



**REQUEST FOR COMPETITIVE SEALED PROPOSALS
FOR
BAYOU WATERWAYS DEBRIS REMOVAL PROJECT**

RFCSP No. 2021-01

Due Date: Monday, March 22, 2021 by 2:00 p.m.

Issued By:
Orange County Drainage District
8081 Old Highway 90
Orange, Texas 77630
(409) 745-3225



REQUEST FOR COMPETITIVE SEALED PROPOSALS FOR BAYOU WATERWAYS DEBRIS REMOVAL PROJECT

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I. NOTICE REQUESTING COMPETITIVE SEALED PROPOSALS

Prospective Contractors (“Offerors”) are hereby notified that the Orange County Drainage District (“District”) located in Orange County, Texas, will receive competitive sealed proposals for the **Bayou Waterways Debris Removal Project** (the “Project”). The successful Offeror(s) shall furnish all labor, material, transportation, tools, supplies, equipment, and appurtenances for the satisfactory completion of the Project.

Parties interested in submitting a competitive sealed proposal to provide services for this Project may find the required information for this Project within this document, which is located on the District’s website at [https://www.ocddtx.com/Bayou Waterways Debris Removal RFCSP 2021_01](https://www.ocddtx.com/Bayou_Waterways_Debris_Removal_RFCSP_2021_01) and also online from CIVCAST, www.civcastusa.com (search “Bayou Waterways Debris Removal Project”). Offerors utilizing CIVCAST must register on that website in order to view and/or download specifications, updates and other important information related to the Project. There is no charge to view or download documents from the CIVCAST website.

Competitive Sealed Proposals for this Project must be received by **2:00 PM on Monday, March 22, 2021**, at the District’s Administration Building located at 8081 Old Hwy 90, Orange, Texas, 77630, at which time and place such proposals will be publicly opened.

If you have any questions regarding this Request for Competitive Sealed Proposals, or are in doubt as to the meaning of any part of these documents, or finds discrepancies in, or omissions from, any of the documents contained or referenced herein, please contact the District’s Purchaser, Joe Escobedo, at jescobedo@orangecountydrainage.com, and include “RFCSP No. 2021-01” in the subject heading of the e-mail. Offerors may also submit questions online through CIVCAST at www.civcastusa.com, which shall be the equivalent of contacting the District directly. **The District will attempt to provide a response to such inquiry within three (3) business days.**

II. BACKGROUND INFORMATION AND SUMMARY OF WORK

Orange County, Texas was severely impacted by Hurricane Laura and other storm events in 2020, and as a result of these storms, a significant number of trees fell into, or were otherwise deposited into Adams Bayou, Cow Bayou and Little Cypress Bayou (collectively referred to herein as the “Bayous”). The Bayous serve as major drainage structures within Orange County, and thereby provide drainage to a significant portion of the County. These fallen trees, and other vegetative debris within the Bayous, impair drainage, and/or create the risk of drainage impairment and flooding. The District therefore intends to remove all of such fallen

trees and other debris from within the Bayous, as well as all trees that are significantly leaning (more than 45 degrees from vertical) over the Bayous to such an extent that the trees are likely, with additional time, to fall into the Bayous and therefore create a drainage impediment. The District intends for this work to be performed in accordance and compliance with the Scope of Work attached hereto as Attachment I to this RFCSP No. 2021-01.

III. PROJECT FUNDING SOURCES

This Project is being funded primarily by the Natural Resources Conservation Service ("NRCS"), a division of the United States Department of Agriculture ("USDA"). Accordingly, the Project shall be performed in strict compliance with all rules, regulations and statutes required by the NRCS, as well as all other federal, state and local rules, regulations or statutes which are applicable to this Project.

IV. DEFINED TERMS

The following terms shall have the following meanings as used in this Request for Competitive Sealed Proposals (RFCSP). However, these definitions do not replace any definitions that are included within specific documents set forth herein, including, but not limited to, the sample Contract for Waterway Debris Removal Services attached hereto as Attachment II.

1. Addendum or Addenda – Shall mean additions, deletions, and/or changes to any part of this RFCSP issued in writing by the District prior to the Proposal due date and times.
2. Apparent Best Value Offeror – Shall mean the Offeror whose Proposal for performance of the Work (defined below) and completion of the Project provides the best value for the District as determined by the District based on the evaluation and selection criteria set forth in Section IX below.
3. Board of Directors – Shall mean the governing body of the District.
4. Contract Negotiations – Shall mean discussions which take place between the District and the Apparent Best Value Offeror in an effort to reach agreement on the final terms of the Contract for Waterway Debris Removal Services, including, but not limited to, the scope of work, cost, and other contractual requirements.
5. Contractor – Shall mean the successful Offeror to this RFCSP who enters into a contractual relationship with the District for performance of the Work and completion of the Project.
6. RFCSP No. 2021-01, or RFCSP – Shall mean this Request for Competitive Sealed Proposals, the purpose of which is to request competitive sealed

proposals, as authorized pursuant to Texas Government Code Chapter 2269, Subchapter D, and all other applicable and governing laws, for the Project.

7. Offeror or Offering Firm – Shall mean a company, firm or entity which responds to this RFCSP No. 2021-01 by submitting a timely Proposal in compliance with the requirements sets forth or referenced herein.
8. District – Shall mean the Orange County Drainage District (sometimes referred to as “the Owner”).
9. Project – Shall mean the Bayou Waterways Debris Removal Project as described in this RFCSP No. 2021-01.
10. Proposal – Shall mean Offeror’s submittal which conforms to the requirements set forth in this RFCSP No. 2021-01.
11. Cost Proposal Form – Shall mean the form referenced in Section VII(B)(6) herein, and which is attached as Attachment III to this RFCSP.
12. Scope of Work – Shall mean the Scope of Work for the Bayou Waterways Debris Removal Project, as set forth and defined in Attachment I to this RFCSP No. 2021-01.
13. Subcontractor – Shall mean any company, firm, entity or person hired by the Offeror to furnish any of the services included in the Scope of Work.
14. Successful Offeror – The Firm which has completed negotiations with the District and is selected to enter into a Contract with the District to perform the Work and complete the Project.
15. Supplier – Any supplier of materials and/or equipment to the Contractor for the Project.
16. Work – Shall mean the services specified to be provided by the Successful Offeror for completion of the Bayou Waterways Debris Removal Project in accordance with the Scope of Work attached hereto as Attachment I.

V. SCOPE OF WORK

The Scope of Work is attached hereto as Attachment I to this RFCSP No. 2021-01.

VI. OVERVIEW OF COMPETITIVE SEALED PROPOSAL PROCESS

A. General

The objective of this Competitive Sealed Proposal process is to competitively procure services from the Offering Firm whose Proposal provides the best value for the District. Proposals will be received, publicly opened, and the names and monetary Proposals of Offerors read aloud. Subsequently, the Proposals will be evaluated and ranked according to the criteria described in Section IX of this RFCSP. Both cost and non-cost factors will be evaluated and scored. One or more Offerors may be invited for discussions or to present their Proposal to the District before the final rankings are made.

RFCSP No. 2021-01 requests that the Offeror submit a cost proposal utilizing the cost proposal format that is described in Section VII(B)(6) below. Each cost proposal will be independently evaluated and scored to determine the overall Highest Ranked Offeror(s) and preferred Proposal(s) based on the criteria set forth in this RFCSP No. 2021-01.

The District may enter into contract negotiations with the highest ranked firm for the performance and completion of the Work. If the negotiations with the highest ranked firm are unsuccessful, the District will formally close negotiations with this firm and initiate contract negotiations with the next highest ranked firm until a contract is reached or all proposals are rejected. Upon successful completion of negotiations with a firm, the District and Offeror shall enter into a Contract for Bayou Waterways Debris Removal Services in substantially the same form as the sample contract which is attached hereto as Attachment II to this RFCSP. As time is of the essence in the performance and completion of the Work, the District reserves the right to select and contract with more than one Offeror in the event that the District determines, in its sole discretion, that it is in the best interest of the District to do so. This RFCSP does not commit the District to pay for any direct and/or indirect costs incurred in the preparation of a Proposal, or in the negotiation of the terms of a contract. To the contrary, any, and all, such costs or expenditures shall be borne by the Offeror.

B. Schedule

The anticipated timetable for this RFCSP is as follows:

RFCSP Documents Posted on District Website and CIVCAST	March 1, 2021
Pre-Submittal Conference (Non-Mandatory, but Attendance is Encouraged)	March 11, 2021, at 10:00 AM
Submittal Deadline	March 22, 2021, at 2:00 PM
Interviews	To be scheduled if needed

C. Interpretation and Addenda

All questions about the meaning or intent of this RFCSP are to be directed to the District in writing, in accordance with Sections I and VI herein. Interpretations or clarifications considered necessary by the District in response to such questions will be issued by written Addenda and posted on the District's website at: [https://www.ocddtx.com/Bayou Waterways Debris Removal RFCSP 2021 01](https://www.ocddtx.com/Bayou_Waterways_Debris_Removal_RFCSP_2021_01) and on the CIVCAST website, www.civcastusa.com (Search "Bayou Waterways Debris Removal Project"). Any questions submitted via the CIVCAST website, www.civcastusa.com (under "Bayou Waterways Debris Removal Project") shall be the equivalent of contacting the District directly (via email to Joe Escobedo at jescobedo@orangecountydrainage.com).

For an Offeror's proposal to be qualified for consideration, the Offeror shall include in its Proposal, all Addenda and acknowledge receipt of such Addenda in its Cost Proposal Form and on the acknowledgement line of the Addendum Cover page. Any Proposal submitted without such acknowledgement of receipt of all issued Addenda and letters of clarification shall result in the Proposal being considered non-responsive and declared to be ineligible for consideration. Such Addenda and letters of clarification shall become a part of the executed contract and modify the contract documents accordingly.

Questions received by the District after the deadline for Questions and Inquiries will not be answered. Only questions answered by formal written Addenda issued by the District will be binding. Oral and other interpretations or clarifications will be without legal effect.

Addenda may further be issued to clarify, correct, or change this RFCSP and Addenda, or any related supplemental data as deemed advisable by the District.

VII. INSTRUCTIONS TO OFFERORS

A. General

This section outlines specific instructions for proposal submissions. Offerors not adhering to these instructions shall be disqualified without further consideration. The District requires comprehensive responses to every section within this RFCSP. Conciseness and clarity of content are encouraged. Vague and general proposals will be considered non-responsive and will result in disqualification. The intent of the proposal format is to expedite review and evaluation. It is not the intent of the District to constrain Offerors with regard to content, but to assure that the specific requirements set forth in this RFCSP are addressed in a uniform manner amenable to review and evaluation. Failure to arrange the proposal as requested may result in disqualification of the proposal at the sole discretion of the District.

Proposals shall have 1" margins and be single-sided, using Arial 11-point font (or larger). All pages of the proposals must be numbered, and the proposal must contain an organized, paginated table of contents corresponding to the sections and pages of the proposal. The Proposals shall not exceed twenty (20) pages.

Except for trade secrets and confidential information which the Offeror identifies as proprietary, all proposals will be open for public inspection after the contract has been awarded. All proposals become the property of the District. In the event a Proposer submits trade secret information to the District, the information must be clearly labeled as "Trade Secret" on each page on which a Trade Secret is claimed. The District will maintain the confidentiality of such trade secrets to the extent provided by law. See, TEX. GOV'T CODE §552.110 (Texas Public Information Act – Trade Secrets). It is not acceptable for an Offeror to merely identify the entire proposal as a "Trade Secret."

B. Contents of Competitive Sealed Proposal

Each Competitive Sealed Proposal shall contain the following documents and information:

- 1. Cover Letter and Executive Summary**
- 2. Offeror's Firm-Wide Qualifications and Experience.** Offeror shall provide the following information:
 - a. Full and complete identification of the Offeror, including the following:
 - (1) The Offeror's full legal name, the Offeror's type of business organization, and the State in which the Offeror is organized;

- (2) Offeror's physical address and mailing address;
 - (3) Federal Tax ID Number;
 - (4) Name of Offeror's Contact, and such Contact's email address and phone number;
- b. If the Offer is being submitted by a Joint Venture, or the Offeror intends, if selected, to perform the Work in a joint venture with other entities, a full and complete identification of all such members of the Joint Venture, including all of the identifying information set forth above for each member of the Joint Venture, must be provided;
- c. History of the Offeror, including the number of years that Offeror has been in business, number of employees, present ownership, and key management individuals;
- d. General qualifications of the Offeror (firm-wide) to perform the Scope of Work described in this RFCSP;
- e. Description of the Offeror's (firm-wide) experience relevant to the Project described in this RFCSP;
- f. Offeror's knowledge of Adams Bayou, Cow Bayou and Little Cypress Bayou, and the local conditions relevant to the Scope of Work;
- g. Offeror's experience of performing debris removal from Adams Bayou, Cow Bayou and Little Cypress Bayou, including a full project description of such other projects for which Offeror has performed debris removal from these bayous;
- h. Offeror's experience of providing waterway debris removal services for projects that were funded by the NRCS or other federal agencies;

3. Project Team Qualifications and Experience

- a. Identification of key staff to be assigned to the Project, including, but not limited to, the Offeror's Project Manager and Project Site Representative (and/or Project Supervisor), including:
 - (1) Full name;

- (2) Project Role;
- (3) Corporate Title (if applicable);
- (4) Years of experience in such Project Role;
- (5) Active Registrations / Certifications /Licenses (if any).

b. Experience of the Project Manager, including the following information for three similar projects in which the Project Manager has provided project management services:

- (1) Name of the other Project and Owner;
- (2) Project Location;
- (3) Project Construction Cost;
- (4) Year Project was completed;
- (5) Total linear feet (or miles) of waterway debris removal;
- (6) Name, phone number, and email address of Owner's representative;
- (7) Description of the services provided by the Offeror, and by the Project Manager.

Please limit response to one (1) page per project.

c. Experience of the Project Site Representative (and/or Project Supervisor), including the following information for three similar projects in which the Project Site Representative has provided project supervisory services:

- (1) Name of the other Project and Owner;
- (2) Project Location;
- (3) Project Construction Cost;
- (4) Year Project was completed;
- (5) Total linear feet (or miles) of waterway debris removal;
- (6) Name, phone number, and email address of Owner's representative;

- (7) Description of the services provided by the Offeror, and by the Project Site Representative (and/or Project Supervisor).

Please limit response to one (1) page per project.

4. Offeror's Safety Record. For each of the last five years (2015 thru present), provide the following information:

- a. Total Recordable Incidents;
- b. Total Lost Workdays;
- c. Total incidents involving a fatality;
- d. Citations / Violations by:
 - i. OSHA
 - ii. United States Coast Guard
 - iii. Other;
- e. Maritime Claims asserted/filed against Offeror;
- f. General Liability Claims asserted/filed against Offeror.

5. Offeror's Project Approach and Schedule. Offeror shall describe and provide its project approach, including, but not limited to, the following components of such project approach, and other relevant information:

- a. Description of the general approach to performing and accomplishing the Project, including: 1) means and methods; the type and number of barges and/or vessels to be used; an identification of all other types of equipment that will be used in the performance of the Work; and 4) a description of the personnel (by position title and function) that will be used in the performance of the Work.
- b. Please identify all areas of concern in accomplishing the Project, including potential delays, and possible solutions to any anticipated project challenges (*Note: The identification of areas of concern does not impact negatively on the qualifications of the Offeror to perform the Project, but rather may be considered by the District in analyzing the Offeror's realistic understanding of the Project*);

- c. Please identify opportunities and methods that can be employed to expedite the completion of the Project;
 - d. Please state the earliest date on which the Offeror may commence the Project, and all conditions or requirements, if any, that affect the Offeror's ability to commence the Project. Please also describe any other projects and/or commitments that may impact the Offeror's ability to proceed with the Work in an expeditious manner following commencement of the Work.
- 6. Cost Proposal Form.** Offeror must use and submit the Cost Proposal Form attached hereto as Attachment III.
- 7. Insurance Requirements.** A statement that the Offeror shall obtain and maintain in effect during the complete term of the Project each and all of the following insurance coverages:
- a. Commercial General Liability insurance for bodily and personal injury (including death) and property damage:
 - (1) Each occurrence not less than \$1,000,000
 - (2) General aggregate not less than \$2,000,000
 - (3) The coverage shall include but not be limited to personal injury liability, premises/operations, and products/ completed operations
 - b. Worker's Compensation and Employer's Liability Insurance
 - (1) Employers' Liability insurance of \$1,000,000 per occurrence
 - (2) Worker's Compensation as required by statute
 - c. United States Longshore and Harbor Workers Compensation Act Insurance
 - (1) In such amount as will fully insure all of the Contractor's employees working on the Project who are covered by the Act.
 - d. Automobile Liability (for vehicles Contractor uses in performing Work under the Contract, including Employer's Owned, Non-Ownership, and Hired Auto Coverage)
 - (1) Combined Single Limit of \$1,000,000 per occurrence

- e. Marine General Liability (for barges, and boats Contractor uses in performing Work under the Contract, including Employer's Owned, Non-Ownership, and Hired Marine Coverage)
 - (1) Combined Single Limit of \$1,000,000 per occurrence per vessel.
 - (2) General aggregate not less than \$2,000,000.00.
 - (3) The coverage shall include but not be limited to personal injury liability, premises/operations, and products/completed operations.
- f. Environmental Impairment Liability and/or Pollution Liability (including, but not limited to, coverage for pollution or contamination of waterways inclusive of Adams Bayou, Cow Bayou and Little Cypress Bayou)
 - (1) \$3,000,000 per occurrence or claim and \$3,000,000 aggregate
- g. Excess Liability
 - (1) \$3,000,000 per occurrence and \$3,000,000 aggregate

- 8. **Additional Information.** Provide a listing of all current pending litigation, outstanding judgments and liens affecting the Offeror.
- 9. **Conflict of Interest Questionnaire.** If applicable, provide a completed Conflict of Interest Questionnaire (Form CIQ).

Chapter 176 of the Texas Local Government Code mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the District, including affiliations and business and financial relationships such persons may have with District officers. The form can be located at the Texas Ethics Commission website:

<https://www.ethics.state.tx.us/forms/conflict/>

By doing business or seeking to do business with the District, including submitting a response to this RFCSP, Offeror acknowledges that it has been notified of the requirements of Chapter 176 of the Texas Local Government Code and it is representing that it is in compliance with such requirements.

10. **Certificate of Interested Parties.** The Successful Offeror is required to fully complete and file the Certificate of Interested Parties Form 1295 found on the Texas Ethics Commission website:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

The Offeror shall provide evidence of such filing to the District.

11. **Bid Bonds.** The Offeror shall provide a certified or cashier's check on a responsible bank, or a bid bond, in the amount of thirty-four thousand six hundred dollars (\$34,600.00), which represents two percent (2%) of the estimated budget set forth in Section VIII (B).
12. **Offeror's References.** Offeror must provide 3 Client references with contact information on projects performed within the past 5 years.
13. **Signature Page.** Offeror must use and fully complete the Signature Page provided as Attachment IV.
14. **Offeror's Certification.** Offeror must use and fully complete the Offeror's Certification provided as Attachment V.

C. Submittal Procedures and Requirements

All responses shall include the original and five (5) copies, shall be sealed and marked **"SEALED PROPOSAL IN RESPONSE TO REQUEST FOR COMPETITIVE SEALED PROPOSALS FOR BAYOU WATERWAYS DEBRIS REMOVAL PROJECT"**, and shall be submitted to Joe Escobedo, the District Purchaser, at the following address:

Orange County Drainage District
Attn: Joe Escobedo, District Purchaser
8081 Old Highway 90
Orange, Texas 77630

1. **Outer Envelope.** The outside envelope shall be clearly marked **"Sealed Proposal in Response to Request For Competitive Sealed Proposals For Bayou Waterways Debris Removal Project"**. The outside envelope shall also clearly indicate the name of the Offeror.

The District shall bear no responsibility for submitting responses on behalf of any Offeror. Offerors may submit a response at any time prior to the stated deadline.

2. **Receipt and Opening of Proposals.** All proposals must be **RECEIVED** by the District on or before **2:00 p.m. on Monday, March 22, 2021**, at the **District Administration Building located at 8081 Old Highway 90, Orange, Texas 77630**, and such proposals must be accompanied by the Bid Bond or other required proposal security, and all other required documents. Any proposal received by the District after this date and time will not be considered and shall be returned unopened to the Offeror. The clock used by the District at the District Administration Building shall conclusively determine the time that the Proposals are received. Proposals sent by facsimile or electronic mail or delivered to a different location will **NOT** be accepted. The District reserves the right to reject any or all proposals.

Submittals will be publicly opened at **2:00 p.m. on Monday, March 22, 2021** at the District Administration Building, 8081 Old Highway 90, Orange, Texas 77630. At the time of said public opening, only the names of timely responding firms, and the monetary proposal(s) of the Offering Firms will be read aloud. Offerors are invited to attend the administrative RFCSP No. 2021-01 opening.

3. **Project Contact Person.** Any and all questions or requests for additional information shall be directed to Mr. Joe Escobedo by email at jescobedo@orangecountydrainage.com, and such email must include "RFCSP No. 2021-01" in the subject heading thereof. Alternatively, Offerors may also submit questions online through CIVCAST at <http://www.civcastusa.com/> which shall be the equivalent of contacting the District directly. Any and all questions or requests must be submitted **no later than March 15, 2021**. The District will attempt to provide a response to such inquiry within three (3) business days.

