

State of Louisiana

Parish of St. Charles

**ASSIGNMENT OF CONTRACT COVERING FLOOD GATES AND  
LEVEE NEAR AMA, ST. CHARLES PARISH, LOUISIANA  
WBV-77**

This ASSIGNMENT is made on this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between the State of Louisiana, through the Coastal Protection and Restoration Authority (herein referred to as "Assignor"), and \_\_\_\_\_, Parish of St. Charles, Louisiana (herein referred to as "Assignee").

WHEREAS, on or about July 13, 2011, Assignor, through its predecessor, the Office of Coastal Protection and Restoration, entered into a certain Contract Covering Flood Gates and Levee Near Ama, St. Charles Parish, Louisiana (herein sometimes referred to as "Agreement") with Union Pacific Railroad Company (herein referred to as "Railroad"), as owner and operator of a railroad located in the vicinity of Railroad's Milepost 19.20 in the Livonia Subdivision (herein referred to as "Property"), in St. Charles Parish, Louisiana, for the purpose of acquiring certain lands, easements, and rights-of-way from Railroad for the construction, operation and maintenance of the reach referred to as WBV-77 (Western Tie-In) West Bank and Vicinity, Louisiana Project (herein referred to as "Project") for hurricane and storm damage risk reduction, on Property, said Property being, lying, and situated in Plaquemines Parish, Louisiana, more particularly described in the Exhibits A-1 and A-2, attached hereto; and

WHEREAS, in conjunction with said Agreement, on or about July 12, 2011, Assignor and Railroad entered into a Servitude for Levee and Flood Gates (herein sometimes referred to as "Servitude") for the purpose of constructing, keeping, using, operating, maintaining, repairing, reconstructing and/or replacing a flood control levee and flood control gate on Railroad's Property, a copy of said Servitude was recorded in the Conveyance Records of St. Charles parish on July 19, 2011, in Book 759, Page 467, Entry Number 371598; and

WHEREAS the Project included constructing and installing railroad flood gates across Milepost 19.20 on Railroad's Livonia Subdivision, more particularly described in the above cited Exhibits A-1 and A-2; and

WHEREAS, the flood gates have been constructed in accordance with the Agreement; and

WHEREAS, the Agreement sets forth the terms and conditions under which the flood gates will be operated and maintained; and

WHEREAS, pursuant to Section 4(D) of the Agreement, CPRA desires to assign all of its rights under said Agreement to St. Charles Parish;

NOW THEREFORE, for and in consideration of the obligations contained herein and in that certain Project Partnership Agreement entered into between Assignor and the United States Army Corps of Engineers dated November 6, 2008, and in accordance with La. R.S. 38:101(C),

Assignor has assigned, transferred, and conveyed and by these present does hereby assign, transfer, and convey unto Assignee all of Assignor's rights, title and interest in, to and under Contract Covering Flood Gates and Levee Near Ama, St. Charles Parish, Louisiana.

Assignee hereby assumes all of Assignor's duties and obligations under said Contract Covering Flood Gates and Levee Near Ama, St. Charles Parish, Louisiana, including but not limited to the operation and maintenance of said Project. Assignee shall coordinate with Railroad for the testing, maintenance and drill of the Flood Gate in accordance with the terms of the Agreement.

Assignee further agrees to adhere to the Standards for Railroad Flood Gates Closure and Reopening as enumerated in Exhibit B to the Agreement, and attached hereto as Exhibit B.

In accordance with Section 4(D), of the Agreement, Union Pacific Railroad Company shall be a third party beneficiary of this Assignment.

This Assignment shall be binding upon the Parties and shall inure to the benefit of Assignee and its successors, transferees and assigns.

[The Remainder of this Page is Intentionally Left Blank.]

THIS DONE, PASSED AND SIGNED by Assignor on this \_\_\_\_\_ day of \_\_\_\_\_, 2015 in \_\_\_\_\_, Louisiana, in the presence of the undersigned competent witnesses, who have hereunto signed their names, together with me, Notary Public, after due reading of the whole.

