation measures, when applicable, to resolve specific OCI issues
- j. Evaluate the GEC MBSD EIS team quality of performance for task orders where team members have an actual or potential OCI issue and redirect or reassign work to achieve performance in accordance with the contract.
- k. Ensure documentation is sufficient to notify Contracting Officer upon discovery of any real or potential OCI conflict.

3. GEC will conduct in-house OCI training to ensure that all employees are aware of the potential for OCI conflicts, reporting requirements, and mitigation. OCI training and awareness will be conducted for all new employees and proposal teams, including subcontractors. When warranted, especially for proprietary knowledge, employees and subcontractors will be required to sign non-disclosure agreements.

5. GEC will fulfil its obligation to identify any OCI, real or reasonably perceived, that may arise. These include changes in corporate identity, changes to the contract, new work or new relationships with connected entities as detailed in the RFP. If any of these conditions arise, GEC will notify USACE and if necessary, develop a conflict mitigation plan.

4. In the case where a GEC affiliate or subcontractor may be in a potential OCI conflict with other projects, clients or company, firewalls will be established to ensure that there is no cross-over between the potentially conflicted organizations.

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

1. INTRODUCTION.

Gulf Engineers & Consultants, Inc. (the “third party contractor” or “TPC”), has prepared the below-listed modifications to the SCOPE OF WORK FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT REQUIRED FOR DEPARTMENT OF THE ARMY PERMITS (“SOW”) executed by the TPC and The Coastal Protection and Restoration Authority Board of Louisiana, through the Coastal Protection and Restoration Authority (“CPRA”) on February 15, 2017.

This Addendum incorporates modifications needed to account for deliverables and work processes which have occurred since the Notice to Proceed (“NTP”) was issued but that were not included in the February 15, 2017 SOW, in accordance with Section 7.6.4. Additional work not included in the February 15, 2017 SOW was performed primarily to accommodate both the Environmental Impact Statement (“EIS”) needs of cooperating agencies working separately through the *Deepwater Horizon* Oil Spill (“DWH”) Natural Resource Damage Assessment (“NRDA”) process under the Oil Pollution Act (“OPA”) (as represented by the Trustee Implementation Group [“TIG”]) and increased effort associated with the Proposed Action’s placement on the Permitting Dashboard for Federal Infrastructure Projects in accordance with the Fixing America’s Surface Transportation Act (“FAST-41”).

All language and provisions not modified hereunder remain the same and in force. The February 15, 2017 SOW as modified by this Addendum is subject to future modifications.

3. GENERAL INFORMATION ON THE PROPOSED ACTION.

3.1 Purpose and Need of the Proposed Action.

- (1) Purpose. and (2) Need. CPRA, together with the LA TIG, refined CPRA’s statement of Purpose and Need, and submitted an updated permit application, for the project as follows:

Consistent with the Louisiana Trustee Implementation Group’s Strategic Restoration Plan and Environmental Assessment #3 and the Louisiana Coastal Master Plan, the purpose is to restore for injuries caused by the Deepwater Horizon oil spill by implementing a large-scale sediment diversion in the Barataria Basin that will reconnect and re-establish sustainable deltaic processes between the Mississippi River and the Barataria Basin through the delivery of sediment, freshwater, and nutrients to support the long-term viability of existing and planned coastal restoration efforts. The proposed

project is needed to help restore habitat and ecosystem services injured in the northern Gulf of Mexico as a result of the DWH oil spill.

7. DETAILED DESCRIPTION OF TASKS.

7.1 Preparation of Detailed EIS Schedule.

Task 1.2 Schedule Revisions. The TPC will work with USACE, EPA, NOAA, USFWS, USDA, members of the LA TIG, and CPRA (collectively referred to as the “UFT”) to revise the EIS Schedule in MS Project/P6 to account for FAST-41, Executive Order 13807¹, and the 25 Jan 2018 MOU between the State of Louisiana and the United States. Revisions to the Schedule may require the TPC to participate in bi-weekly Framework Development Team (“FDT”) meetings for purposes of preparing/updating a task list, including durations and dependencies, which will assist with Schedule development.

Task 1.3 Monthly Progress Report on Tasks and Schedule. The TPC shall provide a monthly report on progress on tasks and schedule. This update should be submitted electronically with the invoices.

7.3 Public Involvement Plan.

Task 3. Coordination on the PIP included the UFT.

7.3.4 Preparation of Public Notices for Public Scoping Meetings, Public Hearings and Filing of NEPA Documents. Drafts of the NOA for the DEIS and FEIS will be provided to the UFT for review and comment prior to issuance.

7.3.5 Public Scoping Meetings. Public Scoping Meetings incorporated the needs of the UFT.

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

Task 4. The TPC will maintain a SharePoint site accessible to USACE and the UFT to facilitate collaborative writing processes. The TPC has not, under the [insert date] SOW, and will not under this Addendum, maintain an EIS website since a Proposed Action website is independently maintained by USACE.