VIII. ADDITIONAL INFORMATION AND REQUIREMENTS

A. Pre-Submittal Conference

A pre-submittal meeting is scheduled for **Thursday, March 11, 2021 at 10:00 A.M.** in the Board Meeting Room in the District's Administration Building, located at 8081 Old Hwy 90, Orange, Texas 77630. Attendance is not mandatory, although all prospective Offerors are encouraged to attend in order to gain a better understanding of the Scope of Work and other Project requirements as well as the expectations of the District.

B. Estimated Budget

The estimated budget for this Project is one million seven hundred thirty thousand four hundred dollars (\$1,730,400.00). If an award is made, the actual contract amount may be subject to change.

C. Estimated Project Schedule and Completion Date

The District's estimated Project Schedule for the work to be performed and completed is 90 work days from the Notice to Proceed (NTP) date. The estimated completion date is July 15, 2021, or sooner contingent on when the NTP is issued.

D. Vendor Registration: SAM (System for Award Management)

Offerors are required to be registered with the System for Award Management (SAM), with an "active" status. Offerors are strongly encouraged to review their firm's SAM status prior to the submission of their proposal.

E. Minority-Women Business Enterprise Participation

It is the desire of the District to increase the participation of minority businesses and women-owned business enterprises in its contracting and procurement programs. While the District does not have any preference or set aside programs in place, it is committed to a policy of equitable participation for these firms.

F. Prohibition of Boycotting Israel and Business Engagement with Foreign Terrorist

By Offeror submitting the Proposal, Offeror hereby verifies that Offeror does not boycott Israel and will not boycott Israel during the term of the contract pursuant Texas Government Code Sec. 2270.002. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli controlled territory, but does not include an action made for ordinary business purposes.

In accordance with Chapter 2252 of the Texas Government Code, the Offeror represents and certifies that neither the Offeror nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization that is identified by the Texas Comptroller of Public Accounts or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

Offeror acknowledges and agrees that the verification stated above is a material term of, and material consideration for, the District's consideration of the Proposal and that the District is expressly relying on this verification in agreeing to enter into a Contract with Offeror.

IX. PROPOSAL EVALUATION PROCESS AND SELECTION CRITERIA

All proposals will be evaluated and ranked based on the following criteria:

<u>Criteria:</u>	<u>Maximum Points:</u>
Offeror's Firm-Wide Qualifications and Experience	25 Points
Project Team Qualifications and Experience	10 Points
Project Approach and Schedule	25 Points
Offeror's Safety Record	10 Points
Cost Proposal	30 Points

The District will consider the qualifications and experience of the Offerors in evaluating the Proposals. The District will rank each of the Proposals based on the criteria and criteria weighting described herein, and select a Proposal that the District determines to provide the best value to the District.

Evaluation and ranking of the Proposals will be completed no later than the 21st calendar day from the date of the Proposal opening. Offerors are requested not to withdraw their Proposals within ninety (90) calendar days from the date on which Proposals are opened. The Bid Bond or other Proposal Security of the highest ranking Offerors will be held by the District until an Offeror is no longer considered a candidate for award of the Contract, or until the District has executed and finalized a contract with the successful Offeror, whichever occurs first.

The District may conduct such investigations as the District deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications and financial ability of Offerors, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to the District's satisfaction within the prescribed time.

The District reserves the right to adopt the most advantageous interpretation of the Proposals submitted in the case of ambiguity or lack of clearness in stating Proposal Prices, to reject any or all Proposals, and/or waive informalities.

The District reserves the right to reject any or all Proposals, including without limitation the right to reject any or all nonconforming, nonresponsive, unbalanced, or conditional Proposals and to reject the Proposal of any Offeror if the District determines that an award of the contract to that Offeror would not provide the best value for the District, whether because the Proposal is not responsive or the Offeror is unqualified or of doubtful financial ability, or fails to meet any other pertinent standards or criteria established by the District.

The District also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Apparent Best Value Offeror. Discrepancies between words and figures will be resolved in favor of the words.

The qualifications of a firm shall not deprive the District of the right to accept a Proposal, which in its judgement offers the best value to the District. In addition, the District reserves the right to reject any Proposal where circumstances and developments have, in the opinion of the District, changed the qualifications or responsibility of the firm.

Material misstatements in the information submitted for evaluation may be grounds for rejection of an Offeror's Proposal. Any such misstatement, if discovered after award of the contract to such firm, may be grounds for immediate termination of the contract. Additionally, the Offeror may be liable to the District for any costs or damages to the District resulting from reliance upon such misstatements, including costs and attorney's fees for collection of such costs and damages.

If the Contract is to be awarded, it will be awarded to the Apparent Best Value Offeror following successful Contract Negotiations and following any required approval by the District's Board of Directors.

X. LAWS, REGULATIONS AND OTHER PROJECT REQUIREMENTS

The Selected Offeror must comply with all federal, state and local laws, ordinances, rules and regulations which govern the Work specified in this RFCSP, including but not limited to, the NRCS Supplement to OSHA Parts 1910 and 1926, a copy of which is attached as Attachment VI. The Selected Offeror must further comply with all rules, regulations and recommendations issued by all federal and state agencies, including, but not limited to, Texas Parks & Wildlife Department and the United States Army Corps of Engineers, whether issued, published, or promulgated generally, or specific to this Project.

END OF SECTION

Attachment I



Attachment I

SCOPE OF WORK

Bayou Waterways Debris Removal Project

- 1. General Description of the Work.** The Contractor shall perform emergency waterway debris removal from Adams Bayou, Cow Bayou and Little Cypress Bayou (hereinafter collectively referred to as the “Bayous”), which will generally consist of the removal of the fallen trees and other vegetative debris deposited within Adams Bayou, Cow Bayou and Little Cypress Bayou as a result of Hurricane Laura and other recent storm events, as well as trees significantly leaning over all three Bayous, in the manner, and in the specific areas, described within this Scope of Work (hereinafter sometimes referred to as the “Project” or the “Work”). As used herein, the term “Debris” shall mean the fallen trees, leaning trees, hanging trees, and all other debris that is described and referenced in paragraphs 5 and 6 below. During the performance of the Work described herein, the Contractor shall consult with the District Representative in the event that the Contractor needs clarification as to whether a particular fallen tree, leaning tree or other debris should be removed from the Bayous as a part of the Work performed by the Contractor. In the event that there is a conflict between any provision of this Scope of Work and the Contractor’s Proposal submitted in response to the District’s Request for Competitive Sealed Proposals (RFCSP No. 2021-01), the provisions of this Scope of Work shall govern. At such time that the District Representative determines, in his/her sole discretion, that the Work has been completed, and communicates such determination to the Contractor, the Contractor shall immediately cease all work and demobilize.
- 2. Segments of Operation.** The District has identified each segment of Adams Bayou, Cow Bayou and Little Cypress Bayou in which the Contractor, with the use of one or more barges, will operate and remove the Debris, and has also identified the exact locations where such Debris will be offloaded, all of which are identified below via latitude and longitude coordinates. The project has been divided into the following segments for Adams Bayou, Cow Bayou and Little Cypress Bayou:

A. Adams Bayou: The Work to be performed in Adams Bayou has been divided into six (6) segments, three (3) of which are located south of Interstate 10, and three (3) of which are located north of Interstate 10. Attached hereto as Exhibit A is a map depicting the overall portion of Adams Bayou in which this Project will occur. The Contractor shall remove all Debris as defined herein from all segments of Adams Bayou set forth below, except for Adams Bayou Segment No. 3. For a description of the location of the Debris to be removed from Adams Bayou Segment No. 3, please refer to Paragraph 2(A)(I)(c) (Adams Bayou Segment No. 3) below.

I. Adams Bayou Debris Removal Segments: The particular segments of the Project to be performed in Adams Bayou are as follows:

a. Adams Bayou Segment No. 1 (FM 1006 to Western Avenue), begins at the approximate geographic coordinates of 30.064067, -93.748681, and traverses upstream to end at the approximate geographic coordinates of 30.084175, -93.743721 (See Map attached hereto as Exhibit A-1).

b. Adams Bayou Segment No. 2 (Western Avenue to Hwy. 87), begins at the approximate geographic coordinates of 30.084175, -93.743721, and traverses upstream to end at the approximate geographic coordinates of 30.093483, -93.749582 (See Map attached hereto as Exhibit A-2).

c. Adams Bayou Segment No. 3 (Hwy. 87 to Interstate 10), begins at the approximate geographic coordinates of 30.093483, -93.749582, and traverses upstream to end at the approximate geographic coordinates of 30.121119, -93.766792 (See Map attached hereto as Exhibit A-3). In Adams Bayou Segment No. 3, the Contractor shall remove the Debris described in Section 5 that has been flagged by the District and that is specifically located at the approximate geographic coordinates of:

- 30.094640, -93.749580;
- 30.097170, -93.751940;
- 30.098860, -93.751440;
- 30.099470, -93.752450;
- 30.099630, -93.752790;
- 30.101470, -93.760080;
- 30.103260, -93.763230;
- 30.104110, -93.762820;
- 30.104700, -93.762540;
- 30.105310, -93.764330;
- 30.105120, -93.765240;
- 30.105320, -93.765480;
- 30.106050, -93.766440.

Additionally, in Adams Bayou Segment No. 3, the Contractor shall remove all Debris as defined and described in Section 5 below within the specific sections of Adams Bayou Segment No. 3:

- beginning at the approximate geographic coordinates of 30.100505, -93.756000 and ending at the approximate geographic coordinates of 30.101444, -93.758542; and
- beginning at the approximate geographic coordinates of 30.106744, -93.766385 and ending at the approximate geographic coordinates of 30.121141, -93.766788.

d. Adams Bayou Segment No. 4 (Interstate 10 to FM 3247), begins at the approximate geographic coordinates of 30.121962, -93.766812, and traverses upstream to end at the approximate geographic coordinates of 30.132246, -93.786702 (See Map attached hereto as Exhibit A-4).

e. Adams Bayou Segment No. 5 (FM 3247 to FM 1078), begins at the approximate geographic coordinates of 30.132246, -93.786702, and traverses upstream to end at the approximate geographic coordinates of 30.144723, -93.807478 (See Map attached hereto as Exhibit A-5).

f. Adams Bayou Segment No. 6 (FM 1078 to End of Noguess Property Boundary), begins at the approximate geographic coordinates of 30.144723, -93.807478, and traverses upstream to end at the approximate geographic coordinates of 30.154193, -93.820212 (See Map attached hereto as Exhibit A-6).

II. Adams Bayou Offloading Locations. The District has designated four (4) highland bank areas adjacent to Adams Bayou that will be used to offload the Debris by the Contractor for placement by the District into trucks for transportation of the Debris to an appropriate and TCEQ approved place of final disposition. These four offloading locations are as follows:

a. Orange Boating Club Offload Site (Adams Bayou Offload Site No. 1), which is located at the geographic coordinates of 30.065924, -93.747466;

b. W. Park Street Offload Site (Adams Bayou Offload Site No. 2), which is located at the geographic coordinates of 30.109993, -93.765925;

c. Peterson Offload Site (Adams Bayou Offload Site No. 3), which is located at the geographic coordinates of 30.134322, -93.795713;

d. FM 1078 Private Drive (Adams Bayou Offload Site No. 4), which is located at the geographic coordinates of 30.145358, -93.808174.

B. Cow Bayou: The Work to be performed in Cow Bayou has been divided into six (6) segments, five (5) of which are located south of Interstate 10, and one (1) of which is located north of Interstate 10. Attached hereto as Exhibit B is a map depicting the overall portion of Cow Bayou in which this Project will occur. The Contractor shall remove all Debris (as defined and described in Section 5 below) from all segments of Cow Bayou set forth below, except for Cow Bayou Segment No. 1 and Cow Bayou Segment No. 2. For a description of the location of the Debris to be removed from Cow Bayou Segment No. 1 and from Cow Bayou Segment No. 2, please refer to Paragraph 2(B)(I)(a) (Cow Bayou Segment No. 1), and to Paragraph 2(B)(I)(b) (Cow Bayou Segment No. 2) below.

I. Cow Bayou Debris Removal Segments: The particular segments of the Project to be performed in Cow Bayou are as follows:

a. Cow Bayou Segment No. 1 (Highway 87 to Highway 105), begins at the approximate geographic coordinates of 30.044893, -93.821580, and traverses upstream to end at the approximate geographic coordinates of 30.074727, -93.846198 (See Map attached hereto as Exhibit B-1). In Cow Bayou Segment No. 1, the Contractor shall remove the Debris described in Section 5 that has been flagged by the District and that is specifically located at the approximate geographic coordinates of:

- 30.074353, -93.846437.

Additionally, in Cow Bayou Segment No. 1, the Contractor shall remove all Debris as defined and described in Section 5 below within the specific section of Cow Bayou Segment No. 1 beginning at the geographic coordinates of 30.048731, -93.830112, and ending at the geographic coordinates of 30.056212, -93.835308.

b. Cow Bayou Segment No. 2 (Highway 105 to Highway 1442), begins at the approximate geographic coordinates of 30.074727, -93.846198, and traverses upstream to end at the approximate geographic coordinates of 30.108018, -93.896401 (See Map attached hereto as Exhibit B-2). In Cow Bayou Segment No. 2, the Contractor shall remove the Debris described in Section 5 that has been flagged by the District and that is specifically located at the approximate geographic coordinates of:

- 30.075008, -93.846203;
- 30.085748, -93.843670;
- 30.084906, -93.848249;
- 30.089273, -93.860895;
- 30.088852, -93.866023;
- 30.086590, -93.872855;
- 30.086668, -93.873009;
- 30.089624, -93.876109.

Additionally, in Cow Bayou Segment No. 2, the Contractor shall remove all Debris as defined and described in Section 5 below within the specific section of Cow Bayou Segment No. 2 beginning at the approximate geographic coordinates of 30.091303, -93.876910 and ending at the approximate geographic coordinates of 30.107958, -93.896383.

c. Cow Bayou Segment No. 3 – Small Portion of Cole Creek Tributary to Cow Bayou (Intersection of Cole Creek and Cow Bayou to Railroad Track), begins at the approximate geographic coordinates of 30.088722, -93.858107, and traverses upstream to end at the approximate geographic coordinates of 30.096311, -93.857310 (See Map attached hereto as Exhibit B-3).

d. Cow Bayou Segment No. 4 – Small Portion of Terry Gully Tributary to Cow Bayou (Intersection of Terry Gully and Cow Bayou to a Point 250 Yards Upstream Terry Gully from Cow Bayou), begins at the approximate geographic coordinates of 30.106444, -93.893519, and traverses upstream to end at the approximate geographic coordinates of 30.105173, -93.895300 (See Map attached hereto as Exhibit B-4).

e. Cow Bayou Segment No. 5 (Highway 1442 to Interstate 10), begins at the approximate geographic coordinates of 30.108018, -93.896401, and traverses upstream to end at the approximate geographic coordinates of 30.130133, -93.915608 (See Map attached hereto as Exhibit B-5).

f. Cow Bayou Segment No. 6 (Interstate 10 to Highline Road), begins at the approximate geographic coordinates of 30.131120, -93.915770, and traverses upstream to end at the approximate geographic coordinates of 30.161711, -93.919159 (See Map attached hereto as Exhibit B-6).

II. Cow Bayou Offloading Locations. The District has designated four (4) highland bank areas adjacent to Cow Bayou that will be used to offload the Debris by the Contractor for placement by the District into trucks for transportation of the Debris to an appropriate and TCEQ approved place of final disposition. These four offloading locations are as follows:

a. Highway 105 Private Road (Cow Bayou Offload Site No. 1), which is located at the geographic coordinates of 30.074948, -93.845577;

b. S. Terry Road Off Load Site (Cow Bayou Offload Site No. 2), which is located at the geographic coordinates of 30.097713, -93.886442;

c. Detention Pond Off Load Site (Cow Bayou Offload Site No. 3), which is located at the geographic coordinates of 30.116748, -93.897999;

d. Claiborne Park Off Load Site 1 (Cow Bayou Offload Site No. 4), which is located at the geographic coordinates of 30.134366, -93.919333;

The Debris may also be offloaded at any other highland bank area adjacent to Cow Bayou that is approved in advance by the District, and for which all necessary permissions and/or right of way have been obtained by the Contractor or the District, at no additional cost to The District.

C. Little Cypress Bayou: The Work to be performed in Little Cypress Bayou has been divided into two (2) segments, both of which are between the Sabine River and FM 3247. Attached hereto as Exhibit C is a map depicting the overall portion of Little Cypress Bayou in which this Project will occur.

I. Little Cypress Bayou Debris Removal Segments: The particular segments of the Project to be performed in Little Cypress Bayou are as follows:

a. Segment No. 1 (Sabine River to Railroad Tracks), begins at the approximate geographic coordinates of 30.133487, -93.702429, and ends at the approximate geographic coordinates of 30.149949, -93.745706 (See Map attached hereto as Exhibit C-1).

b. Segment No. 2 (Railroad Tracks to FM 3247), begins at the approximate geographic coordinates of 30.149949, -93.745706, and ends at the approximate geographic coordinates of 30.152020, -93.746653 (See Map attached hereto as Exhibit C-2).

II. Little Cypress Bayou Offloading Locations. The District has designated two (2) highland bank areas that will be used to offload the Debris by the Contractor for placement by the District into trucks for transportation of the Debris to an appropriate and TCEQ approved place of final disposition. These 2 offloading locations are as follows:

a. Sabine River Boat Launch at Interstate 10 Highway (Little Cypress Bayou Offload Site No. 1), which is located at the approximate geographic coordinates of 30.127236, -93.701923; and

b. ONLY IF NECESSARY: FM 3247 Private Drive (Little Cypress Bayou Offload Site No. 2), which is located at the approximate geographic coordinates of 30.150157, -93.746061.

3. The Debris Removal Process and Procedures.

A. Except as otherwise provided herein, the Contractor shall extract from the Bayous the Debris utilizing a barge that is equipped with a grapple bucket and connected saw, or other equipment suitable to accomplish the removal of the Debris from the Bayous. The Contractor's personnel or agents shall not enter onto the bank or property adjacent to the Bayous for any purpose unless authorization is obtained in advance from the District Representative. All Debris removal work shall be performed by the Contractor from the barge unless otherwise authorized by the District Representative. The removal of leaning trees or trees that are rooted in the banks of the Bayous or land adjacent to the Bayous shall be removed by the Contractor by utilizing a grapple bucket with connected saw, or by utilizing any other conventional method. Further, such rooted trees shall generally be cut flush with the bank or land adjacent to the Bayous and shall be removed in compliance with paragraph 6(b) below. The Debris shall be removed from the Bayous and transported on the same or other transportation barge(s), that will be floated by the Contractor to the nearest available designated offloading location identified herein. Each barge that is used by the Contractor to float the Debris to the nearest available designated offloading location shall hold at least one hundred (100) cubic yards of Debris.

B. The Contractor shall remove the Debris from the barge and place the Debris onto the highland bank located at the offloading location, after which the Debris shall be transported by the District to the site of final disposition. During this offloading process, the Contractor shall not allow any Debris to be placed or fall into the Bayous. The Contractor shall conduct this Debris removal operation in such a manner as is standard in the industry so as to avoid dredging, removal of silt, or any adverse impact to waters of the United States, including wetlands.

C. Time is of the essence, and the Contractor shall therefore perform all Work in an expeditious manner, and shall avoid undue delay in the performance of any and all tasks associated with the Work.

D. The Contractor shall keep a daily log of operations, which shall include the following information:

I. The names of all employees of the Contractor or Subcontractor(s) who worked on the Project;

II. The number of hours, and time of day worked by each employee of the Contractor or Subcontractor(s) who worked on the Project;

III. An identification of each barge or other vessel utilized in the performance of the Contractor's work, and the number of hours and time of day that such barge or other vessel was used;

IV. The identification of the segment(s) of the Bayous in which the Debris removal work occurred, and an identification of the offloading location(s) to which the Debris was transported;

V. The number of cubic yards of debris that is removed from the Bayous, and transported to the Disposal Site; and

VI. Any and all other information or documentation that is required by the NRCS, and any other state or federal agency.

E. The Contractor shall be solely responsible for mobilizing and placing the barges or other vessels into the Bayous for the purpose of accomplishing the Work described herein, and for removing the barges and vessels from the Bayous following performance of the Work. Unless otherwise agreed to by the District, the time and cost of placing the barges and other vessels into the Bayous, and the time and cost of removing such barges and vessels from the Bayous shall be at the sole cost and expense of the Contractor. The Contractor shall secure the necessary permits and/or permissions of any and all agencies and property owners whose permissions are needed in order to use the property adjacent to the Bayous for the purpose of placing the barges into, and removing from, the Bayous, including, but not limited to, the Texas Department of Transportation, Texas Department of Public Safety, and any other interested agency, property owner, and/or applicable stakeholders. The Contractor shall have such permits or correct copies thereof available for inspection by the District Representative upon request. The District may reasonably assist the Contractor in securing the permissions described herein, but the cost of such permissions, if any, shall be borne by the Contractor. The Contractor shall also be solely responsible for developing, implementing, providing, and utilizing all required traffic control and safety measures required by law and by the agencies referenced herein during the operation of placing the barge or other vessel into, and removing the same from, the Bayous, and for the operation of the Contractor's vehicles and equipment on public roads and highways.

5. Description and Criteria of Debris to be Removed, and Processes of Removal

A. Large Wood Debris. The Contractor shall remove all fallen trees ("Large Wood Debris") that have been deposited into the Bayous as a result of Hurricane Laura and other storm events or any other reason, and all leaning and hanging trees as described herein, subject to the following guidelines and processes:

I. Large Wood Debris demonstrating characteristics of natural integration into the Bayous over time shall remain, except to the extent that portions should be removed to facilitate equipment access for appropriate reach, draft and navigability.