Witnesses:

Assignor:

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Kyle Graham, Executive Director  
Coastal Protection and  
Restoration Authority

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Name: \_\_\_\_\_

Notary Identification No.: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**Accepted by St. Charles Parish:**

Accepted on this \_\_\_\_\_ day of \_\_\_\_\_, 2015 in \_\_\_\_\_, Louisiana, in the presence of the undersigned competent witnesses, who have accepted and signed their names, together with me, Notary Public, after due reading of the whole.

Witnesses:

Assignee:

Print Name: \_\_\_\_\_

\_\_\_\_\_  
[Name and Title]  
St. Charles Parish

Print Name: \_\_\_\_\_

Sworn to and ascribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015,  
in \_\_\_\_\_, \_\_\_\_\_ Parish, Louisiana.

\_\_\_\_\_  
Notary Public

Name: \_\_\_\_\_

Notary Identification No.: \_\_\_\_\_

My commission expires: \_\_\_\_\_

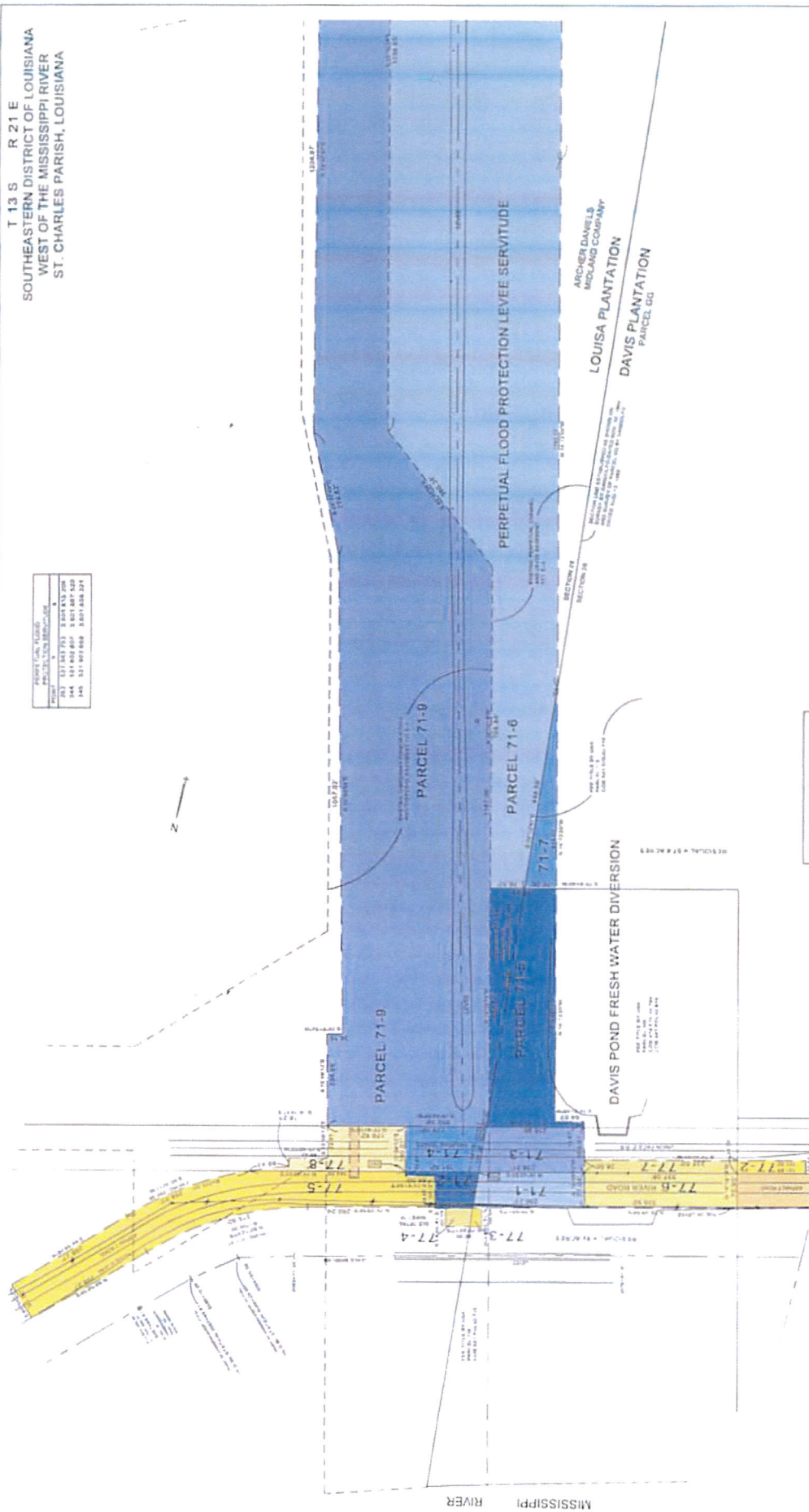
EXHIBIT A-1

SURVEY PLAT OF THE CROSSING AREA



T 13 S R 21 E  