7.5 Data Gathering and Data Compilation.

¹ While Executive Order 13807 does not apply retroactively to the Proposed Action, the Parties to the 25 Jan 2018 MOU will use their best efforts to strive to meet the goals and objectives set forth therein.

Task 5. The TPC shall review any submittals by CPRA or cooperating agencies for accuracy, relevancy, and completeness and recommend to USACE whether such information should be included in the EIS. To the extent any submittals by CPRA or cooperating agencies, or the information contained therein, are used to support the analysis in the EIS, the information reviewed by the TPC shall be included in the documents gathered by the TPC for potential inclusion into the Administrative Record (see Task 7.20).

Task 5.1 Modeling. The TPC shall lead and participate in bi-weekly modeling interagency working group meetings to review and discuss any modeling data and information provided by CPRA. The TPC shall review any modeling data and information provided for accuracy, relevance, and completeness, and shall provide recommendations to USACE and the modeling working group as to information required from modeling efforts. The TPC may contact the Water Institute of the Gulf directly, provided CPRA and USACE are copied on any correspondence, to resolve outstanding model issues and improve the transparency, reporting, and understanding of the robustness of the proposed Delft 3D model for representing existing conditions in the Barataria Basin and modeling alternatives in the EIS. The TPC will track modeling issues and their resolution. The TPC shall work closely with Delft 3D modelers on any subsequent ecological modeling necessary for the EIS (such as CASM/EwE and/or HSI, if necessary), and any other modeling (such as ADCIRC) in coordination with cooperating agencies. USACE, as lead agency, will make final determinations as to the resolution of outstanding modeling issues.

7.6 Scoping Process and Scoping Report.

Task 6. Scoping Process and Scoping Report.

7.6.2.2 Meeting Plans. Scoping Meeting Plans incorporated the needs of the UFT.

7.6.3.2 Scoping Report Review Process. Review of the Scoping Report was coordinated with the UFT.

7.7 Preparation of Draft EIS Generally.

Task 7. The TPC will prepare the EIS using information contained in submittals provided by CPRA or cooperating agencies, if appropriate, after the TPC has independently reviewed the submittals for accuracy, relevancy, and completeness in accordance with Task 5.

Preparation of the EIS will include collaborative writing, via the SharePoint site established and maintained by the TPC, by members of the UFT and multiple revisions in accordance with agreed-upon UFT workflow processes as follows:

- TPC submits initial drafts of major deliverables to the UFT for collaborative writing (Version 1);

- TPC cleans up and revises to address comments/edits from collaborative writing (Version 2);
- Agency Face-to-Face Meeting, if needed, to discuss comments/edits from collaborative writing;
- TPC submits revised deliverable to UFT for review, comment, and edits (Version 2);
- TPC addresses UFT comments and revises (Version 3);
- TPC submits revised deliverable to UFT for fatal flaws review and USACE for final review and approval (Version 3);
- TPC revises as needed per fatal flaws review for inclusion in PDEIS.

Revisions to Chapter 1 of the EIS included an updated Purpose and Need, submitted as described in Section 3.1 to this Addendum.

Task 7.1 Annotated Table of Contents (TOC).

The TPC prepared (in coordination with the UFT), and may prepare for future sections, an annotated TOC to detail information that is to be presented in a particular Chapter in the EIS to assist with collaborative writing. The TPC will follow agreed-upon UFT workflow processes for reviews, revisions, and number of iterations.

Task 7.2 Style Guide.

The TPC developed a Writing Style Guide (by coordination with the UFT) for the EIS for the purpose of assisting the collaborative writing effort.

Task 7.3 Administrative and General Project Management.

The TPC will account for administrative and general project management activities not included under other task, including but not limited to: unscheduled meetings and phone calls; emails; and internal coordination amongst project staff members.

7.8 Development of Alternatives.

Task 8. The TPC shall lead and participate in bi-weekly alternatives analysis interagency working group meetings/conference calls as necessary to facilitate development of Chapter 2 of the EIS.

7.10 Identification and Analysis of Cumulative Impacts.

Task 10. The TPC shall lead and participate in bi-weekly cumulative impacts interagency working group meetings/conference calls as necessary to facilitate development of the cumulative impacts section of Chapter 4 of the EIS.

7.11 Mitigation Measures.

Task 11. The TPC shall review draft mitigation plans submitted by CPRA for accuracy, relevancy, and completeness. The TPC shall prepare a summary for inclusion in the EIS of any draft mitigation plans submitted by CPRA and approved by USACE.

7.12 Preparation of Supporting Technical Appendices.

Task 12. If CPRA submits any draft technical appendices, in lieu of those appendices being prepared by the TPC, the TPC shall review those draft technical appendices for accuracy, relevancy, and completeness. Review of any draft technical appendices submitted by CPRA may result in the TPC recommending to USACE that USACE concur with determinations submitted therein.

7.12.8. Commercial and Recreational Fisheries and Aquaculture Assessment. The TPC may be asked to perform field surveys/interviews to collect data to determine potential behavioral changes expected for analyses of impacts to commercial/recreational fishing and recreation/tourism. The methodology and scope will be coordinated with USACE, CPRA, and TIG.