II. The Contractor, with guidance and consent of the District Representative, shall determine which Large Wood Debris is subject to removal. In general, Large Wood Debris meeting the following characteristics shall be removed:

III. Trees still possessing large areas of intricate twig patterns, or with significant percentages of leaves still in place, indicating a recent fall;

IV. Trees possessing intact bark for the majority of the trunk area;

V. Trees free-floating, or with very little of its branch or root network becoming integrated into the banks or bottom of the Bayous;

VI. Trees with root balls that show recent disturbance, with exposed new, unstable soil and exhibit signs of imminent fall into the Bayous;

VII. Trees extending entirely across the Bayous (bank to bank), prone to prohibit flow and navigation, or to promote large accumulations of small debris such that flow is significantly restricted;

VIII. Trees that are leaning over the Bayous (more than 45 degrees from vertical) which are expected to imminently fall into the Bayous, and which shall be removed by cutting the trunk above the soil or waterline; and,

IX. Trees or portions of trees that are hanging above the Bayous and are expected to imminently fall into the Bayous, and are within reach of the grapple and saw, or other appropriate equipment, shall be removed, but only if the Contractor determines the operation to be safe.

B. Removal of Other Debris. The Contractor shall remove from the Bayous, and sort, store, and create separate waste streams at the designated offloading locations the following classifications of other debris that impair or may impair drainage or flow within the Bayous:

I. Other Wood Debris;

II. White Goods (Appliances);

III. Tires and Trash; and

IV. Hazardous Waste (subject to the rules and guidelines set forth in Section 10 below).

6. Project and Operation Rules. The following rules and procedures will govern the removal of Debris by the Contractor:

A. Identification for Removal. The Contractor, with guidance from the District Representative as needed, will determine which Debris is to be removed from the Bayous based on the criteria and guidelines set forth above. The District Representative will accompany the Contractor as reasonably required during the Debris removal operations so as to provide guidance on identification and prioritization of material to be removed.

B. Sediment and Soil Disturbance. The Contractor shall remove the Debris using methods and equipment capable of working from the water. The Contractor shall not dredge or use drag lines, and will be required to minimize disturbance of sediment on the bottom of the Bayous and/or soil along the banks of the Bayous. Barge or other vessel work shall only occur in areas where sufficient draft exists to float the vessel without significant adverse impacts to the waterway bottom. The Contractor shall not place any Debris onto a bank of the Bayous except at one of the designated offloading locations described herein.

C. Contractor Supervisor on Site. The Contractor's designated supervisor shall be present at the work site at all times during operations. If the Contractor's designated supervisor is not present, the Contractor shall not proceed with the Debris removal operations until the Contractor's designated supervisor arrives on the Project site.

D. Scattered Debris Removed. Concentrations of scattered Debris, such as any Debris, limbs or branches touching each other or piled on top of each other or any material protruding over two feet in elevation above the ground or water, shall not be allowed to accumulate or concentrate. The Contractor shall use its best efforts to minimize and remove scattered debris resulting from removal and cutting operations.

E. Hanging and Leaning Objects. Cut trees or debris shall not be allowed to stand or lean against other standing uncut trees or brush. Such "hang-ups" shall be removed, or minimized, if practicable.

F. Protection of Existing Vegetation. The Contractor will preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site of Work which is not to be removed and which does not unreasonably interfere with the Debris removal work. The Contractor shall use reasonable care in removing trees authorized for removal so as to avoid damage to remaining vegetation and adjacent property.

G. Repair of Damaged Vegetation or Other Property. If the Contractor damages any existing improvements, utility, or vegetation, the Contractor shall repair such damage without delay and without cost to the District. If the Contractor fails or refuses to repair such damage promptly, the District will have the necessary repairs performed and deduct the cost thereof from money due or to become due the Contractor.

- 7. Refueling.** The Contractor shall refuel powered equipment at least fifty (50) feet from the Bayous in such a manner as to prevent direct delivery of contaminants into the Bayous, except for refueling of the motor powering the barge.

A. All oil, fuel and hydraulic lines shall be in proper working condition to minimize leakage. The Contractor shall use food grade oils and fluids for all hydraulic equipment and working parts exposed to the water to minimize potential impacts to water quality.

B. For refueling of the motor powering the barge or other vessel(s) utilized by the Contractor, a Refueling Plan will be required as a Contractor submittal and reviewed by the District to ensure minimization of accidental spills.

C. Fuel and oil containers shall be removed daily from the Project site and disposed of, or secured in accordance with all applicable statutes, rules and regulations.

D. The Contractor shall be required to submit a Spill Response Plan to the District. The Contractor shall not be allowed to work until the Spill Response Plan is approved by the District.

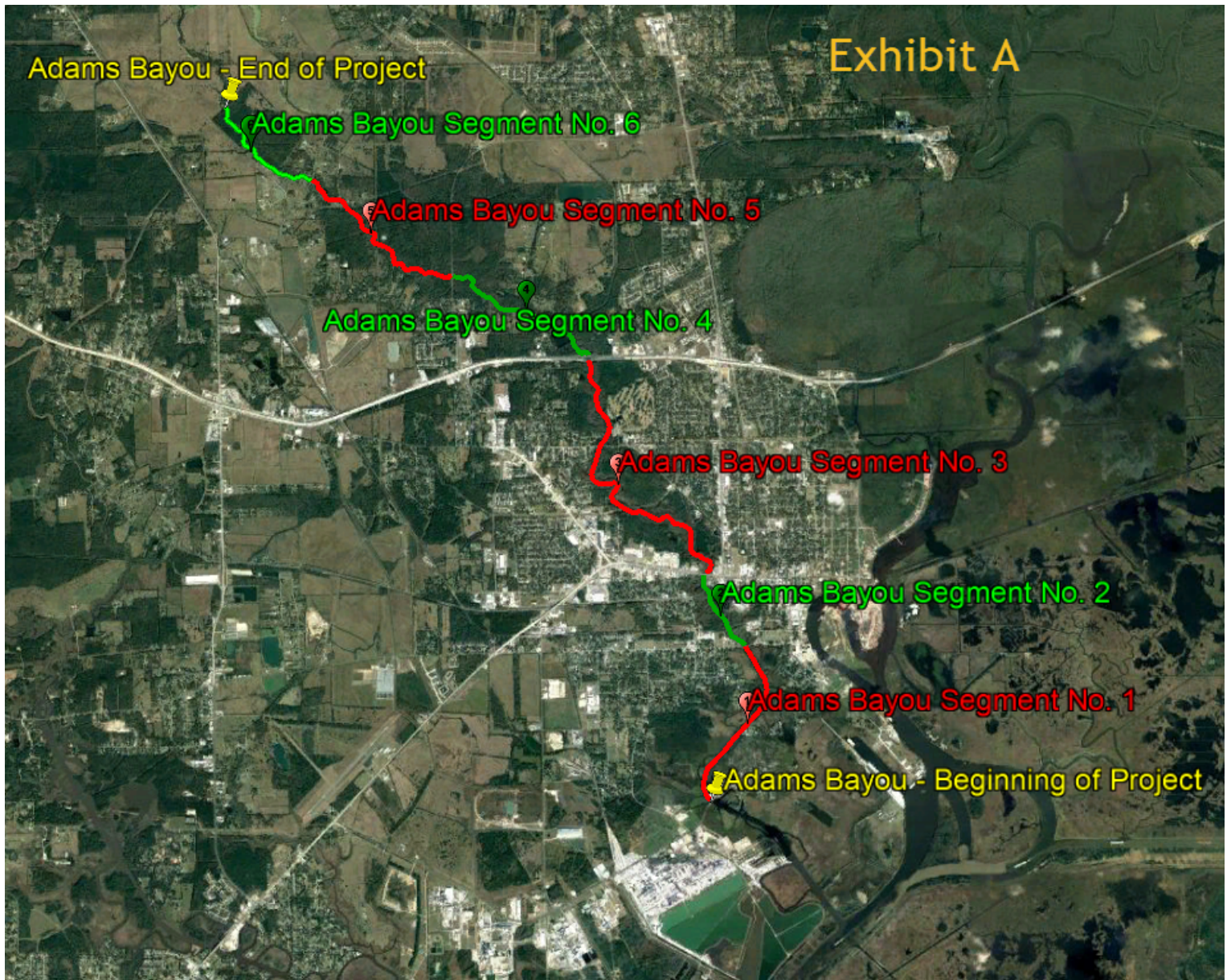
- 8. Daily Project Area Clean Up.** The Contractor shall, not less than once per day, clear all Project areas of debris, refuse, garbage, etc. that may have been left by the Contractor. All such debris, garbage, and refuse shall be removed from the project areas by the Contractor and disposed of legally off site. The Contractor will minimize disturbance of sediment on the channel bottom and/or soil along the Bayou banks during clean up.

- 9. Regulation of Public Traffic.** The Contractor has the necessary experience to determine any applicable related public traffic concerns both on the waterway and at related road/bridge intersections. The Contractor shall be responsible for developing, implementing, and providing required traffic warning signs and controls meeting the minimum requirements as stated in the Manual for Uniform Traffic Control Devices (MUTCD) for shape, size, color and legend at all roadway access points used by the Contractor, and shall comply with all applicable rules and guidelines issued by the Texas Department of Transportation and the Texas Department of Public Safety.
- 10. Discovery of Hazardous Materials or Solid Waste.** If, in connection with the performance of the Work, the Contractor, subcontractor, or employee of them, discovers, encounters or becomes aware of any hazardous materials or solid waste in the Project area, such as, but not limited to, barrels or other containers of chemicals, oil, or other potential hazardous materials, the Contractor shall immediately suspend all operations in the vicinity of the hazardous material or solid waste and shall notify the District Representative of the findings.
- A.** The District shall then determine the method for reporting, storing, relocating and/or otherwise responding to the discovery of the potentially hazardous material. Operations may resume at the discovery site upon receipt of authorization from the District Representative.
- B.** The Contractor, or any subcontractor or employee thereof shall not remove any objects of hazardous materials or solid waste, except as authorized by the District Representative.
- 11. Prohibition of Dumping.** Dumping of any waste material at any time, including any waste generated by the Contractor during the performance of the Work is prohibited.
- 12. Cultural Resource and Endangered Species Protection.** If, during the performance of the Work, the Contractor, subcontractors, or the employees thereof, discovers, encounters or becomes aware of any objects or sites of cultural value on or in the project area such as historical objects or prehistoric fossils or artifacts, or becomes aware of any endangered species on or in the project area, the Contractor shall immediately suspend all operations in the vicinity of the cultural object or site, or endangered species, and will notify the District Representative of the findings. Operations may resume at the discovery site upon receipt of authorization of the District Representative. No objects of cultural value will be allowed to be removed from the project site, except as authorized by the District Representative. The Contractor shall comply with the Endangered Species Act, 16 U.S.C Chapter 35, and all rules, regulations or directives issued by a federal agency regarding endangered species. The Contractor shall further comply with all rules, regulations and recommendations issued by all federal and state agencies, including, but not limited to, Texas Parks & Wildlife Department and the United States Army Corps of Engineers, whether issued, published, or promulgated generally, or specific to this Project.

13. Other Emergencies. In the event of a Force Majeure event or an emergency, such as a major tropical storm, or other natural or manmade disaster, the Contractor shall consult with the District Representative and a Change Order may be issued to temporarily suspend operations and remove equipment, material, and personnel from the Project site and take all other appropriate and reasonably necessary actions. The Change Order shall identify schedules, activities, and responsible parties. The District Representative shall be responsible for enacting the emergency plan, as well as for deciding when the Work can resume pursuant to the Change Order.

14. Notifications. The Contractor shall notify the District Representative prior to proceeding with Debris removal operations, and prior to final site cleanup and demobilization. In addition, the Contractor will be required to notify the District Representative of any material Project delays.

Exhibit A



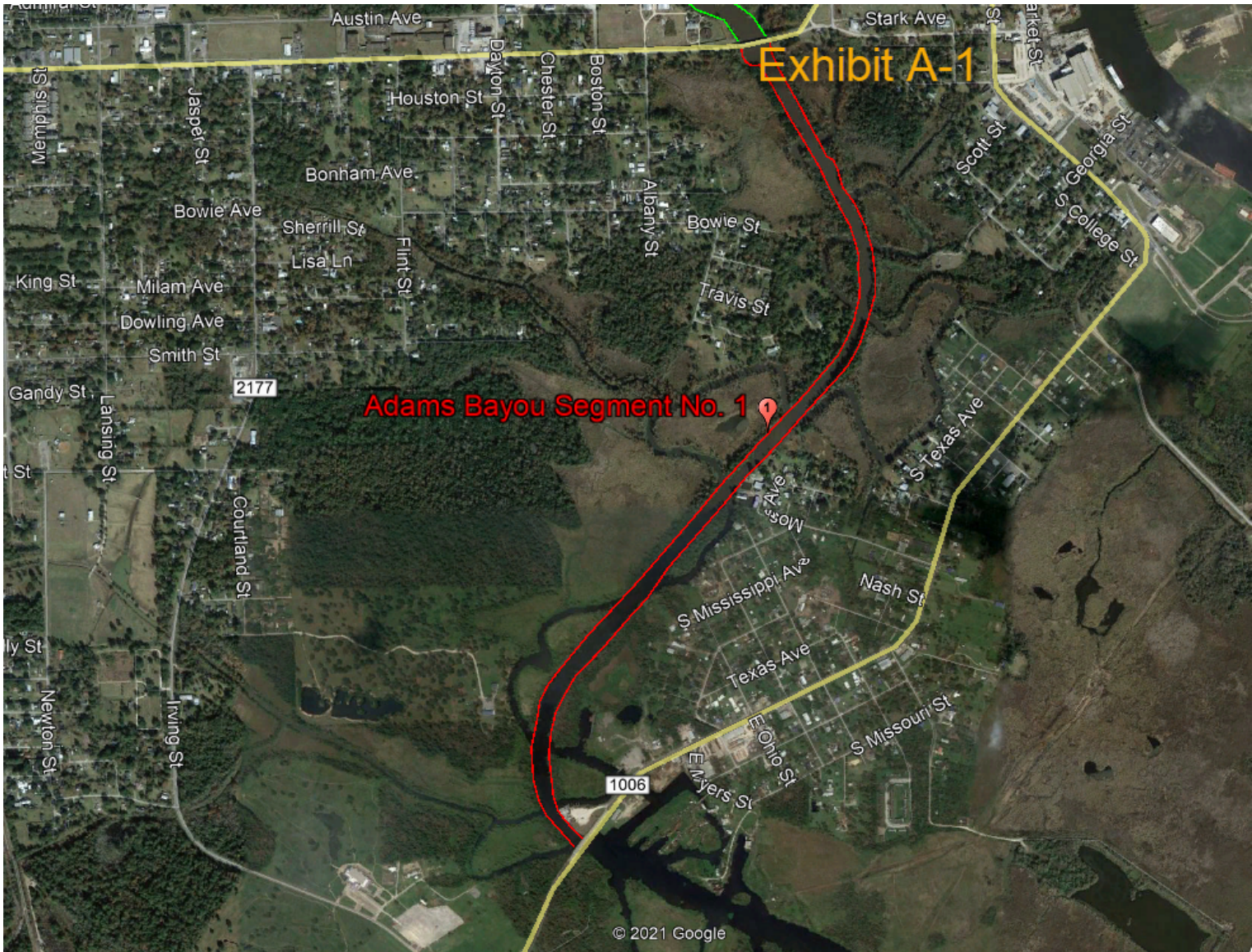
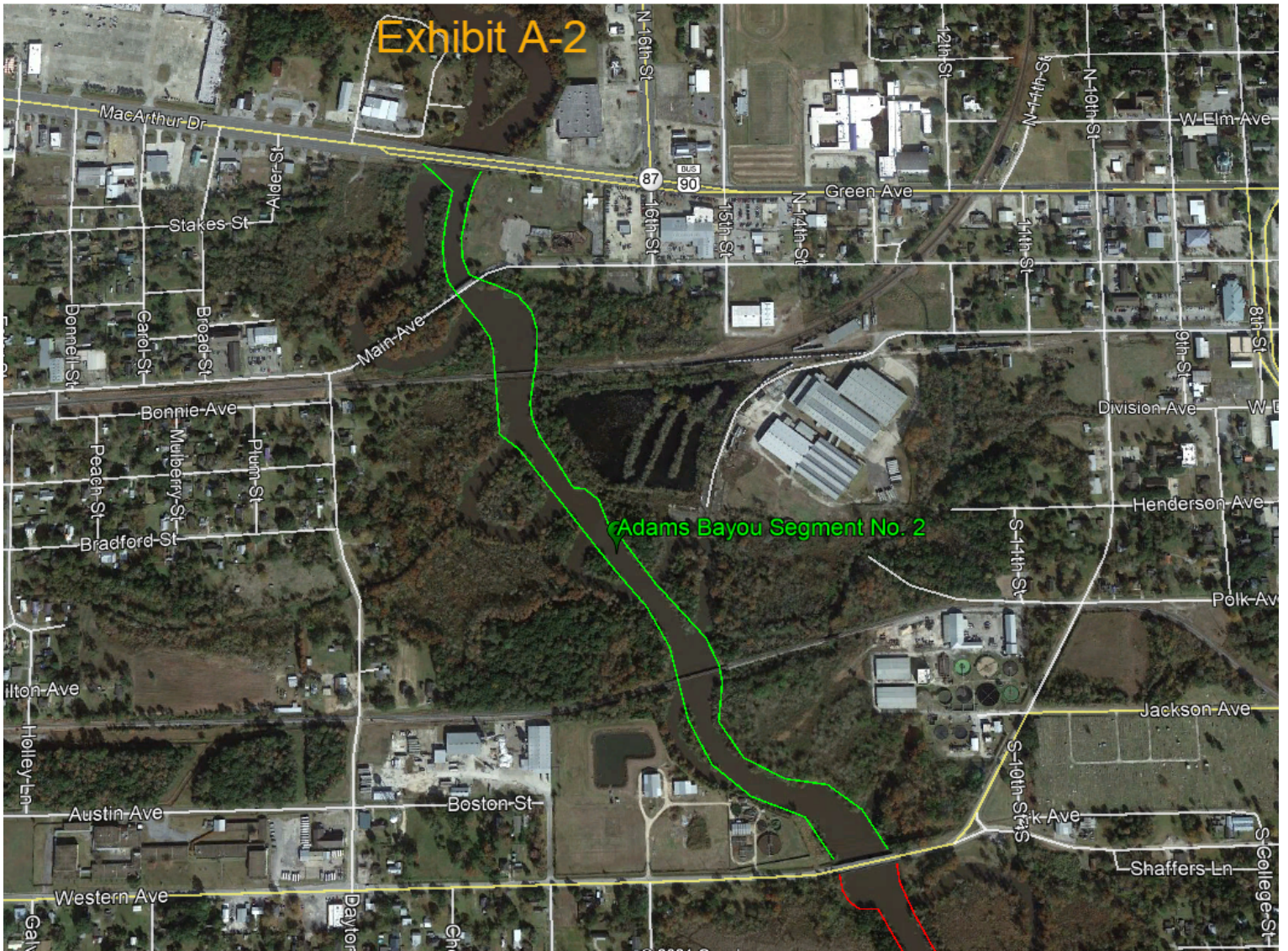