 SOUTHEASTERN DISTRICT OF LOUISIANA  
 WEST OF THE MISSISSIPPI RIVER  
 ST. CHARLES PARISH, LOUISIANA

PARCEL NO.	AREA (ACRES)
77-1	1.17
77-2	1.17
77-3	1.17
77-4	1.17
77-5	1.17
77-6	1.17
77-7	1.17
77-8	1.17
77-9	1.17
77-10	1.17



SEE SHEET 10 FOR PARCELS  
 77-1 THROUGH 77-10

PERPETUAL FLOOD PROTECTION LEVEE SERVICURE	PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
	71-2	ARCHER DANIELS MIDLAND COMPANY	COB 348 FOLD 235	0.1839 ACRES	810 AC & 2.4 AC & 8.9 ACRES
	71-4	ARCHER DANIELS MIDLAND COMPANY	COB 348 FOLD 235	0.2818 ACRES	SEE 71-2
	71-6	ARCHER DANIELS MIDLAND COMPANY	COB 348 FOLD 235	12.7377 ACRES	SEE 71-2
	71-7	UNITED STATES OF AMERICA	COB 541 FOLD 715	0.2373 ACRES	SEE 71-2
	71-9	ARCHER DANIELS MIDLAND COMPANY	COB 348 FOLD 235	16.410 ACRES	SEE 71-2

PERPETUAL FLOOD PROTECTION LEVEE SERVICURE	PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
	71-1	UNITED STATES OF AMERICA	474780 541814 541775	0.4375 ACRES	89 AC 57.4 AC
	71-3	UNITED STATES OF AMERICA	474780 541814 541775	0.3226 ACRES	SEE 71-1
	71-5	UNITED STATES OF AMERICA	474780 541814 553248	1.1925 ACRES	SEE 71-1