7.12.9. Socioeconomic Analysis. The TPC may be asked to perform field surveys/interviews to collect data to determine potential behavioral changes expected for analyses of impacts to commercial/recreational fishing and recreation/tourism. The methodology and scope will be coordinated with USACE, CPRA, and TIG.

7.12.15. Navigation Study. The TPC will review for accuracy, relevancy, and completeness any Navigation Study submitted by CPRA, or shall, after coordination with USACE, prepare a Navigation Study for incorporation into the EIS.

7.12.16. Traffic Study. The TPC will review for accuracy, relevancy, and completeness any Traffic Study submitted by CPRA detailing potential traffic impacts to LA 23 and railroad realignment in accordance with Task 5, or shall, after coordination with USACE, prepare a Traffic Study for incorporation into the EIS.

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

Task 16.

7.16.1 Initial Section Reviews. Electronic drafts of each section of the EIS submitted to USACE shall also be submitted to the UFT for collaborative writing in accordance with Task 7. Workflow processes established by the UFT for collaborative writing and UFT review supersede those processes detailed in Task 16 of the February 15, 2017 SOW for initial section reviews, the PDEIS, and the PFEIS. Final production processes to USACE for distribution remain unchanged.

7.16.3.1 DEIS Notice of Availability (“NOA”). The Draft NOA developed by the TPC will be coordinated with the UFT.

7.16.3.2 DEIS Comment/Response Matrix. Comment responses will be coordinated with the UFT.

7.16.4 Conducting DEIS Public Hearing(s). Coordination of DEIS Public Hearings shall include the UFT.

7.16.5 Final EIS ("FEIS"). Before beginning procedures outlined in 7.16.5. in the February 15, 2017 SOW, the TPC will prepare a Preliminary FEIS incorporating responses to comments from the UFT, which will then be reviewed by the UFT as a "camera-ready" FEIS.

7.16.5.1 FEIS Notice of Availability. The NOA will be coordinated with the UFT.

7.16.5.2 Responses to FEIS Comments. Comments to the FEIS, if required, will be coordinated with the UFT.

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 and within a timeframe consistent with the CPP schedule. This meeting will also ensure that the Administrative Record is fully documented, and all affected parties are in agreement.

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.

7.19.2 Periodic Meetings with USACE. The language in the [insert date] SOW is superseded by the following: 7.19.2 Weekly Meetings with USACE. The TPC will participate in weekly internal meetings with USACE (via conference call if necessary), in order to maintain communication on EIS development issues, including, but not limited to final resolution of comments submitted by cooperating agencies or CPRA. These meetings will require meeting minutes on a case-by-case situation that could be incorporated into the weekly progress reports.

7.19.3 Monthly UFT Meetings. The TPC shall personally attend and participate in all monthly UFT meetings held in either New Orleans or Baton Rouge.

7.19.4 Other Meetings. The TPC will participate in future unscheduled or unknown meetings, conference calls, and/or webinars, as requested. This can include interagency meetings, unscheduled UFT meetings, working group meetings for the working groups mentioned in this Addendum or those that may be stood up in the future, and/or meetings with USACE and/or CPRA.

7.20 Administrative Record.

Task 20. Task 20 as described in the [insert date] SOW is superseded as follows:

The Administrative Record (“AR”) is a collection that consists of all documents and materials directly or indirectly considered by USACE in making the decision to grant or deny a Section 10/404 permit or Section 408 permission for the Proposed Action. The AR includes all data, information and analyses, whether generated by the agency or obtained from other sources, used in making the decision. 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 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 relied upon as part of making the decision; 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.

To support the preparation of the AR, the TPC should organize all data and information created or prepared as part of preparing the EIS and consultations for the Proposed Action. The TPC shall develop, manage, and maintain the data and information for the Proposed Action based on direction provided by USACE for the design, organization, indexing, preparation, and maintenance of the AR. The TPC should organize the data and information 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. All references cited in the EIS should be traceable to the AR prepared by USACE. The TPC shall maintain and keep up-to-date the organization and indexing of the data and information throughout the entire EIS development process; and should submit the index and a summary of the organized and indexed contents as a part of each end-of-month progress report.

All planning data, maps, files, reports, computer, audio or video tapes, and disks and other records shall be included in the data and material. 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.

Emails that contain relevant factual information, a substantive analysis, or that documents the USACE decision-making process are treated like any other document. 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 in the data and material. Emails that contain both relevant and non-relevant information **must** be included. For example, emails that contain relevant information to the decision-making process and personal comments about the author's weekend **must** be included.

Every Document collected as part of the data and material 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.

Data and information collected 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 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.

As part of preparing the AR, it is important to screen records collected under this Task 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 make 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 the document or material is withheld, it would continue to be identified as part of the data and information collected by the TPC.

In the event of a challenge to the legality or adequacy of the USACE compliance with NEPA with respect to the Proposed Action, 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.