Exhibit A-2



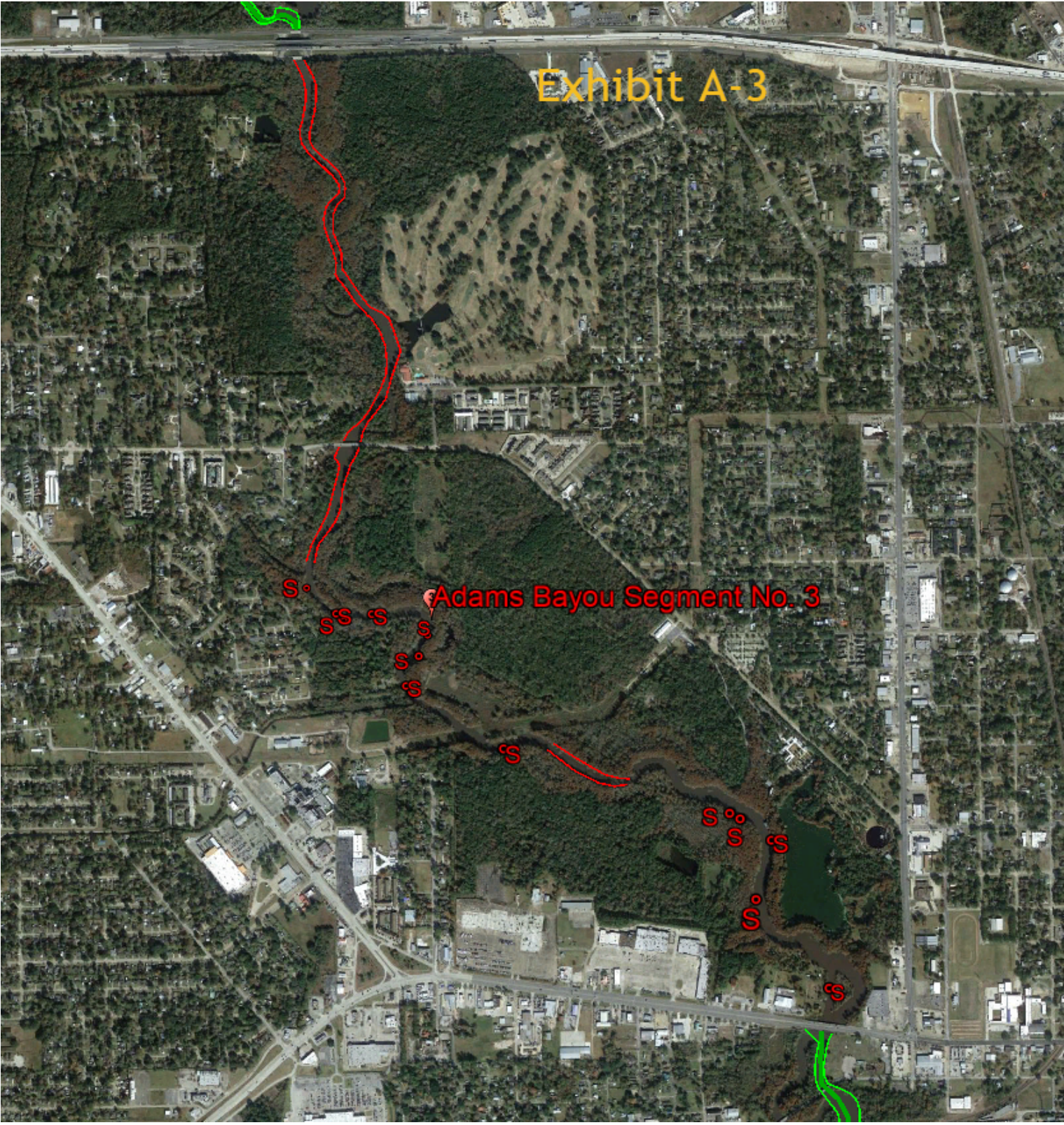


Exhibit A-3

Adams Bayou Segment No. 3

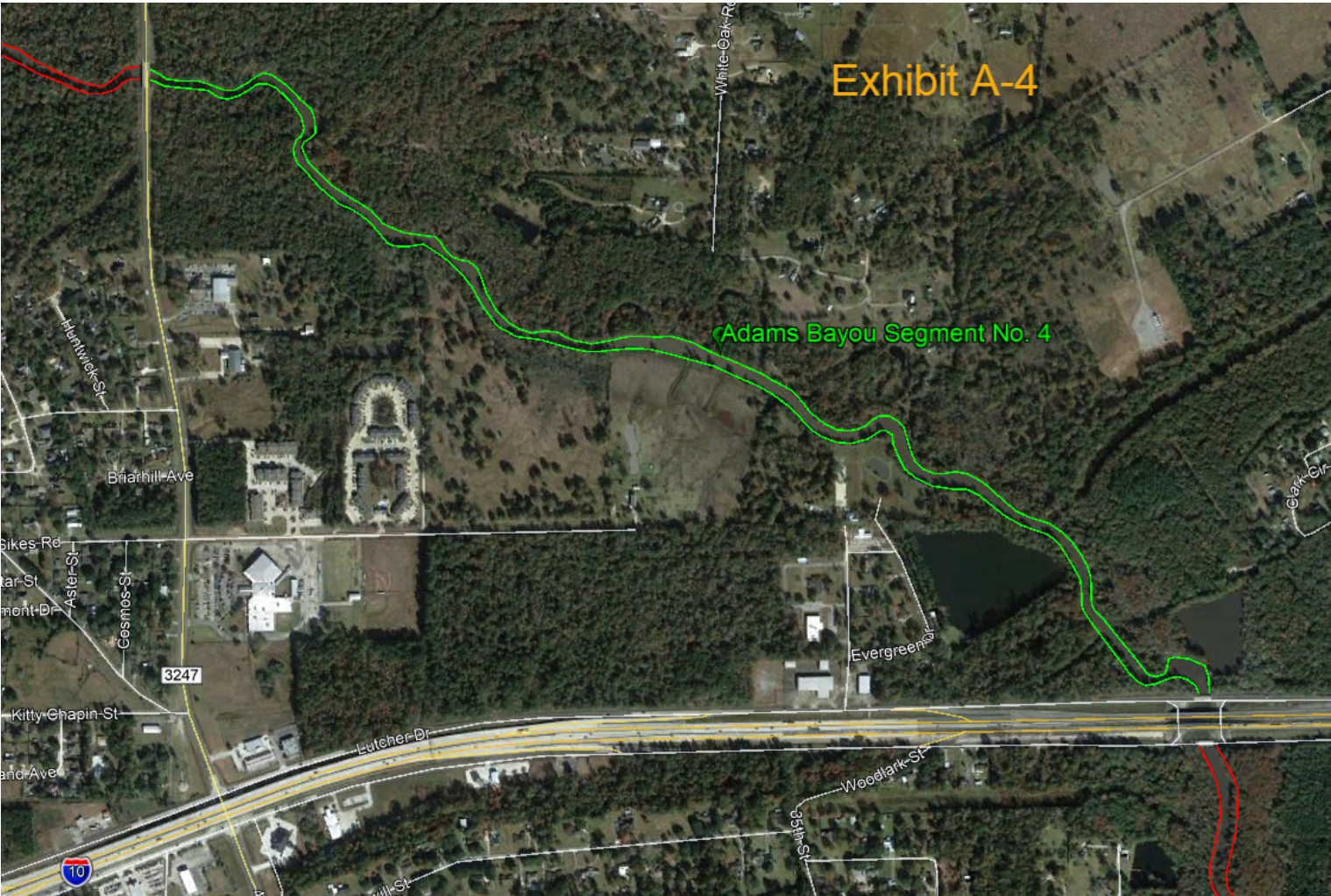


Exhibit A-4

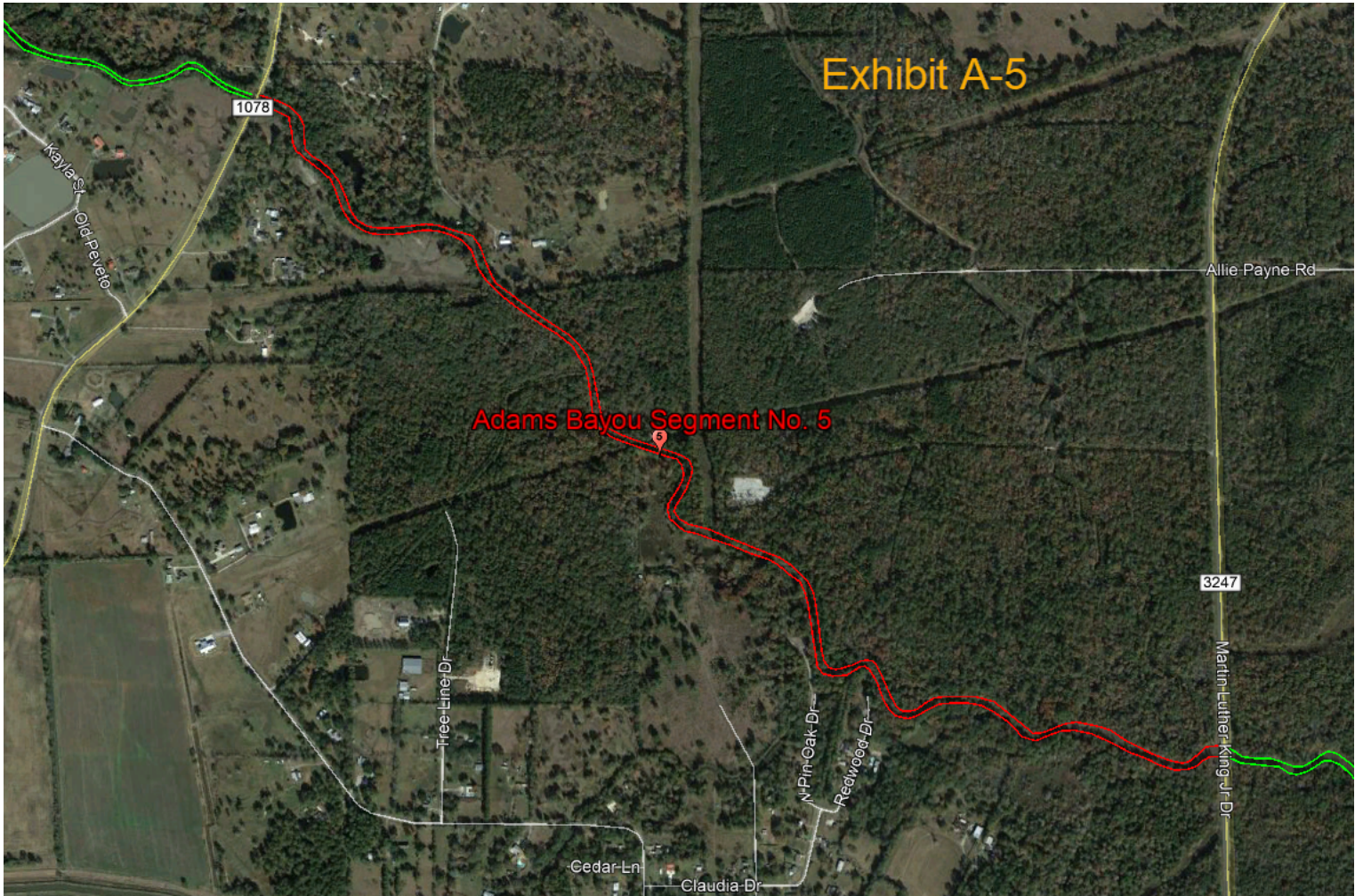


Exhibit A-6

Adams Bayou Segment No. 6

1078



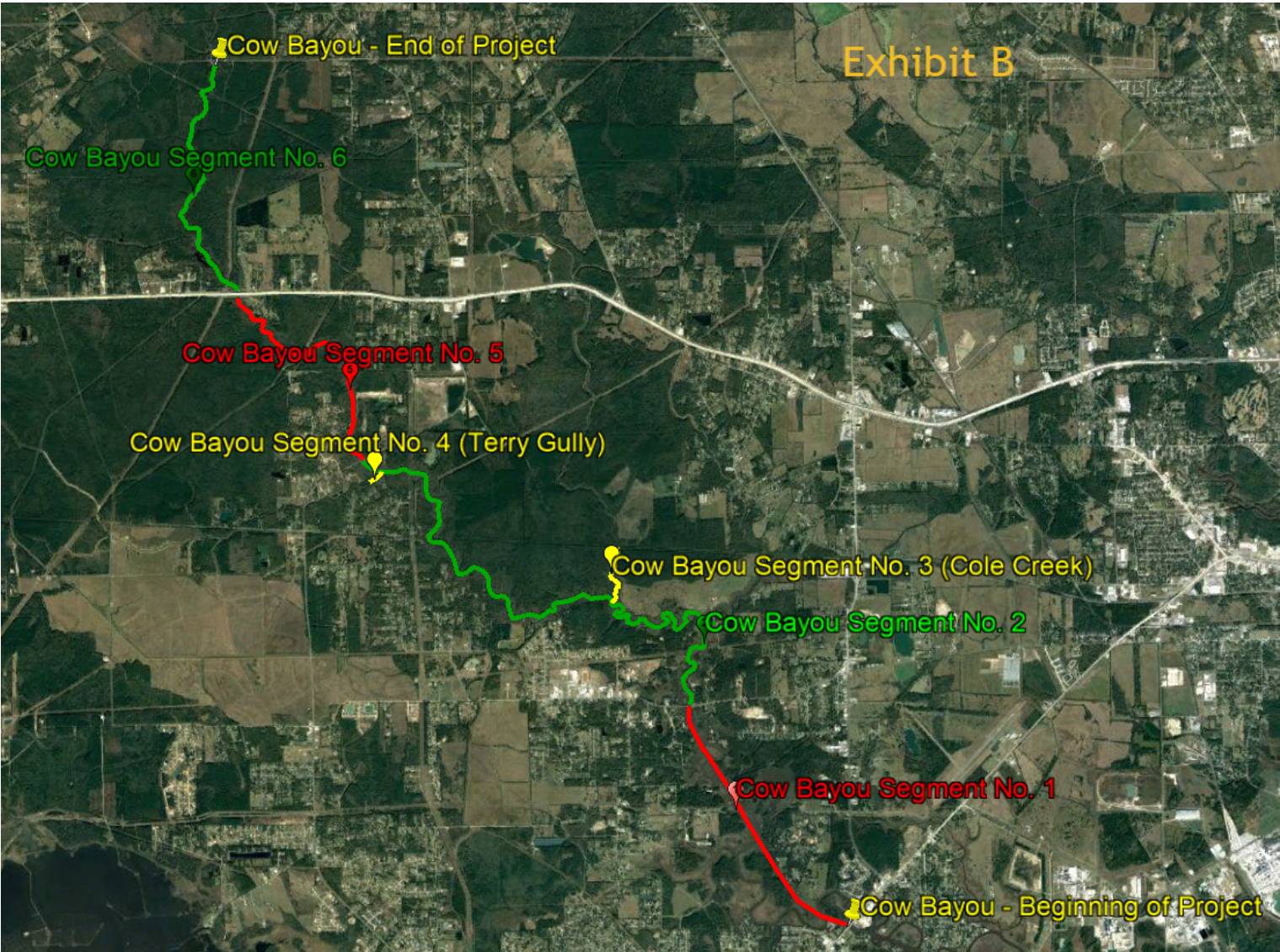


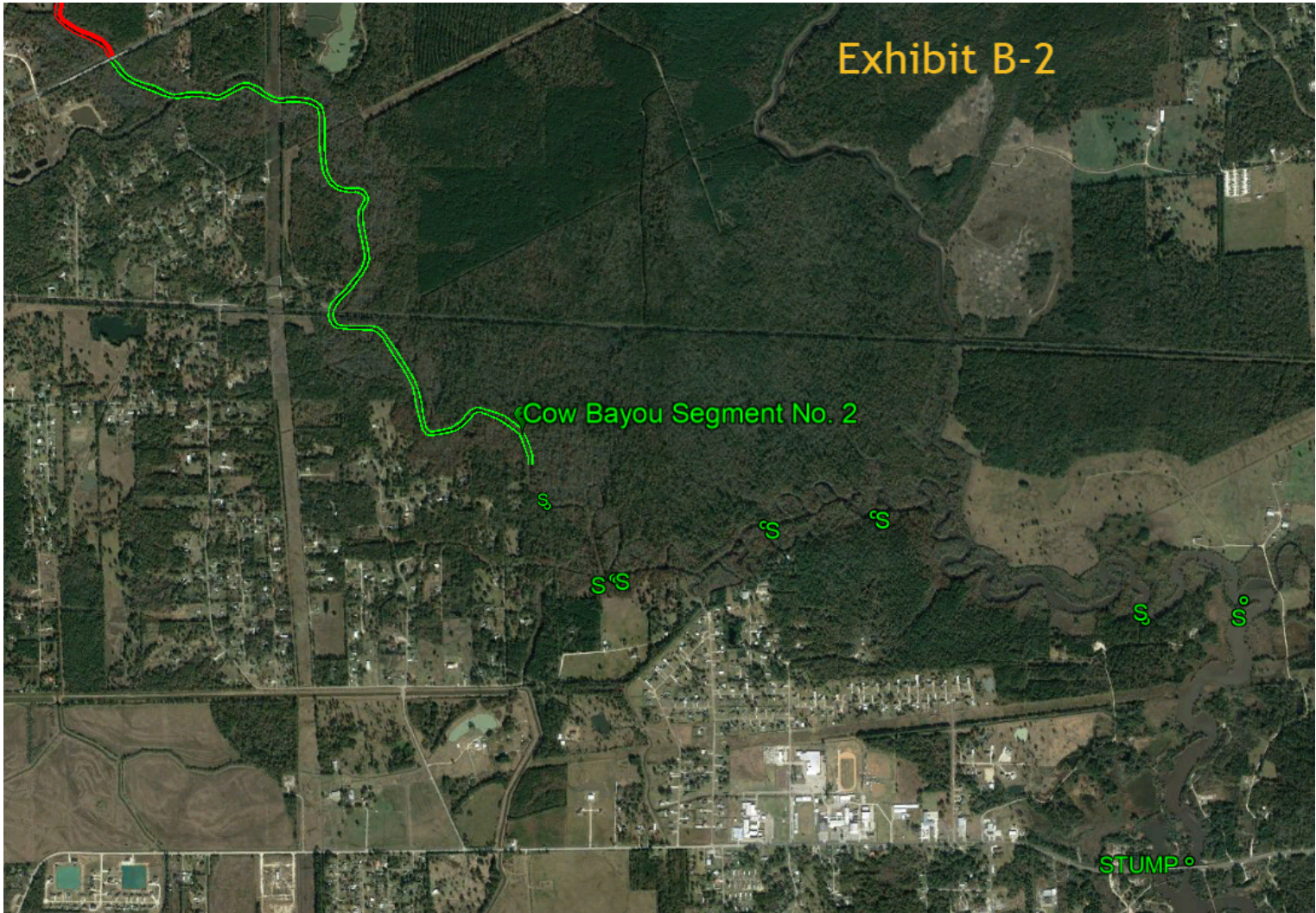
Exhibit B-1

Cow Bayou Segment No. 1

Cow Bayou - Beginning of Project



Exhibit B-2



Cow Bayou Segment No. 2

STUMP °

Exhibit B-3

Cow Bayou Segment No. 3 (Cole Creek)

Mea-Gir

Sand
ar-Rd

US-4

Exhibit B-4



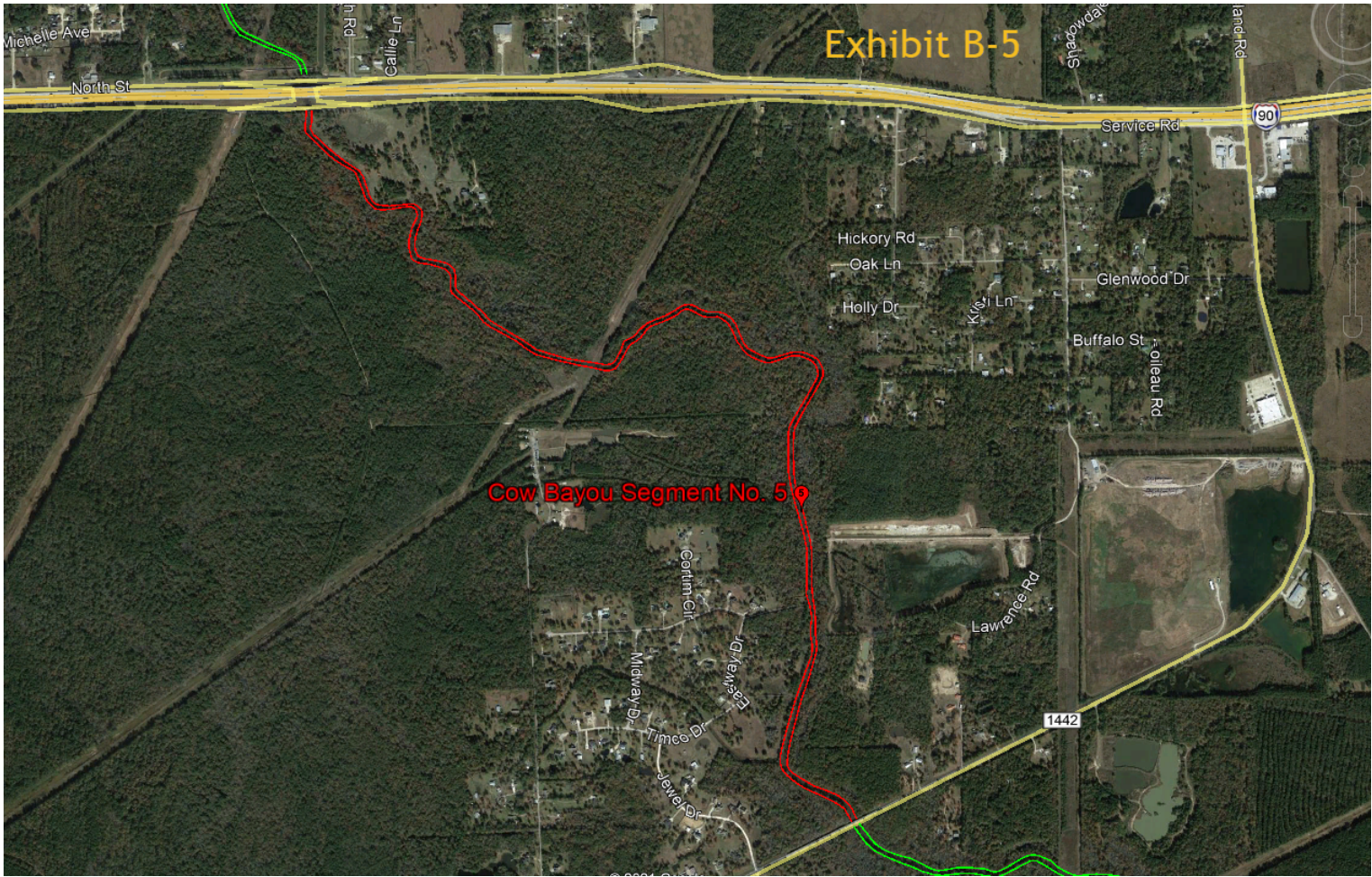


Exhibit B-6

Cow Bayou Segment No. 6

1442

North St

Service Rd

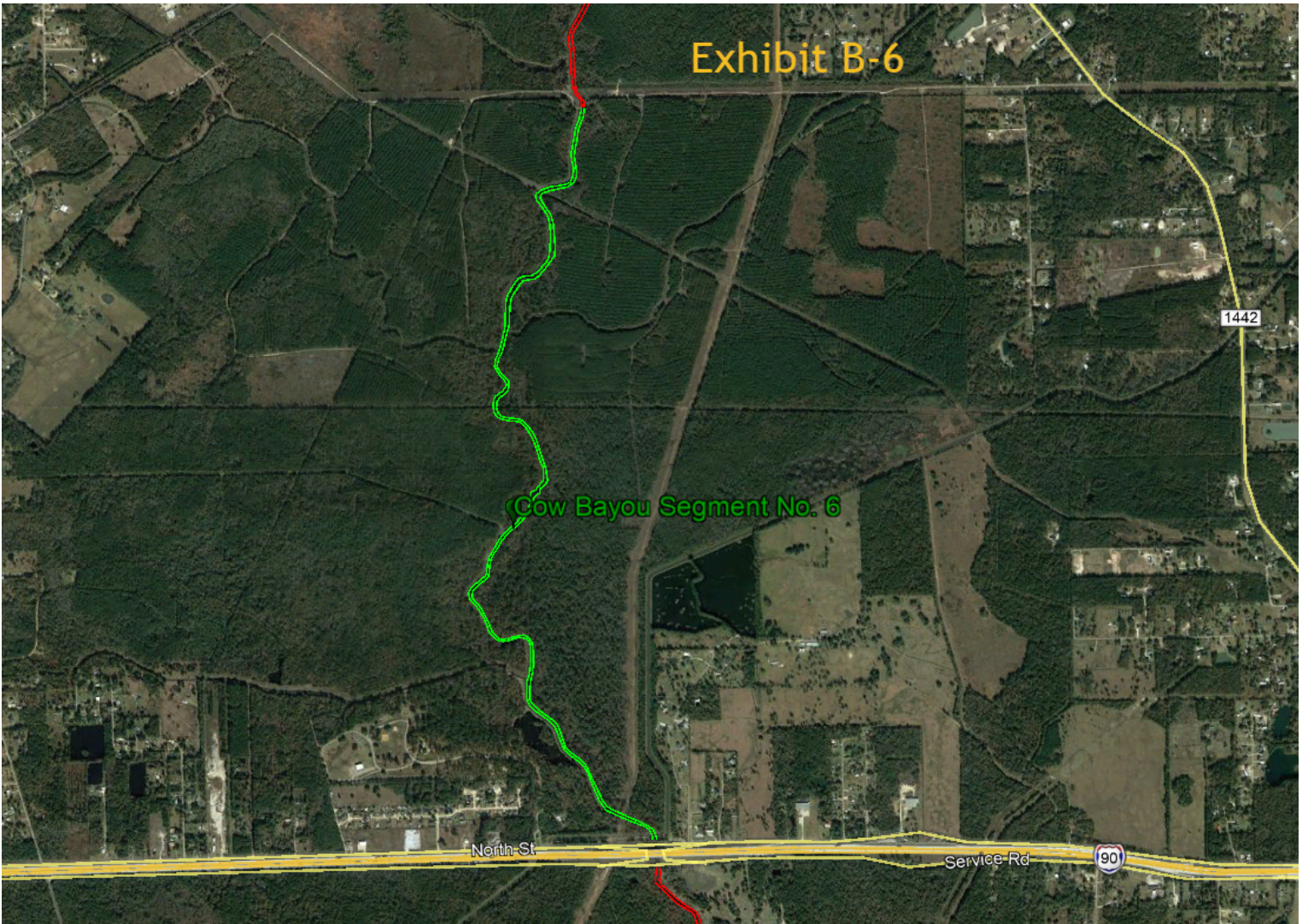
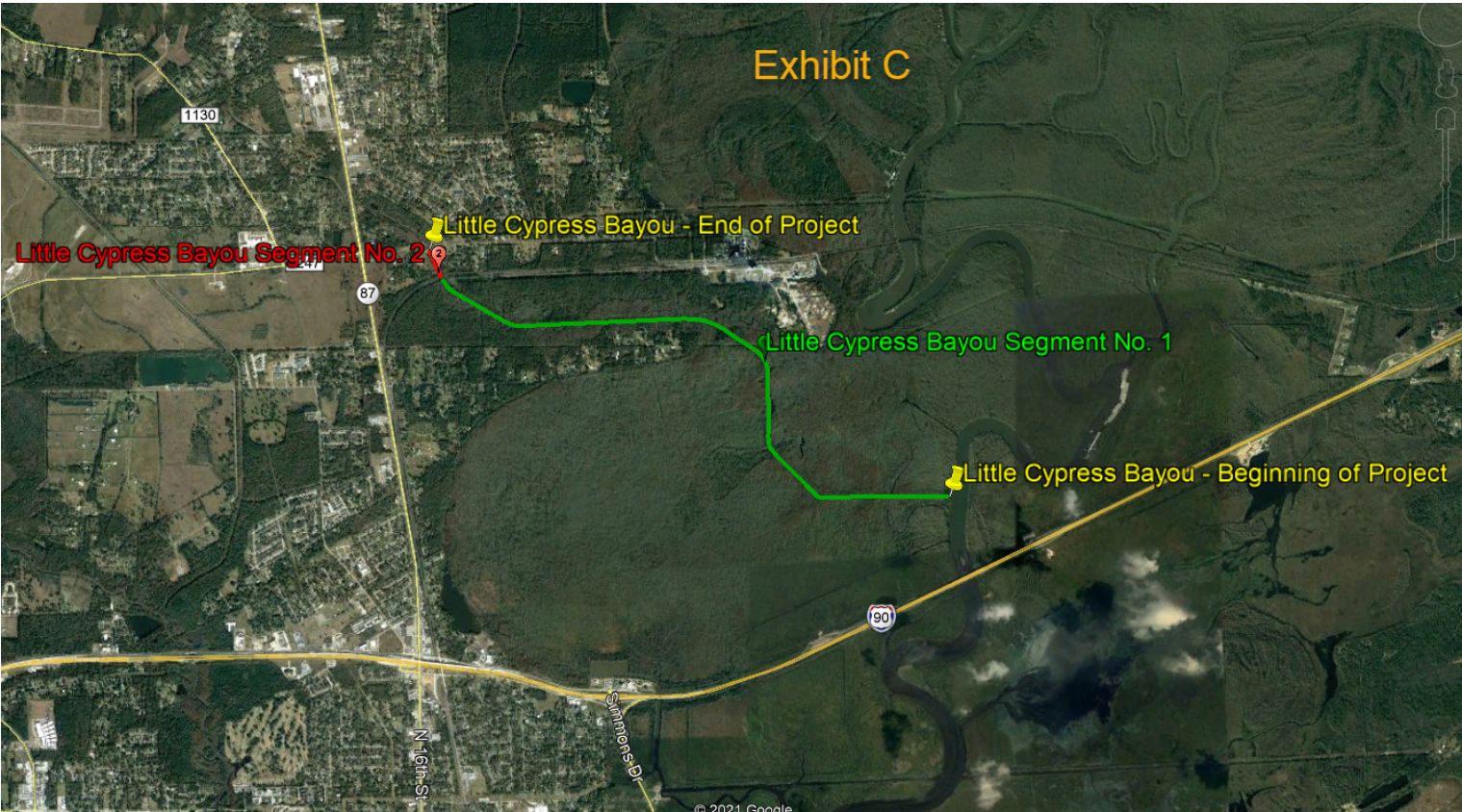
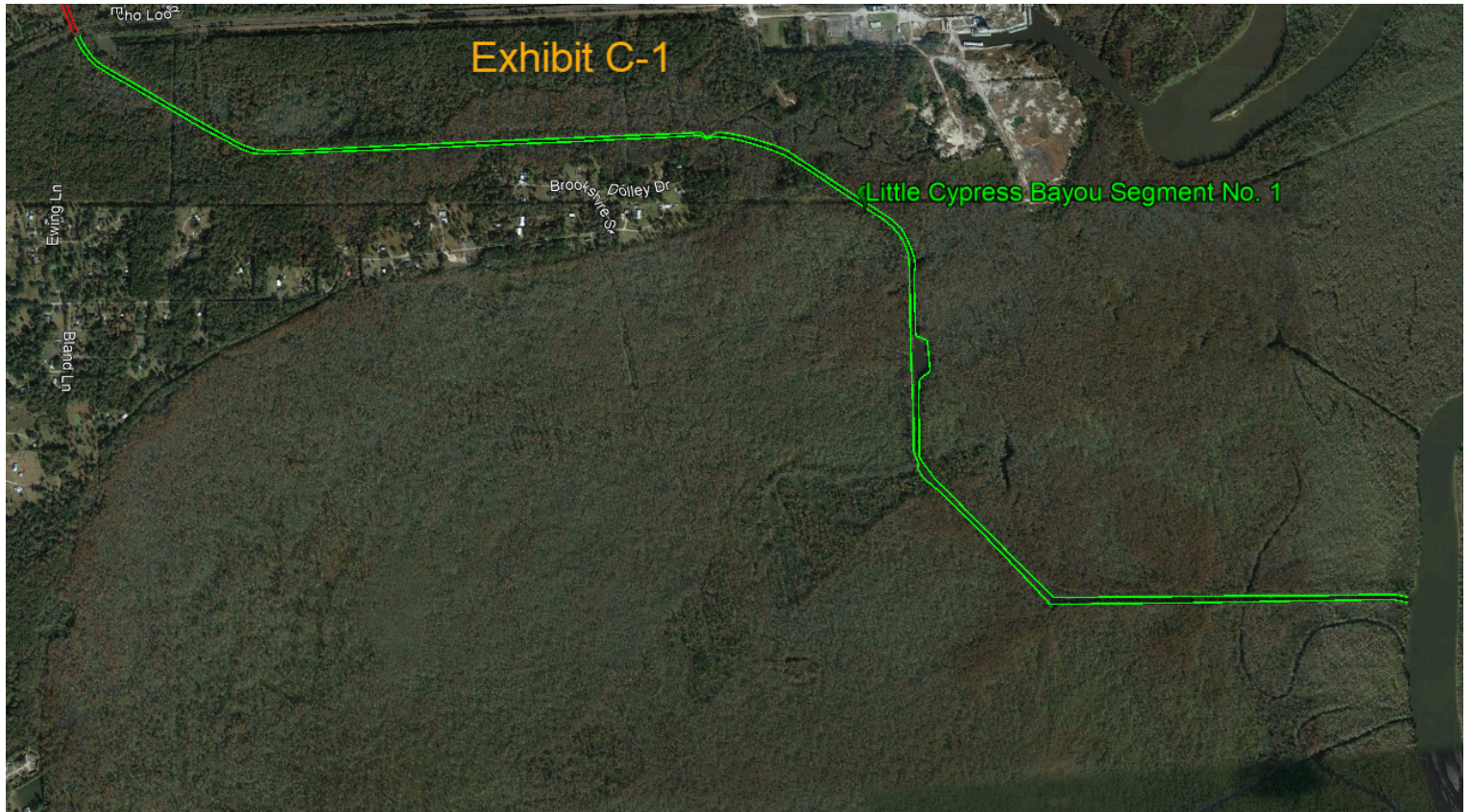


Exhibit C





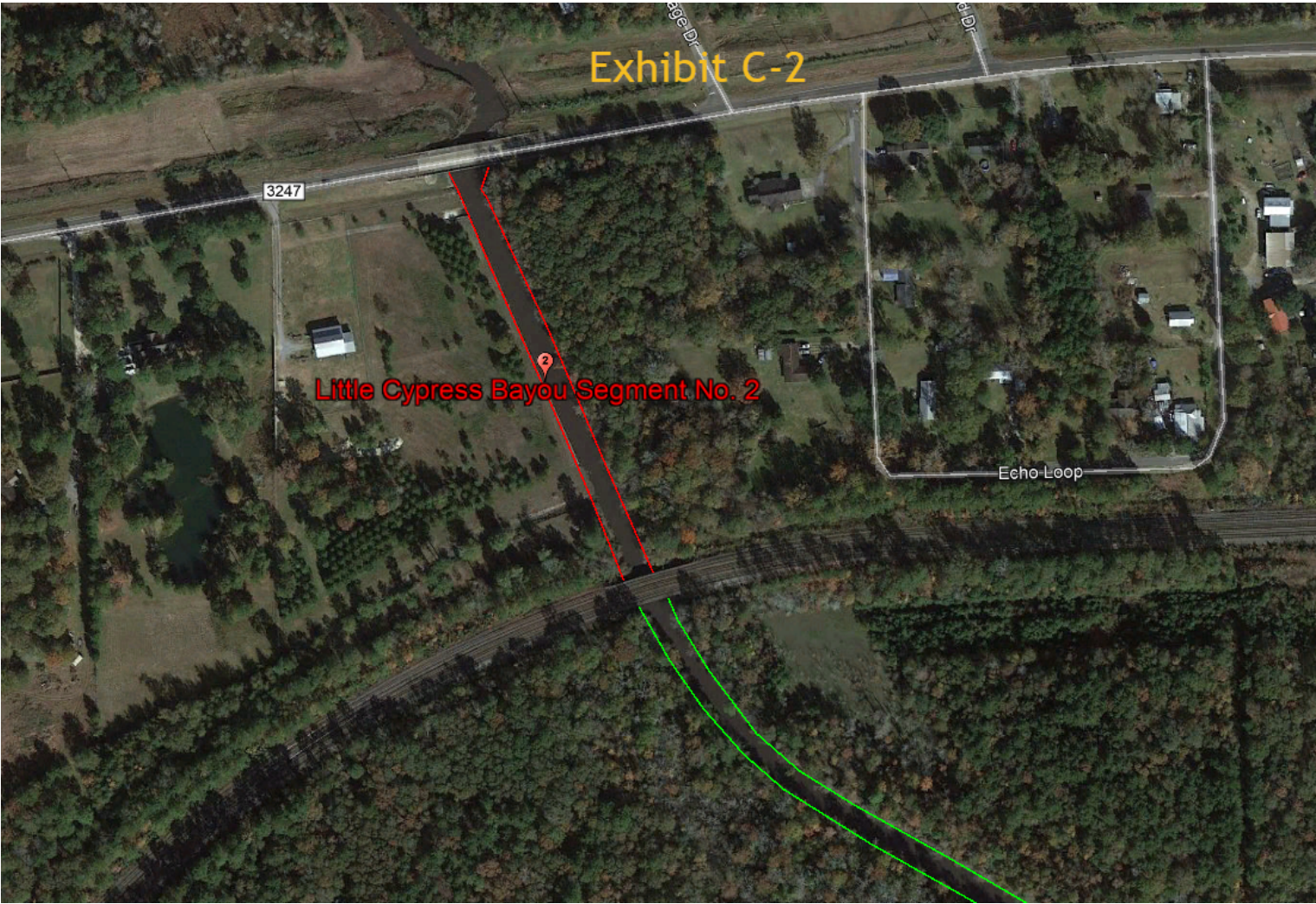


Exhibit C-2

Little Cypress Bayou Segment No. 2

Echo Loop

Attachment II

STATE OF TEXAS

§

BAYOU WATERWAYS

§

DEBRIS REMOVAL PROJECT

COUNTY OF ORANGE

§

CONTRACT FOR BAYOU WATERWAYS DEBRIS REMOVAL SERVICES

The Parties to this contract are the **Orange County Drainage District** ("District"), a special law district and political subdivision of the State of Texas, and _____ ("Contractor"), a corporation authorized and existing pursuant to the laws of the State of _____. The District and Contractor shall sometimes be jointly referred to herein as the "Parties." In consideration of the mutual promises, covenants and agreements set forth herein, the Parties agree as follows:

I. GENERAL PROVISIONS, CONTRACT DOCUMENTS AND DEFINITIONS

- 1.1. Contract Documents.** The Contract Documents consist of the *Contract for Bayou Waterways Debris Removal Services* (hereinafter the "Contract") and all Attachments as set forth in Section 1.2 below, as well as any written modifications duly executed by the Parties and Change Orders properly executed under the terms and conditions of the Contract.
- 1.2. Attachments.** This Contract has five (5) Attachments. These Attachments include: (1) the Scope of Work (Attachment I); (2) Contractor's Declarations Pages evidencing its various insurance coverages (Attachment II); (3) the Contractor's Proposal submitted in response to the District's RFCSP No. 2021-01 (Attachment III); (4) the Contractor's Cost Proposal Form (Attachment IV); and (5) the NCRS Supplemental to OSHA Parts 1910 and 1926 (Attachment V).
- 1.3. Contract.** The Contract Documents represent the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract Documents are complementary, and what is required by any one document shall be as binding as if required by all.
- 1.4. Intent.** The intention of the Parties is to include, except as specifically excluded, all labor, equipment, materials, facilities and services necessary for the proper execution and completion of the Scope of Work attached to this Contract as Attachment "I".
- 1.5. Effective Date, Term, and Renewals.** The effective date of this Contract is the date upon which the last Party signs it. The Term of this Contract shall begin on the Effective Date and continue day to day thereafter until the occurrence of the earlier of one of the following conditions: (1) the Work has been completed as determined by the District Representative; (2) the expiration of _____ days from issuance of the Notice to Proceed, not including work days on which the Contractor is prevented from working due to weather or other conditions (including, but not limited to, the water surface level of the Bayous); or (3) the total compensation lawfully due to the Contractor reaches the Not to Exceed price of _____ dollars (\$_____), or such other amount as may be agreed to in writing by the Parties.

- 1.6. **Status as Independent Contractor.** This Contract does not create an employee-employer relationship between the Parties. The Contractor is an independent contractor of the District and will be in control of the means and the method in which the Scope of Work is performed. As an independent contractor, the Contractor will be solely responsible for payment of all federal, state and local income tax and employment taxes arising from this Contract, and the Contractor agrees to indemnify and hold harmless the District from any obligations relating to such taxes. The District will not make deductions from payments due for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes for which the Contractor is responsible.
- 1.7. **Contractor.** This term shall mean _____, its agents and employees.
- 1.8. **District.** This term shall mean the **Orange County Drainage District** (the "District"), a special law governmental and political subdivision of the State of Texas established pursuant to Article 8280-292 (Vernon's Texas Annotated Statutes).
- 1.9. **District Representative.** The person designated by the District's General Manager as having authority for the general administration of the Contract and with whom the Contractor may communicate regarding questions and issues related to the Project.
- 1.10. **Not To Exceed Price.** This term shall be the maximum compensation due the Contractor and no more. The Not to Exceed Price is _____ dollars (\$_____), or such other amount as may be set forth and agreed upon in a Change Order executed by the Parties. If the Contractor performs Work beyond the Not to Exceed Price, it does so at its own risk and without any obligation of the District to pay additional compensation to the Contractor.
- 1.11. **Project.** The term "Project" shall mean the Scope of Work attached to the Contract as Attachment I.
- 1.12. **Scope of Work.** This term shall mean all of the services described in Attachment I to this Contract along with any Change Orders as may be lawfully executed by the Parties.
- 1.13. **Work.** This term shall mean the services required to be provided by the Contractor pursuant to the Contract Documents and the Scope of Work.
- 1.14. **Day.** Wherever the word "Day" is used in the Contract Documents, it shall be interpreted to mean a calendar day, unless otherwise specifically stipulated.
- 1.15. **Notice to Proceed.** A written notice issued by the District that commences the time period during which the Contractor may begin performance of the Work. The Contractor shall be obligated to commence the Work within five (5) days of the date that the District issues the Notice to Proceed to the Contractor. Prior to beginning Work, all required submittals shall be approved as discussed in the Scope of Work in Attachment I.

- 1.16. Claims and Disputes.** This term shall mean any claim, dispute, protest and/or controversy between the Parties concerning the Contract Documents or Project, or any related matters thereof which shall be processed and determined exclusively pursuant to the provisions of Article XI (Claims and Disputes).
- 1.17. Subcontractor.** This term shall mean a person or entity hired or retained by the Contractor to perform various tasks included within the Scope of Work, or who contracts with another subcontractor to perform various tasks included within the Scope of Work. The Contractor shall not be relieved of any obligations and/or performance under the terms of the Contract by its determination to contract with any subcontractor.

II. COMPENSATION

- 2.1. Form of Compensation.** The District has determined that it is not possible for the District or the Contractor to accurately estimate in advance of the commencement of the Project: (a) the total volume of debris to be removed from Adams Bayou, Cow Bayou and Little Cypress Bayou (collectively the "Bayous") pursuant to the Scope of Work attached hereto as Attachment I; (b) the difficulty and duration of such debris removal; or (c) the total anticipated costs of such debris removal. This determination is made after careful consideration of the near-constant change in the condition of the Bayous caused by previously leaning trees falling into the Bayous with the passage of time, some previously fallen trees becoming dislodged and floating down or into other areas of the Bayous, and the water surface levels of the Bayous. Based upon this determination, the District has also determined that the most suitable form of compensation for complete performance of the Work is payment to the Contractor based on a fixed cost per day for services provided.
- 2.2. Consideration to Contractor.** The District has agreed to allow the Contractor to utilize _____ barge unit(s) in the performance of the Work, which the Parties agree will essentially reduce the time for the completion of the project by _____. The Contractor agrees to provide _____ barge unit(s), each of which shall be capable of holding at least one hundred cubic yards of debris, along with all necessary transport barges, push boats, excavators, and personnel that are necessary and required for the full, efficient and simultaneous operation of _____ barge unit(s) during the course of the Project. Based on the use of _____ barge unit(s), the Contractor represents to the District that it shall remove an average of _____ (_____) minimum cubic yards of debris from the Bayous each work day, and offload such debris onto one of the offloading sites designated in the Scope of Work attached hereto, or onto a site otherwise mutually agreed to by the District and Contractor. Accordingly, the District will pay to the Contractor the amount of _____ dollars (\$_____) per day for a full day (10 hours) for services provided, in accordance with the details set forth in the Cost Proposal Form attached hereto as Attachment IV (___ x \$_____ per work day). The Contractor shall not be separately compensated for the time spent on, and cost of, mobilization and demobilization, whether such mobilization and demobilization occurs before the Work commences, after the Work is performed, or during the course of the performance of the Work, as such tasks are included in the daily cost of debris removal services referenced herein. The Contractor's total consideration under this contract **shall not exceed** the price of _____ dollars (\$_____) for performing all of the Work originally contracted for, unless adjusted by a properly executed Change Order. Any payment made to the Contractor by the Natural Resources Conservation Service (the

“NRCS” or “funding agency”) for Work performed pursuant to this Contract shall be considered to have been made on behalf of the District as a credit against any amounts lawfully owed by the District to the Contractor.

- 2.3. Weather Delays and Partial Workdays.** In the event that the weather or condition of the Bayous (including, but not limited to, the water surface level of the Bayous) prevents the Contractor from working on an otherwise scheduled day, the District shall not owe the contractor any payment or other compensation for such day. It is understood and agreed that no Work shall be performed during such time that there is lightning visible from the worksite that is determined to be less than ten (10) miles away from the worksite, or lightning is detected within ten (10) miles of the worksite via a weather service or electronic application software, or for thirty (30) minutes after such lightning is detected as set forth herein. Further, no Work shall be performed on any day, or during any time of the day, that the representative of the NRCS or the District Representative determines is unsafe due to extreme rainfall, other weather conditions, or other working conditions (such as the water level in the Bayous or other condition that prevents the performance of the Work in a safe and workmanlike manner). In the event that the Contractor is able to work a partial day (less than ten hours), the District will pay to the Contractor a pro-rated amount for such workday for each barge unit at the rate of _____ dollars (\$_____) per hour per barge unit.
- 2.4 Mobilization of Barge Unit(s) During Project.** The Parties anticipate that the barge unit(s) and other vessels will be required to be removed from Adams Bayou, and then placed back into the bayou during the course of the Project due to the existence of railroad trestles or other crossings. The Contractor shall not be compensated for the time or expense associated with repositioning the barge unit(s) during the course of the Project as described herein.

III. DISTRICT OBLIGATIONS

- 3.1. District’s Rights and Obligations.** As owner of the Project, the District’s rights and obligations under the Contract Documents are set forth and described in the following sections, and as well other related sections of this Contract.
- 3.2. Copies Furnished – Drawings and/or Specifications.** The District shall furnish surveys, maps or other documents requested by Contractor describing the physical characteristics, legal description, limitations, site utility locations, designated Offloading Locations and other information necessary to the Contractor, and which is available to the District or under its control. Communication with the Contractor shall be through the District Representative or the District’s General Manager.
- 3.3. General Administration.** Unless otherwise agreed, the District shall designate a District Representative who will provide general administration of the contract and will be the District's official representative during the performance of the Scope of Work described in Attachment I, and with regard to any Change Orders to be executed by District’s Representative and General Manager as provided in Section 6 of this Contract. The District assumes no responsibility for any understanding given or representation made orally by any person prior to the execution of this Contract, unless such understanding(s) or representation(s) are also expressly stated in the Contract, its Attachments or a properly

executed Change Order. The District assumes no responsibility for any conclusions or interpretations made by the Contractor even where the Contractor has relied upon oral representations of the District or its agents prior to the execution of this Contract. A failure by the Contractor to become acquainted with all available information will not relieve Contractor from responsibility for properly estimating the difficulty or cost of successfully performing the Work or mutually agreed Change Orders.

- 3.4. Authority of District Representative.** The District Representative has the authority to act on behalf of the District to the extent provided for in the Contract Documents, unless otherwise modified by written instrument signed by the District's General Manager that will be shown, and given, to the Contractor. The District's instructions to the Contractor will generally be issued through the District Representative, except that the District reserves the right to issue instructions directly to the Contractor through its General Manager, or other representative as may be designated in writing by the General Manager.
- 3.5. Instructions Affecting Payment or Scope of Work.** All instructions affecting the Contract Sum, Payment, Contract Time, Scope of Work, or Contract Interpretation, shall be confirmed expeditiously in a writing with copies furnished to the District Representative as well as the Contractor regardless of which party issues the instruction. No deviation from any previously approved Scope of Work shall be allowed except as directed by the District Representative or General Manager pursuant to a lawfully executed Change Order.
- 3.6. Interpretation of Contract Documents.** Unless otherwise set forth in a Change Order or other writing signed by the General Manager, the District Representative will be the final interpreter of the Scope of Work. All such interpretations shall be consistent with the intent of and reasonably reflect the usual and ordinary meaning of the terms set forth in the Contract Documents.
- 3.7. Access to and Inspection of the Scope of Work.** The Contractor shall provide sufficient, safe and reasonable access at all reasonable times for the District Representative and/or any officer, agent or employee of the District, or of any federal or state funding or enforcement agency, for the observation and/or inspection of the Contractor's Work. However, inspection by the District Representative or other District personnel in no way relieves the Contractor from its obligations to independently perform the Contractor's obligations in accordance with the Contract Documents. The District Representative will be present on the site as frequently as the District reasonably deems necessary to consult with the Contractor and to judge whether the quality and quantity of the Work complies with the Contract Documents. The District Representative has the authority, but not the duty, to stop the Contractor from beginning or completing any portion of the Work that in any way fails to conform to the Contract Documents.
- 3.8. Removal of Employees.** The District may, in writing, require the Contractor to remove from the project any employee of the Contractor or a subcontractor who the District finds careless, incompetent, or otherwise objectionable. However, the District Representative has no affirmative duty to make any such objection, and his failure to do so shall not relieve the Contractor from any obligation or liability under the Contract.

- 3.9 District's Right to Stop the Work.** If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the District or any authorized governmental agency may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the District to stop the Work shall not give rise to a duty on the part of the District to exercise this right for the benefit of the Contractor or any other person or entity.
- 3.10. Successors and/or Assigns.** The District and the Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the District, nor shall the Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the District.

IV. CONTRACTOR OBLIGATIONS

- 4.1. Contractor's Obligations.** The Contractor's performance of the Work is required to be in accordance with the Contract Documents, industry standards and best practices, as well as, the additional obligations as set forth in this Contract.
- 4.2. Contractor's Performance of Scope of Work.** Within five (5) days of receipt of the District's Notice to Proceed, the Contractor shall commence the Work. The Contractor shall supervise and direct the Work thereafter using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, permits, safety, sequences and procedures, and for coordinating all portions of the Work under this Contract. The Contractor shall perform all Work in a good and workmanlike manner, in a timely manner, and free of defect. Except for weather delays, force majeure, or agreement by the District, the Contractor shall continue the Work in an expeditious manner, six (6) days per week (Monday thru Saturday, excluding District Holidays), ten hours per day (beginning at 7:00 a.m. each day) until the Work is completed. The Contractor shall complete the performance of the Work within _____ (__) work days. In the event that the Contractor has performed the Work in an expeditious manner, but is nevertheless unable to complete the Work in _____ (__) work days, the District may authorize up to an additional _____ (__) work days for the completion of the Work.
- 4.3. Designation of Contractor's Supervisor.** The Contractor shall, before commencement of the Work, submit to the District the name of the person designated as its Supervisor.
- 4.4. Contractor's Supervisor On Site.** The Contractor shall employ a competent Supervisor who shall be in attendance at the project site during the progress of the Work. The Supervisor shall be satisfactory to the District, and shall not be changed except upon written approval of the District unless he/she leaves the employment of the Contractor. The Supervisor shall represent the Contractor and shall have full authority to act on its behalf. All communication given to the Supervisor shall be as binding as if given to the Contractor.

- 4.5. Contractor's Employees/Representatives.** Contractor shall be responsible to the District to the fullest extent of the law for all acts and/or omissions of its employees, agents and/or representatives resulting in damage, either property damage or personal injury, to District personnel or any third party.
- 4.6. Subcontractors.** The Contractor shall submit a list of all subcontractors it proposes to use during the project. The Contractor shall not employ any subcontractor to whom the District has a reasonable and lawful objection. After the execution of the Contract, the substitution of a previously approved subcontractor or the addition of one, or more, new subcontractors shall be made only with the written consent of the District Representative.
- 4.7. Liability for Subcontractors.** The Contractor agrees to bind every subcontractor to the terms and conditions of this Contract, including, but not limited to, the Federally Mandated Contract Clauses set forth in Section XII of this Contract. The Contractor shall inform its subcontractors, prior to executing an agreement with them, that they will be required to perform their Work in conformance with all of the Contract Documents, and to submit cost estimates and cost-related supporting documentation in sufficient detail when so requested. The Contractor shall indemnify the District for any subcontractor's claim that may result from the Contractor's failure to incorporate the provisions of this contract in agreements with any of its subcontractors.
- 4.8. Acts and/or Omissions of Subcontractors.** The Contractor shall be jointly and severally liable to the District together with subcontractors for all acts and omissions of the Contractor's and subcontractor's representatives, agents, and/or employees.
- 4.9. Review of Contract Documents and Field Conditions by Contractor.**
- 4.9.1.** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with site conditions under which the Work is to be performed and correlated personal observations with the requirements of the Contract Documents and as well, the information provided to the Contractor referenced in Section 3.2.
- 4.9.2.** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully review and compare the Contract Documents for the Work, as well as the information furnished by the District, shall make field observations of any existing conditions related to that portion of the Work, and shall observe any conditions at the site effecting the Work. The Contractor shall promptly report to the District any errors, inconsistencies or omissions discovered by or made known to the Contractor as may be required. It is the Contractor's duty to determine whether, and to what extent, the Contract Documents may need to be clarified and to timely seek any such clarification before commencement of the Work.
- 4.9.3.** Any unreasonable failure by the Contractor to observe conditions at the site which may affect the Work or to carefully review and compare the Contract Documents for the Work shall not cause the District to incur any additional costs; and, any such failure will not excuse the Contractor from the obligations to perform the Work strictly in accordance with the Contract Documents.

- 4.10. Unforeseen Conditions or Circumstances.** If the Contractor encounters conditions at the site that are subsurface, or otherwise concealed physical conditions that differ materially from the information provided in the Contract Documents, or unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in the construction activities concerning the Work provided for in the Contract Documents, the Contractor shall promptly provide written notice to the District Representative of such conditions before conditions are disturbed and/or any Work is performed. If necessary due to such unforeseen conditions or circumstances, the District Representative may issue a Change Order, subject to approval of the General Manager, modifying the Scope of Work as determined to be necessary by the District Representative in order to conform to such conditions and describing any increase or decrease in the cost of the Work or the time for completion of the Work.
- 4.11. Insurance.** The Contractor shall not commence the Work under this Contract until it has obtained all of the insurance required by this Contract, and certificates of such insurance have been filed with and accepted by the District. Acceptance of the insurance certificates by the District shall not relieve or decrease the liability of the Contractor. The Contractor's Certificates of Insurance or Declarations Pages for each type of insurance affecting this Contract is attached to this Contract as Attachment III.
- 4.12. Certificates of Insurance.** Contractor shall furnish Certificates of Insurance to the District within five (5) days after execution of this Contract and before proceeding to perform any Work set forth in the Scope of Work. If Contractor fails to provide Certificates of Insurance after such time, the District may terminate the contract.
- 4.13. Maintenance of Insurance.** Unless otherwise provided, the Contractor shall provide and maintain, until the Scope of Work attached to this Contract is completed and accepted by the District, the minimum insurance coverage as set forth below:
1. Commercial General Liability insurance for bodily and personal injury (including death) and property damage:
 - a. Each occurrence not less than \$1,000,000
 - b. General aggregate not less than \$2,000,000
 - c. The coverage shall include but not be limited to personal injury liability, premises/operations, and products/completed operations
 2. Worker's Compensation and Employer's Liability Insurance
 - a. Employers' Liability insurance of \$1,000,000 per occurrence
 - b. Worker's Compensation as required by statute
 3. United States Longshore and Harbor Workers Compensation Act Insurance
 - a. In such amount as will fully insure all of the Contractor's employees working on the Project who are covered by the Act.
 4. Automobile Liability (for vehicles that Contractor uses in performing Work under the Contract, including Employer's Owned, Non-Ownership, and Hired Auto Coverage)

ATTACHMENT II

- a. Combined Single Limit of \$1,000,000 per occurrence
5. Marine General Liability (for barges and boats that the Contractor uses in performing Work under the Contract, including Employer's Owned, Non-Ownership, and Hired Marine Coverage)
 - a. Combined Single Limit of \$1,000,000 per occurrence per vessel
 - b. General aggregate not less than \$2,000,000
 - c. The coverage shall include, but not be limited to, personal injury liability, premises/operations, and products/completed operations
6. Environmental Impairment Liability and/or Pollution Liability (including, but not limited to, coverage for pollution or contamination of waterways, including, but not limited to, Adams Bayou, Cow Bayou, and Little Cypress Bayou and all of its tributaries and connected waterways)
 - a. \$3,000,000 per occurrence or claim and \$3,000,000 aggregate
7. Excess Liability
 - a. \$3,000,000 per occurrence and \$3,000,000 aggregate
8. Other Insurance requirements and provisions applicable to the insurance coverages required to be secured and maintained by Contractor are as follows:
 - a. Defense costs shall be excluded from the face amount of the policy. Aggregate limits are per 12-month policy period unless otherwise indicated.
 - b. All of the insurance required to be carried by the Contractor hereunder shall be by policies which shall require on their face, or by endorsement, that the insurance carrier waive any rights of subrogation to recover against the District, and that it shall give thirty (30) days written notice to the District before such policies may be cancelled or materially changed. Within such thirty (30) day period, Contractor covenants that it will provide other suitable policies in lieu of those about to be cancelled or materially modified, or nonrenewed so as to maintain in effect the coverage required under the provisions hereof. Failure or refusal of the Contractor to obtain and keep in force the above-required insurance coverage shall authorize the District, at its option, to terminate the Contract at once. Contractor shall give written notice to the District within five (5) days of the date on which total claims by any party against Contractor reduce the aggregated amount of coverage below the amounts required by the Agreement.
9. The Contractor shall pay all insurance premiums, and the District shall not be obligated to pay any premiums. The Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the District.
10. If any part of the Work is subcontracted, similar insurance shall be provided by or on behalf of the subcontractor to cover its operations, and evidence of such insurance, satisfactory to the District, shall be furnished by the Contractor. In the event a subcontractor is unable to furnish insurance in the limits required under the

Agreement, the Contractor shall endorse the subcontractor as an Additional Insured on its policies, excluding Worker's Compensation and Employer's Liability.

Only unaltered original insurance certificates endorsed by the underwriter are acceptable. Photocopies are unacceptable.

4.13.1. Worker's Compensation. The Contractor shall maintain the minimum amounts required pursuant to the laws of the State of Texas.

4.13.2. Occurrence Basis. All policies shall be on an "occurrence" basis rather than a "claims made" basis.

4.13.3. Additional Insured. The District shall be added as an additional insured on all insurance policies for the duration of the Contract.

4.13.4. Insurer Rating. Insurance companies providing insurance for the Contractor shall be A.M. Best Company rated AX (A-10) or better, unless otherwise specifically approved in writing by the District.

4.14 Performance Bond and Payment Bond. Before any Work is commenced, the Contractor shall provide the following described surety bonds from a company lawfully authorized to issue surety bonds in Orange County, Texas, as follows:

14.14.1 Performance Bond. The Contractor shall provide a Performance Bond, in the form reasonably required by and acceptable to the District, in the amount of _____ dollars (\$_____), whereby the Contractor and Surety shall bind themselves, jointly and severally, to the District for the performance of the Contract.

14.14.2 Payment Bond. The Contractor shall provide a Payment Bond in the form reasonably required by and acceptable to the District, in the amount of _____ dollars (\$_____), whereby the Contractor and Surety shall bind themselves, jointly and severally, to the District for the payment of all labor, subcontractor services, materials and equipment furnished for use in the performance of the Contract.

4.15. Safety Precautions and Programs. It shall be the duty and responsibility of the Contractor and all of its subcontractors to be familiar and comply with all requirements of 29 U.S.C.A. §651 *et seq.* (the *Occupational Safety and Health Act of 1970*, aka OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of this Act. In any emergency affecting the safety of persons and property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor resulting from emergency work shall be considered in accordance with provisions for contract changes set forth in this Contract.

4.16. Materials and Workmanship. The Contractor warrants to the District that all materials and the Work furnished under the Contract will be of good quality and in accordance with the customs, practices and standards applicable to the same or similar work in the Contractor's industry. The Contractor further warrants that the Work will conform to the

requirements of the Contract Documents, be performed in a good and workmanlike manner, and be free from defects, except for those inherent in the quality of the Work that the Contract Documents require or permit.

- 4.17. Labor and Materials.** The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent.
- 4.18. Taxes.** The Contractor shall pay sales, use and similar taxes for the Work provided by the Contractor which are legally in effect upon the occurrence of the notice to proceed.
- 4.19. Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District, and the District's consultants, agents, employees and representatives including their successors and assigns thereof from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property caused by the negligent acts and/or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person pursuant to the laws of the State of Texas.
- 4.20. Interrelation of Documents.** Should the drawings, diagrams, Change Orders, or other media disagree one with another, or with the Scope of Work in general, the Contractor shall clarify the inconsistency with the District Representative and obtain written instructions as to how to interpret the conflicting documents in order to proceed.

V. SUBCONTRACTORS

- 5.1. Subcontractor Relations.** By appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities including the responsibility for safety of the subcontractor's work, which the Contractor, by this Contract assumes toward the District. Each subcontractor agreement shall preserve and protect the rights of the District under the Contract Documents with respect to the Work to be performed by the subcontractor. Notwithstanding any provision herein, this Contract shall not create any obligation of the District to any subcontractor or other party.
- 5.2.** Subcontractors shall be required to submit cost estimates in sufficient detail to the Contractor and the District when so requested.
- 5.3.** Contractor shall indemnify the District for all costs, expenses and losses that result from the Contractor's failure to strictly comply with the provisions of the Contract Documents.

- 5.4. The Contractor shall reimburse the District for costs that the District incurs that are payable to a subcontractor because of the Contractor's delays, improperly timed activities, defective Work or nonpayment of wages.

VI. **CHANGE ORDERS**

- 6.1. **Change Orders.** A Change Order is a lawfully executed written order to the Contractor, signed by the District's General Manager issued after execution of the contract, authorizing a change in the Scope of Work. A Change Order may increase, decrease and/or otherwise modify the Scope of Work.

- 6.2. **District Initiated Change Order.** The District, without invalidating the Contract, may order changes in the Scope of Work of the Contract consisting of additions, deletions or other revisions so long as the changes do not cause the Contractor to be entitled to an amount of compensation greater than the Not to Exceed Price. No change in the Scope of Work shall be valid or authorized under this Contract unless it be in the form of a Change Order signed by the District's General Manager.

- 6.3. **Change Order's Effect Upon Contract.** Where such a Change Order has been issued and accepted, it shall be performed pursuant to the requirements of the Contract Documents. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in the Change Order itself.

- 6.4. **Change Order Procedure.** Procedures for administration of Change Orders are set forth below:

6.4.1. Prior Approval Required. A change in the Scope of Work shall be formally initiated by a Change Order detailing requirements of the proposed change, which in the Scope of Work may include a change in cost or time by the Contractor. Except for emergency conditions defined herein, the General Manager must approve any Change Order in writing for authorization to proceed with the Work made the basis of the Change Order. The District will not be responsible for the cost of such changes in the Scope of Work performed by the Contractor without prior written approval of the General Manager.

6.4.2. Effect of Change Order. When a District initiated Change Order has been issued, it will have the full force and effect of a Contract Modification.

6.4.3. Contractor Objection. If the Contractor objects to a District initiated Change Order, it shall state in writing the specific objections or points of disagreement within three (3) calendar days of receipt of such order. Otherwise, the Contractor shall agree, in writing, to the Change Order and perform the Work specified in the Change Order accordingly.

6.4.4. Oral Representations Invalid. No oral statement, or direction of the District Representative shall be treated as a change under this Contract or entitle the Contractor to an adjustment in the Scope of Work unless in response to a *bona fide* emergency as determined by the Contractor and the District Representative. In such an instance, the instructions of the District's Representative as authorized by the General Manager or his designee shall constitute the substance of a Change Order. These instructions shall be

reduced to writing and signed by the appropriate representative of the Parties as soon as is practicable after the abatement of the emergency condition.

6.4.5. Request for Additional Time or Compensation. The Contractor shall make a claim for additional time or compensation in the form of a Change Order as specified below.

6.5. Claims for Additional Costs. If the Contractor wishes to make a claim for a change in the Contractor's Schedule of Rates or in total compensation, it shall give the District Representative written notice thereof within twenty-four hours (24 hours) after the occurrence of the event giving rise to such claim. The claim for change in compensation rates shall be treated as a Change Order request initiated by the Contractor.

6.6. Grounds for Claim. If the Contractor claims that a change in its Schedule of Rates or additional time is required because of: (1) any written interpretation of the Contract Documents by the District's Representative, (2) any order by the District Representative to stop the Work where the Contractor is not at fault, or (3) any written order for a minor change in the Work, such grounds will be duly considered by the District's Representative, and the Contractor will be notified of the District's determination. Any disagreement between the Parties shall be subject to Article XI (Claims and Disputes).

6.7. Review of Contract Documents, Scope of Work and Project Conditions. The Contractor shall carefully study and compare the Scope of Work together with any other information supplied by the District as well as its own knowledge and expertise, and report immediately to the District Representative any material errors, inconsistencies or omissions which the Contractor discovers.

6.7.1. Should the Contractor or its subcontractor fail to report to the District Representative known errors, inconsistencies or omissions, and proceed to perform the Work incorporating known error, inconsistency or omission, the Contractor shall assume appropriate responsibility and shall bear appropriate attributable cost for the performance of such Work.

6.7.2. The District, if applicable, may assume an intent to circumvent competitive bidding for necessary corrective project Work where the Contractor proceeds to perform the Work and fails to report to the District Representative known errors, inconsistencies, and omissions. In such case, the District may choose to award a separate contract for the corrective Work.

6.7.3. Claims for time extensions or for extra cost resulting from delayed notice and/or reports of known errors, inconsistencies or omissions will not be considered by the District for the issuance of a Change Order.

VII. CONTRACT PAYMENTS

7.1. Contract Price Breakdown. The Contractor's selected Cost Proposal Form (Attachment IV hereto) shall be used as the basis for calculation of progress payments under the Contract.

- 7.2. Requests for Progress Payments and Final Payment.** After the expiration of thirty (30) days from the date that the Contractor begins the performance of the Work, the Contractor may submit to the District an itemized Request for a Progress Payment for completed portions of the Work. The Request for Progress Payment shall include and be supported by all data substantiating the Contractor's right to payment that the District, or any federal or state agency that is funding in whole or in part the performance of the Work, may require. The Request for Progress Payment shall reflect retainage of ten percent (10%) of the amount represented by the Request for Progress Payment to be owed to Contractor, which shall be retained by the District or NRCS until such time as Final Payment is made to the Contractor. By submitting a Request for Progress Payment or a Request for Final Payment, the Contractor represents and warrants to the District that to the best of Contractor's knowledge, information and belief: (a) all Work covered by the Request for Progress Payment or Final Payment has been performed in compliance with the Contract Documents, and is free and clear of liens, claims, security interests or other encumbrances adverse to the District's interests; and (b) all payrolls, bills for labor, materials, equipment, or other indebtedness connected with such Work have been paid or will be paid within thirty (30) days after receipt of payment. The Contractor may submit a successive Request for Progress Payment after the expiration of thirty (30) days from the date of the submission of the last preceding Request for Progress Payment, and may submit the Final Application for Payment after all Work has been performed in accordance with the Contract Documents.
- 7.3. Progress Payments.** Except for the District's right to withhold payment as reflected in Section 7.4 below, the District shall make, or cause to be made by the NRCS, payment to the Contractor within thirty (30) days of a properly submitted and documented Application for Progress Payment or Application for Final Payment.
- 7.4. Withholding Payment.** Until corrected in accordance with Texas law, the District reserves the right to withhold or, on account of subsequently discovered evidence, nullify that part of any request for payment to such extent as may be necessary to protect the District from loss on account of:
- a. Defective Work not remedied;
 - b. Damage to Work of another contractor;
 - c. Failure to maintain scheduled progress; or
 - d. Failure to timely pay wages to its employees, or otherwise make due and owing payments to suppliers and subcontractors.
- 7.5. Final Payment.** Notwithstanding any other provision herein, final payment to the Contractor shall not become due until the Contractor has delivered to the District a complete release of all liens arising out of the Contract and the Work, and provides receipts required by the District evidencing payment for all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the District to indemnify the District against such a lien.

- 7.6. Payment Shall Not Be Deemed a Release.** Payments to the Contractor shall not be construed to release the Contractor or its surety, if any, from any obligations under this Contract.

VIII. TERMINATION OR SUSPENSION OF THE CONTRACT

- 8.1. Termination by Contractor.** The Contractor may terminate the Contract as follows: if the Work is stopped for a period of thirty (30) consecutive calendar days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon ten (10) additional days written notice to the District Representative, terminate the Contract and recover from the District payment for all Work executed in accordance with the Contract Documents up to the date of termination.
- 8.2. Termination by District for Cause.** The District may terminate the Contract for cause if the Contractor: (1) persistently or repeatedly refuses or fails (except in cases for which extension of time is provided) to supply a sufficient number of properly skilled workmen or proper materials, (2) persistently or repeatedly refuses or fails to timely pay his subcontractors or suppliers, (3) persistently or repeatedly disregards laws, ordinances, rules, regulations, instructions or orders of the District or any public authority having jurisdiction, (4) otherwise is guilty of a substantial breach of a provision of the Contract Documents, or (5) fails to so perform the Work as to insure its completion, within the time, or any extension thereof, specified in the Contract Documents. Upon occurrence of any of the above, the District may, without prejudice to any right or remedy provided in this Contract or by the laws of the State of Texas and after giving the Contractor and his surety, if any, three (3) days written notice, terminate the Contract. When the District terminates the Contract for one of the reasons stated hereinabove, the Contractor shall only be entitled to payment for such Work which was completed in accordance with the Contract Documents prior to the occurrence which is the basis of the termination.
- 8.3. Termination for Convenience of District.** The District may, at any time, terminate the Contract at the District's convenience and without cause. Upon receipt of written Notice from the District of such termination for the District's convenience, the Contractor shall: (1) cease operations as directed by the District in the Notice; (2) take actions necessary, or that the District may direct, for the protection and preservation of the Work, (3) except for Work directed to be performed prior to the effective date of termination stated in the Notice, immediately terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; (4) within thirty (30) days of the date of the Notice of Termination, submit a final invoice to the District for payment due up until the date of termination for Work executed in accordance with the Contract Documents and reasonable demobilization costs. The final invoice shall set forth the basis for costs claimed by the Contractor, fully detailed and with adequate support for the District's review and determination. If the Contractor fails to submit a final invoice within the time allowed, the District may determine the amount due to the Contractor because of the termination and shall pay the determined amount to the Contractor.

- 8.4. Written Notice.** Written notice shall be considered to have been duly given if delivered in person to the other Party's authorized representative, or Designated Supervisor or Representative, or if delivered at or sent by registered or certified mail to the other Party at the address provided herein.

IX. CONTRACT COMPLETION TIME

- 9.1. Time for Completion.** The Contractor shall complete the Work on or before the expiration of _____ (__) days from the date of the issuance of the Notice to Proceed.
- 9.2. Delays and Extensions of Time.** The Contractor may be granted an extension of time for good cause. Claims for extensions of time must be made in the form of a Change Order request made within twenty-four (24) hours after the occurrence of the delay. All time extension claims shall be supported by sufficient written evidence to justify the issuance of a Change Order. In the case of a continuing cause of delay, only one Change Order is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days.
- 9.3. Failure to Complete Scope of Services on Time.** The Parties agree that time is of the essence with respect to the completion of the Work. Contractor acknowledges and agrees that its failure to expeditiously perform the Work will cause damage to the District. Accordingly, in the event that the District Representative, or a state or federal agency that is funding in whole or in part the performance of the Work, reasonably determines that the Contractor is not performing the Work in a reasonably expeditious or efficient manner, or is otherwise performing the Work in a manner that is unduly delaying the completion of the Work, the District's General Manager may stop the Work, and the District may terminate the Contract. In the event that the District terminates the Contract for this reason, the Contractor shall only be entitled to payment for such Work which was completed in accordance with the Contract Documents prior to the stoppage of the Work and termination of the Contract.

X. FINAL ACCEPTANCE AND PAYMENT

- 10.1. Notification and Payment.** When the Work is completed, the Contractor shall notify the District Representative, in writing, that the Work will be ready for final inspection on a definite date. Upon verification by the District Representative that the Work is ready for final inspection and acceptance, the District Representative shall have two (2) calendar days to make a final inspection. When 1) the Work is found acceptable as compared to the Scope of Work; 2) the Contractor has performed all obligations under the Contract; and 3) the Contractor has submitted all data and documentation substantiating the Contractor's right to payment (as required by the District or the NRCS) the District shall issue a Final Payment to the Contractor within thirty (30) calendar days after acceptance by the District.
- 10.2. Final Payment.** Acceptance of Final Payment shall constitute a waiver of all claims by the Contractor against the District except those specifically enumerated in writing at the time of Final Payment.

XI. CLAIMS AND DISPUTES

- 11.1. Dispute Resolution, Jurisdiction and Venue.** The Parties to this Contract shall attempt to settle disputes arising under this Contract by discussion between the Parties' senior representatives of management. If any dispute cannot be resolved in this manner, within a reasonable length of time, the Parties may agree to attempt non-binding mediation prior to filing any legal proceeding. In the event that either party institutes any legal proceeding, including but not limited to a lawsuit, that arises out of, or relates to the rights and obligations of the Parties to this Contract or the Project, the Parties agree that the exclusive jurisdiction and venue of such legal proceeding shall lie in Orange County, Texas, in an appropriate State District Court or County Court at Law having jurisdiction in Orange County, Texas.

XII. FEDERALLY MANDATED CONTRACT CLAUSES

- 12.1.** Contractor acknowledges its full and complete understanding that the Work that it provides pursuant to this Contract will be funded in whole or in part by the NRCS, a division of the United States Department of Agriculture, and that notwithstanding any other provisions set forth in this Contract, the following provisions govern the responsibilities of the Parties, and Contractor shall comply with all of the following provisions:

A. Equal Employment Opportunity: During the performance of this Contract,

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event that the Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Davis Bacon Act and Copeland Anti-Kickback Act – Compliance with the Copeland "Anti-Kickback" Act:

- (1) The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.
- (2) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the Funding Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The

Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Contract clauses.

- (3) **Breach.** A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

C. Compliance with the Contract Work Hours and Safety Standards Act:

- (1) **Overtime Requirements.** The Contractor or any subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics, shall not require or permit any such laborer or mechanic in any workweek in which he or she is employed to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of Work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 or such other amount required by law, for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for Unpaid Wages and Liquidated Damages.** The District shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

D. Clean Air Act :

- (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) Contractor agrees to report each violation to the Texas Commission on Environmental Quality (TCEQ) and understands and agrees that TCEQ will, in turn, report each violation as required to assure notification to the District, the appropriate Environmental Protection Agency Regional Office, FEMA, or other appropriate state or federal agency.
- (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the NRCS.

E. Federal Water Pollution Control Act:

- (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) Contractor agrees to report each violation to the Texas Commission on Environmental Quality (TCEQ) and understands and agrees that TCEQ will, in turn, report each violation as required to assure notification to the District, Federal Emergency Management Agency, the appropriate Environmental Protection Agency Regional Office and/or other appropriate state or federal agency.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the NRCS.

F. Debarment and Suspension:

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the District. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to Remedies available to the District, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the time period of this Contract. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

G. Procurement of Recovered Materials:

- (1) In the performance of this contract, Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- (2) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines website.

H. Program Fraud and False or Fraudulent Statements or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

I. Access to Records: The following access to records requirements apply to this Contract:

- (1) The Contractor agrees to provide the District, the NRCS, the Comptroller General of the United States, or any other authorized state or federal entity, agency or department, or their authorized representatives, access to any books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- (2) The Contractor agrees to permit any of the foregoing Parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - (3) The Contractor agrees to provide the NRCS, and its representatives, and the authorized representatives of any other federal or state entity, agency or department access to construction or other work sites pertaining to the Work being completed under this Contract.
- J. Agency Seal, Logo and Flags:** The Contractor shall not use the seals, logos or flags of the NRCS or any other state or federal agency without the express written permission of such state or federal agency.
- K. Byrd Anti-Lobbying Amendment. 31 U.S.C. § 1352 (as amended):** Contractor must file with the Government the required certification. Each subcontractor certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. If not provided with the bid response, the Contractor must complete and submit the Certification Regarding Lobbying Form.
- L. Whistleblower Protection Act:** The Contractor understands and agrees that this Contract and employees working on this Contract will be subject to the whistleblower rights and remedies established under 41 U.S.C. § 4712 and shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712 as described in section 3.908 of the Federal Acquisition Regulation. The Contractor shall insert the substance of this clause, Paragraph L (“Whistleblower Protection Act”), in all subcontracts providing services under this Contract.
- M. Damages:**
 - (1) All Work to be performed under this Contract shall be timely commenced, it being understood that the Contractor will be given adequate time to employ sound professional practices. A breach of this Contract by Contractor would cause substantial delay in the completion of the required services affecting the safety and welfare of the public.
 - (2) In the event of Contractor’s breach of its performance obligations, the District shall have all rights and remedies against Contractor as provided by law.

- N. **Energy Efficiency and Conservation (2 CFR §200.326 Appendix II to Part 200):** If applicable to the Work and services performed by the Contractor under the Contract, the Contractor shall comply with the mandatory standards and policies of the state regulation promulgated in accordance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).
- O. **Agreements With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR §200.321):** Should Contractor subcontract any of the Work under this Contract, Contractor shall take the following affirmative steps: place qualified small and minority businesses and women's business enterprises on solicitation lists; assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- P. **Compliance With All Other Federal and State Law, Regulations and Executive Orders:** In addition to the provisions set forth above, the Contractor agrees that it will comply with all other federal and state laws, regulations, and executive orders that may be applicable to the Work which it performs pursuant to this Contract, including, but not limited to, any and all of such provisions that are required for the District's eligibility for funding from the NRCS or any other applicable funding entity, agency or department.
- Q. **No Obligation By Federal Government:** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the District, Contractor, or any other party pertaining to any matter resulting from this Contract.
- R. **Required Amendment to Contract:** In the event that the this Contract needs to be amended or modified so as to allow the District to become or remain eligible for funding for the Project from the NRCS or any other federal or state entity, agency or department, the District and the Contractor agree that they shall reasonably attempt to amend or modify this Contract in writing for such purpose, providing that such amendment or modification does not materially alter the obligations of the Parties, or providing that the Contractor is reasonably compensated in the event that such amendment or modification of the Contract does materially alter Contractor's obligations hereunder.

XIII. MISCELLANEOUS PROVISIONS

- 13.1. **Compliance with Laws and Regulations.** In providing all services pursuant to this Contract, the Contractor will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall

constitute a material breach of this Contract and will entitle the District to terminate this Contract immediately upon delivery of written notice of termination to the Contractor. The Contractor shall indemnify and hold harmless the District and its officers, agents and employees against any claim arising from violation of any such law, ordinance or regulations by itself or by its subcontractors, or suppliers at any time, or its or their employees.

- 13.2 Compliance with Recommendations of Texas Parks & Wildlife Department.** With respect to the performance of the Work, the Contractor shall comply with all of the recommendations of Texas Parks & Wildlife Department, whether issued, published, or promulgated generally, or specific to this Project.
- 13.3 Compliance with NRCS Supplement to OSHA Parts 1910 and 1926.** With respect to the performance of the Work, the Contractor shall comply with the NRCS Supplement to OSHA Parts 1910 and 1926, a copy of which is attached hereto as Attachment "V."
- 13.4 Cooperation with Municipalities.** The Contractor shall cooperate with applicable city or other government officials at all times where their jurisdiction applies. The Contractor shall make application for any permits and permanent utilities that are required for the performance of the Scope of Work attached to the Contract.
- 13.5 Applicability of the Texas Public Information Act.** The District is a governmental body under the Chapter 552, Tex. Gov't Code (Texas Public Information Act). Accordingly, information submitted by the Contractor is subject to release by the District as public information unless the information or specific parts thereof can be shown to fall within one or more of the exceptions listed in the Act. If the Contractor contends that parts of its information are exempt from disclosure under the Act, it shall clearly specify those parts and exceptions that it believes may apply (e.g. Trade Secrets), with specific detailed reasons. Vague and general claims to confidentiality are not acceptable. The District shall have sufficient information to give to the Attorney General if his/her opinion is requested. The Contractor acknowledges its understanding that the Office of the Attorney General has previously ruled that the exception pertaining to advantages to competitors of Contractors generally does not apply after the contract has been awarded.
- 13.6 Contract Information Presumed To Be Public Information.** Once a Contract has been awarded, information will automatically be considered public information unless a detailed explanation giving basis for a claim for exemption from disclosure is presented by Contractor.
- 13.7 Immigration Reform.** By this reference, all requirements to comply with the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this contract are incorporated.
- 13.8 Wage Rates.** The Contractor is required to pay prevailing wages not less than the wage scale of the various classes of labor as shown on the "Davis-Bacon Wage Determination" (<https://www.wdol.gov/>). The specified wage rates are minimum rates only, and the District will not consider any claims for additional compensation made by any Contractor because of payment by the Contractor of any particular wage.

- 13.9. State Sales and Use Taxes.** The District qualifies for exemption from State and Local Sales and Use Taxes for purposes of this Contract.
- 13.10. Antitrust Claims.** The Contractor shall assign to the District any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States or the State of Texas. See, Tex. Bus & Com. Code §15.01, *et. seq.*
- 13.11. Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in the form of a written Change Order signed by both Parties.
- 13.12. Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the District's written approval. The District shall not unreasonably withhold such approval.
- 13.13. No Third Party Beneficiaries.** There are no third-party beneficiaries of Contractor's services under this Contract.
- 13.14. Contingency Fee.** The Contractor warrants that it has not employed or retained any company or person, other than a *bona fide* employee working solely for the Contractor, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- 13.15. Nondiscrimination.** The Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, the Contractor agrees to comply with all local, state and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, the Contractor agrees to comply with all applicable laws and regulations including but not limited to the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246 and the American with Disabilities Act of 1990, and all amendments and as well, Chapter 21 of the Texas Labor Code.
- 13.16. Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Texas. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate.

- 13.17. Force Majeure.** A Force Majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, or freight embargo; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event shall promptly notify the other Party of the Event and shall use its best efforts to minimize any resulting delay.
- 13.18. Integration.** This Contract represents the entire agreement of the Parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.
- 13.19. No Waiver of Rights.** Neither the District's review, approval, or acceptance of, or payment for, any of the services provided by the Contractor, shall be construed to operate as a waiver of the District's rights under this Contract. Contractor shall be and always remain liable to the District in accordance with applicable law for any and all damages to the District caused by the Contractor's negligent or wrongful provision of any of the services furnished under this Contract. Failure of the District to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the District at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the District's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time. The District expressly and affirmatively retains all rights, benefits and immunities of sovereign and/or governmental immunity in accordance with Texas law.
- 13.20. Israel Anti-Boycotting Provision.** As required by Chapter 2270 of the Texas Government Code, the Contractor affirmatively represents and verifies that it does not boycott Israel, and will not boycott Israel during the term of this Contract. For purposes of this verification, "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel, or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 13.21. Dealings with Known Terrorists Organizations.** In accordance with Chapter 2252 of the Texas Government Code, the Contractor warrants and represents that, at the time of the execution of this Contract and for the duration of this Contract and any renewal terms, Contractor, does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies and services to a foreign terrorist organization.

13.22. Notices. Effective notice to each party shall be delivered by certified mail, facsimile, electronic mail or hand delivery to the Parties as follows:

Orange County Drainage District
Don Carona, General Manager
dcarona@orangecountydrainage.com
8081 Old Highway 90
Orange, Texas 77630
Tel: (409) 745-3225
Fax: (409) 745-3004

13.23. Authority. The persons signing this Contract warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

13.24. Multiple Originals. It is understood and agreed that this Contract may be executed in two identical counterparts (one for each party), each of which shall be deemed an original for all purposes.

SIGNED AND EFFECTIVE on the latest date set forth below by persons who each affirm that they possess the lawful authority to execute the Contract on behalf of their respective Parties and bind each Party to the terms and conditions of the Contract.

ORANGE COUNTY DRAINAGE DISTRICT

By: Don Carona, General Manager

Date

NAME OF CONTRACTOR

By:

Date

Attachment III

ATTACHMENT III

COST PROPOSAL FORM

NAME OF OFFEROR: _____

This Cost Proposal is submitted by OFFEROR to the ORANGE COUNTY DRAINAGE DISTRICT, herein referred to as the "DISTRICT", as a component of the OFFEROR'S submittal in response to the RFCSP No. 2021-01 (Bayou Waterways Debris Removal Project).

The services proposed to be furnished by the OFFEROR for the Cost Proposal set forth below are:

All services set forth in the Scope of Work described in Attachment I to the RFCSP No. 2021-01, which include, but are not limited to, the full and complete mobilization and demobilization of all vessels and equipment to be used in the performance of such services.

The Offeror shall provide the cost per day for services provided, and the average minimum yards of debris to be removed per day for each of the bayous (Adams Bayou, Cow Bayou and Little Cypress Bayou) separately, and shall further provide the cost per day and the average minimum yards of debris to be removed per day for all three bayous combined.

COST PROPOSAL:

Adams Bayou Separate Cost Proposal Format	Cost Per Day For Services Provided	Average Minimum Cubic Yards of Debris to be Removed per Day
	\$	C.Y.
Maximum Number of Work Days to Complete the Adams Bayou Project: ____ days		

Cow Bayou Separate Cost Proposal Format	Cost Per Day For Services Provided	Average Minimum Cubic Yards of Debris to be Removed per Day
	\$	C.Y.
Maximum Number of Work Days to Complete the Cow Bayou Project: ____ days		

ATTACHMENT III

Little Cypress Bayou Separate Cost Proposal Format	Cost Per Day For Services Provided	Average Minimum Cubic Yards of Debris to be Removed per Day
	\$	C.Y.
Maximum Number of Work Days to Complete the Little Cypress Bayou Project: _____ days		

Adams Bayou, Cow Bayou and Little Cypress Bayou Combined Cost Proposal Format	Cost Per Day For Services Provided	Average Minimum Cubic Yards of Debris to be Removed per Day
	\$	C.Y.
Maximum Number of Work Days to Complete the Adams Bayou, Cow Bayou and Little Cypress Bayou Combined Project: _____ days		

Note: The DISTRICT and selected OFFEROR shall negotiate and agree upon the exact methodology for determining volume of debris removed from the Bayous and offloaded at one of the designated offloading locations described in the Scope of Work for the purpose of determining the average cubic yards of debris that is removed from the Bayous each work day.

In submitting this Cost Proposal, the undersigned OFFEROR represents, proposes and agrees that:

1. If OFFEROR is selected and OFFEROR'S Cost Proposal is accepted, OFFEROR shall enter into an agreement with the DISTRICT in substantially the same form of the Sample Contract attached to the RFCSP No. 2021-01 as Attachment II, and shall perform and furnish all Work as specified and described in the Scope of Work attached to the RFCSP No. 2021-01 as Attachment I, within the time periods indicated in OFFEROR'S Proposal;
2. OFFEROR has examined and carefully studied the entirety of all RFCSP No. 2021-01 Documents and Addenda. OFFEROR hereby acknowledges receipt of the following Addenda, if any such Addenda have been issued by the DISTRICT: (List Addenda by Addendum Number and Date).

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____;

ATTACHMENT III

3. OFFEROR has visited the project sites, has conducted all testing and/or inspections of the project sites, or has otherwise become familiar with the project sites and all reasonably foreseeable general, local and site conditions that will affect the performance of the Work that OFFEROR deems necessary to submit this Cost Proposal to the DISTRICT, and to make the representations and proposal(s) set forth herein;
4. OFFEROR is familiar with, and has taken into consideration in formulating its Cost Proposal, all applicable federal, state, and local laws, rules and regulations that may affect cost, progress, performance, and the furnishing of the services described above;
5. OFFEROR has given the DISTRICT written notice of all conflicts, errors, ambiguities, or discrepancies that OFFEROR has discovered in the RFCSP No. 2021-01 or any attachments thereto; OFFEROR has no questions regarding the Work that OFFEROR has not submitted; OFFEROR has all information necessary to provide a fully informed Cost Proposal; and that the documents comprising the RFCSP No. 2021-01 are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Cost Proposal is submitted;
6. OFFEROR is duly qualified to conduct business in the State of Texas; possesses or has the ability to possess all licenses, permits, and certificates of authority necessary to commence and to complete the Work in accordance with the Scope of Work and all other documents comprising the RFCSP No. 2021-01; is fully qualified and has the experience in performing the work of the same type as the Work described above; and will provide all necessary labor, supervision, vessels, machinery, equipment, tools, materials, services, and other means to complete all Work included in OFFEROR's Proposal and to complete said Work within the time periods included in OFFEROR'S Proposal; and
7. OFFEROR has enclosed with this Cost Proposal the required security in the form of certified or cashier's check from a responsible bank, or a bid bond, in the amount of thirty-four thousand six hundred dollars (\$34,600.00).

(THIS SPACE INTENTIONALLY LEFT BLANK)

ATTACHMENT III

ATTEST:

On behalf of Offeror, Respectfully Submitted:

(SEAL, if Offeror is Corporation)

By: _____
(Signature)

(Typed or Printed Name)

Title: _____

Offeror: _____
(Full and Legal Name of Offeror)

Address: _____

Telephone No.: _____

Facsimile No.: _____

Email Address: _____

Surety Company: _____

Address: _____

Telephone No.: _____

Facsimile No.: _____

Attachment IV

Attachment IV

Signature Page

By submitting a response to the Orange County Drainage District's RFCSP No. 2021-01, the undersigned certifies that at the time of submission the Offeror and the undersigned representative of the Offeror is not on the Federal Government's list of suspended, ineligible, or debarred contractors. In the event of placement on the list between the time of submission of the Offeror's Proposal and time of award, the undersigned will notify the District Purchaser. Failure to do so may result in termination of the Contract for default.

The undersigned affirms that he/she is duly authorized to execute and submit the Proposal on behalf of the Offeror, that the Offeror has not prepared the Proposal in collusion with any other Offeror, and that the contents of Offeror's Proposal have not been communicated by the undersigned nor by any employee or agent of Offeror to any other Offeror or to any other person(s) engaged in this type of business prior to the official opening of Offeror's response to RFCSP No. 2021-01. The undersigned further represents and affirms that neither the Offeror nor its employees or agents have been for the past six (6) months directly nor indirectly concerned in any pool or agreement or combination to control the price of goods or services proposed by any Offeror, or has attempted to influence any person or entity to respond or not respond to RFCSP No. 2021-01.

Offeror (Entity Name)

Signature

Street and Mailing Address

Print Name

City, State and Zip Code

Date Signed

Telephone Number

Fax Number

E-Mail Address

Offeror Shall Return This Completed Form with the Proposal

Attachment V

Attachment V

Offeror's Certification

I have carefully examined all of the information and documents that comprise the entirety of Offeror's response to the Orange County Drainage District's RFCSP No. 2021-01, including, but not limited to, the statement of qualifications and experience, and any other documents accompanying or made a part of this submittal.

Offeror hereby proposes to furnish the services specified in the District's RFCSP No. 2021-01, and agrees that the Proposal will remain firm for a period of up to 90 days in order to allow the District adequate time to evaluate the proposals submitted.

I verify that all information contained in this Proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this Proposal on behalf of the Offeror as its act and deed and that the Offeror is ready, willing and able to perform the services described in RFCSP No. 2021-01 if Offeror is selected and awarded the contract.

I further certify, under oath, that this Proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a Proposal for the same service; that no officer, employee or agent of the District or any other Offeror is interested in said Proposal; and that the undersigned executed this Offeror's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

OFFEROR

Name of Offeror

By: _____
Signature

Sworn to and subscribed before me
this _____ day of _____,
2021.

Name and Title, Typed or Printed

Mailing Address

Notary Public

City, State, Zip Code

State of _____

My Commission Expires: _____

Telephone Number

Offeror Shall Return This Completed Form with Proposal

Attachment VI

Appendix F

NRCS Supplement to OSHA Parts 1910 and 1926

The NRCS Supplement to OSHA Parts 1910 and 1926 is included in NRCS construction contracts and recommended for other contracts, such as CLO contracts, in which the NRCS is involved. It contains requirements that are not included in the OSHA requirements. It also emphasizes specific safety requirements that are covered in OSHA Parts 1910 and 1926.

**NATURAL RESOURCES CONSERVATION SERVICE
SUPPLEMENT TO OSHA PARTS 1910 AND 1926
CONSTRUCTION INDUSTRY STANDARDS AND INTERPRETATIONS**

The Contractor shall comply with OSHA (Occupational Safety and Health Administration) Parts 1910 and 1926, Construction Industry Standards and Interpretations, and with this supplement.

Requests for variances or waiver from this supplement are to be made to the Contracting Officer in writing supported by evidence that every reasonable effort has been made to comply with the contractual requirements. A written request for a waiver or a variance shall include--

- (1) Specific reference to the provision or standard in question;
- (2) An explanation as to why the waiver is considered justified; and
- (3) The Contractor's proposed alternative, including technical drawings, materials, or equipment specifications needed to enable the Contracting Officer to render a decision.

No waiver or variance will be approved if it endangers any person. The Contractor shall not proceed under any requested revision of provision until the Contracting Officer has given written approval. The Contractor is to hold and save harmless the Natural Resources Conservation Service free from any claims or causes of action whatsoever resulting from the Contractor or subcontractors proceeding under a waiver or approved variance.

Copies of OSHA Parts 1910 and 1926, Construction Industry Standards and Interpretations, may be obtained from:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

1.0 GENERAL CONTRACTOR REQUIREMENTS:

1.1 SAFETY PROGRAM. Each Contractor is to demonstrate that he or she has facilities for conducting a safety program commensurate with the work under contract. The Contractor is to submit in writing a proposed comprehensive safety program to the Contracting Officer for approval before the start of construction operations. The program is to specifically state what provisions the Contractor proposes to take for the health and safety of all employees, including subcontractors and rental equipment operators. The program shall be site specific and provide details relevant to the work to be done, the hazards associated with the work, and the actions that will be necessary to minimize the identified hazards.

1.2 PRECONSTRUCTION SAFETY MEETING. Representatives for the Contractor are to meet with the Contracting Officer (CO) or the CO's representative before the start of construction to discuss the safety program and the implementation of all health and safety standards pertinent to the work under this contract.

1.3 JOINT SAFETY POLICY COMMITTEE. The Contractor or designated on-site representative is to participate in monthly meetings of a joint Safety Policy Committee, composed of the Natural Resources Conservation Service (Contracting Local Organization in locally awarded contracts) and Contractor supervisory personnel. At these meetings the Contractor's project manager and the Contracting Officer will review the effectiveness of the Contractor's safety effort, resolve current health and safety problems, and coordinate safety activities for upcoming work.

1.4 SAFETY PERSONNEL. Each Contractor is to designate a competent supervisory employee satisfactory to the Contracting Officer to administer the safety program.

1.5 SAFETY MEETINGS. A minimum of one "on-the-job" or "toolbox" safety meeting is to be conducted each week by all field supervisors or foremen and attended by mechanics and all construction personnel at the jobsite. The Contractor is to also conduct regularly scheduled supervisory safety meetings at least monthly for all levels of job supervision.

1.6 SAFETY INSPECTION. The Contractor shall perform frequent and regular safety inspections of the jobsite, materials, and equipment, and shall correct deficiencies.

1.7 FIRST AID TRAINING. Every Contractor foreman's work crew must include an employee who has a current first aid certificate from the Mine Safety and Health Administration, American Red Cross, or other state-approved organization.

1.8 REPORTS. Each Contractor is to maintain an accurate record of all job-related deaths, diseases, or disabling injuries. The records shall be maintained in a manner approved by the Contracting Officer. A copy of all reports is to be provided to the Contracting Officer. All fatal or serious injuries are to be reported immediately to the Contracting Officer, and every assistance is to be given in the investigation of the incident, including submission of a comprehensive narrative report to the Contracting Officer. Other occurrences with serious accident potential, such as equipment failures, slides, and cave-ins, must also be reported immediately. The Contractor is to assist and cooperate fully with the Contracting Officer in conducting accident investigations. The Contracting Officer is to be furnished all information and data pertinent to investigation of an accident.

1.9 CERTIFICATION OF INSURANCE. Contractors are to provide the Contracting Officer or his or her authorized representative with certificates of insurance before the start of operations indicating full compliance with State Worker's Compensation statutes, as well as other certificates of insurance required under the contract.

2.0 FIRST AID AND MEDICAL FACILITIES:

2.1 FIRST AID KITS. A 16-unit first aid kit approved by the American Red Cross is to be provided at accessible, well-identified, locations at the ratio of at least 1 kit for each 25 employees. The first aid kits are to be moisture proof and dust tight, and the contents of the kits are to be replenished as used or as they become ineffective or outdated.

2.2 EMERGENCY FIRST AID. At least one employee certified to administer emergency first aid must be available on each shift and duly designated by the Contractor to care for injured employees. The names of the certified employees shall be posted at the jobsite.

2.3 COMMUNICATION AND TRANSPORTATION. Prior to the start of work, the Contractor is to make necessary arrangements for prompt and dependable communications, transportation, and medical care for injured employees. At least one stretcher and two blankets shall be readily available for transporting injured employees.

2.4 FIRST AID AND MEDICAL REPORTS. The Contractor is to maintain a record system for first aid and medical treatment on the jobsite. Such records are to be readily available to the Contracting Officer and are to include--

- (a) A daily treatment log listing chronologically all persons treated for occupational injuries and illnesses;
- (b) Cumulative record of injury for each individual;
- (c) Monthly statistical records of occupational injuries, classified by type and nature of injury; and
- (d) Required records for worker's compensation.

2.5 SIGNS AND DIRECTIONAL MARKINGS. Adequate identification and directional markers are to be provided to readily denote the location of all first aid stations.

2.6 EMERGENCY LISTING. A listing of telephone numbers and addresses of doctor, rescue squad, hospital, police, and fire departments is to be provided at all first aid locations.

3.0 PHYSICAL QUALIFICATIONS OF EMPLOYEES:

3.1 GENERAL REQUIREMENTS. Persons employed throughout the contract are to be physically qualified to perform their assigned duties. Employees must not knowingly be permitted or required to work while their ability or alertness is impaired by fatigue, illness, or any other reason that may jeopardize themselves or others.

3.2 HOIST OPERATORS. Operators of cranes, cableways, and other hoisting equipment shall be examined annually by a physician and provided with a certification stating that they are physically qualified to safely operate hoisting equipment. The Contractor is to submit a copy of each certification to the Contracting Officer.

3.3 HEAVY EQUIPMENT OPERATORS. It is recommended that operators of trucks and heavy construction equipment be given physical examinations to determine if they are physically qualified to perform their assigned work without endangering themselves or others.

3.4 MOTOR VEHICLE OPERATORS. Operators of motor vehicles engaged primarily in the transportation of personnel are to be 18 years of age or older and have a valid state operator's permit or license for the equipment being operated. The operators must have passed a physical examination administered by a licensed physician within the past year showing that they are physically qualified to operate vehicles safely.

4.0 PERSONAL PROTECTIVE EQUIPMENT:

4.1 HARDHAT AREAS. The entire jobsite, with the exception of offices, shall be considered a hardhat area. All persons entering the area are, without exception, required to wear hardhats. The Contractor shall provide hardhats for visitors entering hardhat areas.

4.1.1 LABELS. Hardhats shall bear a manufacturer's label indicating design compliance with the appropriate ANSI (American National Standards Institute) standard.

4.2 POSTING. Signs at least 3 by 4 feet worded as follows with red letters (minimum 6 inches high) and white background shall be erected at access points to designated hardhat areas:

CONSTRUCTION AREA - HARDHATS REQUIRED BEYOND THIS POINT

These signs are to be furnished and installed by the Contractor at entries to shops, construction yards, and job access points.

4.3 SAFETY GOGGLES (DRILLERS)

4.3.1 DRILLERS AND HELPERS. Drillers and helpers operating pneumatic rock drills must wear protective safety goggles.

5.0 MACHINERY AND MECHANIZED EQUIPMENT:

5.1 SAFE CONDITION. Before any machinery or mechanized equipment is initially used on the job, it must be inspected and tested by qualified personnel and determined to be in safe operating condition and appropriate for the intended use. Operators shall inspect their equipment prior to the beginning of each shift. Any deficiencies or defects shall be corrected prior to using the equipment. Safety equipment, such as seatbelts, installed on machinery is to be used by equipment operators.

5.2 TAGGING AND LOCKING. The controls of power-driven equipment under repair are to be locked. An effective lockout and tagging procedure is to be established, prescribing specific responsibilities and safety procedures to be followed by the person or persons performing repair work. Mixer barrels are to be securely locked out before permitting employees to enter them for cleaning or repair.

5.3 HAUL ROADS FOR EQUIPMENT

5.3.1 ROAD MAINTENANCE. The Contractor shall maintain all roadways, including haul roads and access roads, in a safe condition so as to eliminate or control dust and ice hazards. Wherever dust is a hazard, adequate dust-laying equipment shall be available at the jobsite and utilized to control the dust.

5.3.2 SINGLE-LANE HAUL ROADS. Single-lane haul roads with two-way traffic shall have adequate turnouts. Where turnouts are not practical, a traffic control system shall be provided to prevent accidents.

5.3.3 TWO-WAY HAUL ROADS. On two-way haul roads, arrangements are to be such that vehicles travel on the right side wherever possible. Signs and traffic control devices are to be employed to indicate clearly any variations from a right-hand traffic pattern. The road shall be wide enough to permit safe passage of opposing

traffic, considering the type of hauling equipment used.

5.3.4 DESIGN AND CONSTRUCTION OF HAUL ROADS. Haul road design criteria and drawings, if requested by the Contracting Officer, are to be submitted for approval prior to road construction. Sustained grades shall not exceed 12 percent and all curves shall have open-sight line with as great a radius as practical. All roads shall be posted with curve signs and maximum speed limits that will permit the equipment to be stopped within one-half the minimum sight distance.

5.3.5 OPERATORS. Machinery and mechanized equipment shall be operated only by authorized qualified persons.

5.3.6 RIDING ON EQUIPMENT. Riding on equipment by unauthorized personnel is prohibited. Seating and safety belts shall be provided for the operator and all passengers.

5.3.7 GETTING ON OR OFF EQUIPMENT. Getting on or off equipment while the equipment is in motion is prohibited.

5.3.8 HOURS OF OPERATION. Except in emergencies, an equipment operator shall not operate any mobile or hoisting equipment for more than 12 hours without an 8-hour rest interval away from the job.

5.4 POWER CRANES AND HOISTS (TRUCK CRANES, CRAWLER CRANES, TOWER CRANES, GANTRY CRANES, HAMMERHEAD CRANES, DERRICKS, CABLEWAYS, AND HOISTS)

5.4.1 PERFORMANCE TEST. Before initial onsite operation, at 12-month intervals, and after major repairs or modification, power cranes, derricks, cableways, and hoists must satisfactorily complete a performance test to demonstrate the equipment's ability to safely handle and maneuver the rated loads. The tests shall be conducted in the presence of a representative of the Contracting Officer. Test data shall be recorded and a copy furnished the Contracting Officer.

5.4.2 PERFORMANCE TEST—POWER CRANES (Crawler mounted, truck mounted and wheel mounted). The performance test is to be carried out as per ANSI requirements. The test is to consist of raising, lowering, and braking the load and rotating the test load through 360° degrees at the specified boom angle or radius. Cranes equipped with jibs or boom-tip extensions are to be tested using both the main boom and the jib, with an appropriate test load in each case.

5.4.3 PERFORMANCE TEST—DERRICKS, GANTRY CRANES, TOWER CRANES, CABLEWAYS, AND HOISTS, INCLUDING OVERHEAD CRANES. This equipment is to be performance tested as per ANSI requirements.

5.4.4 BOOM ANGLE INDICATOR. Power cranes (includes draglines) with booms capable of moving in the vertical plane shall be provided with a boom angle indicator in good working order.

5.4.5 CRANE TEST CERTIFICATION. The performance test required by 5.4.2 and 5.4.3 is fulfilled if the Contractor provides the Contracting Officer a copy of a certificate of inspection made within the past 12 months by a qualified person or by a government or private agency satisfactory to the Contracting Officer.

5.4.6 POSTING FOR HIGH VOLTAGE LINES. A notice of the 10-foot (or greater) clearance required by OSHA 1926.550, Subpart N, shall be posted in the operator's cab of cranes, shovels, boom-type concrete pumps, backhoes, and related equipment.

5.4.7 BOOM STOPS. Cranes or derricks with cable-supported booms, except draglines, shall have a device attached between the gantry of the A-frame and the boom chords to limit the elevation of the boom. The device shall control the vertical motions of the boom with increasing resistance from 83° or less, until completely stopping the boom at not over 87° above horizontal.

5.4.8 SAFETY HOOKS. Hooks used in hoisting personnel or hoisting loads over construction personnel or in the immediate vicinity of construction personnel shall be forged steel equipped with safety keepers. When shackles are used under these conditions, they shall be of the locking type or have the pin secured to prohibit turning.

5.5 ROLLOVER PROTECTIVE STRUCTURES (ROPS)

5.5.1 ROLLOVER PROTECTIVE STRUCTURES. OSHA 1926, Subpart W, Overhead Protection, Sections 1001 and 1002 are applicable regardless of the year in which the equipment was manufactured and regardless of the struck capacity of the equipment.

5.5.2 EQUIPMENT REQUIRING ROPS. The requirement for ROPS meeting 5.5.1 above applies to crawler and rubber-tired tractors such as dozers, push-and-pull tractors, winch tractors, tractors with backhoes, and mowers; off-highway, self-propelled, pneumatic-tired earthmovers, including scrapers, motor graders and loaders; and rollers, compactors, water tankers (excluding trucks with cabs). These requirements shall also apply to agricultural and industrial tractors and similar equipment.

5.5.3 EQUIPMENT REQUIRING SEATBELTS. The requirements for seatbelts as specified in OSHA Subpart O, Motor Vehicles, Mechanized Equipment, and Marine Operations, Section 1926.602 shall also apply to self-propelled compactors and rollers, and rubber-tired skid-steer equipment.

6.0 LADDERS AND SCAFFOLDING:

6.1 LADDERS. OSHA 1926, Subpart L - Section 450. Ladders shall be used as work platforms only when use of small hand tools or handling of light material is involved. No work requiring lifting of heavy materials or substantial exertion shall be done from ladders.

6.2 SCAFFOLDING. OSHA 1926, Subpart L - Section 451. Scaffolds, platforms or temporary floors shall be provided for all work except that which can be done safely from the ground or similar footing.

6.3 SAFETY BELTS, LIFELINE, AND LANYARDS. OSHA 1926, Subpart E, Section 104. Lifelines, safety belts and lanyards independently attached or attended, shall be used when performing such work as the following when the requirements of 6.1 or 6.2 above cannot be met.

- (a) Work on stored material in hoppers, bins, silos, tanks, or other confined spaces.
- (b) Work on hazardous slopes, structural steel, or poles; erection or dismantling of safety nets, tying reinforcing bars; and work from Boatswain's chairs, swinging scaffolds, or other unguarded locations at elevations greater than 6 feet.
- (c) Work on skips and platforms used in shafts by crews when the skip or cage does not block the opening to within 1 foot of the sides of the shaft, unless cages are provided.

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