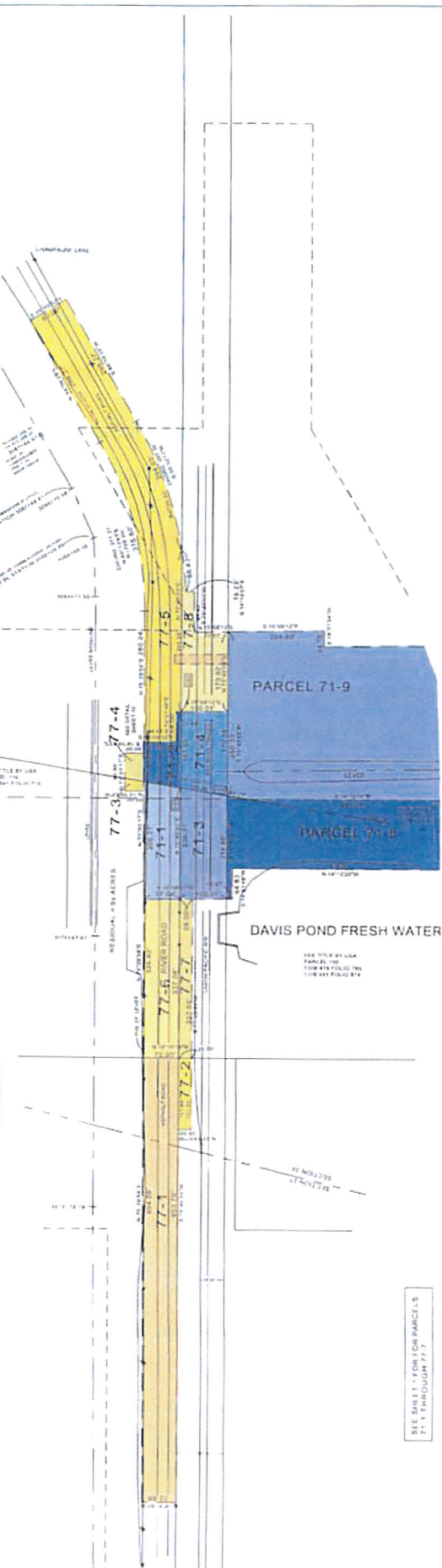
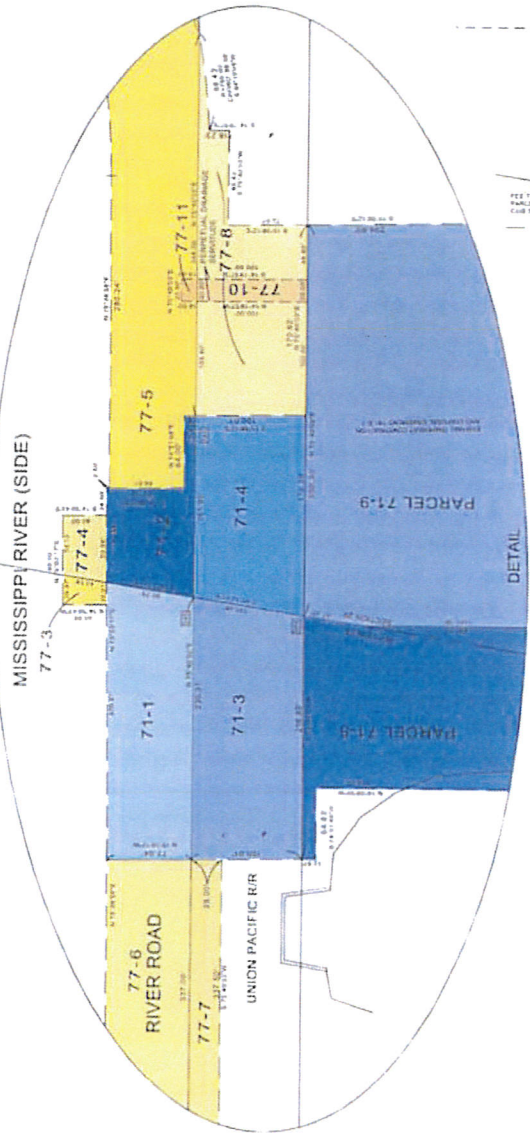
WBV-70 THROUGH 77  
 LAKE CATAOUCHE LEVEE  
 WESTERN TIE-IN  
 HURRICANE PROTECTION PROJECT  
 JEFFERSON PARISH, LA  
**RIGHT OF WAY PLAN**  
 CONSULTING ENGINEERS  
 APRIL 14, 2012



THIS PLAN AND THE INFORMATION CONTAINED HEREON ARE THE PROPERTY OF WESTERN TIE-IN ENGINEERS, INC. AND ARE NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF WESTERN TIE-IN ENGINEERS, INC.

T 13 S R 21 E  
 SOUTHEASTERN DISTRICT OF LOUISIANA  
 WEST OF THE MISSISSIPPI RIVER  
 ST. CHARLES PARISH, LOUISIANA

77-3	1,000.00	1,000.00
77-4	1,000.00	1,000.00
77-5	1,000.00	1,000.00
77-6	1,000.00	1,000.00
77-7	1,000.00	1,000.00
77-8	1,000.00	1,000.00
77-9	1,000.00	1,000.00
77-10	1,000.00	1,000.00
77-11	1,000.00	1,000.00



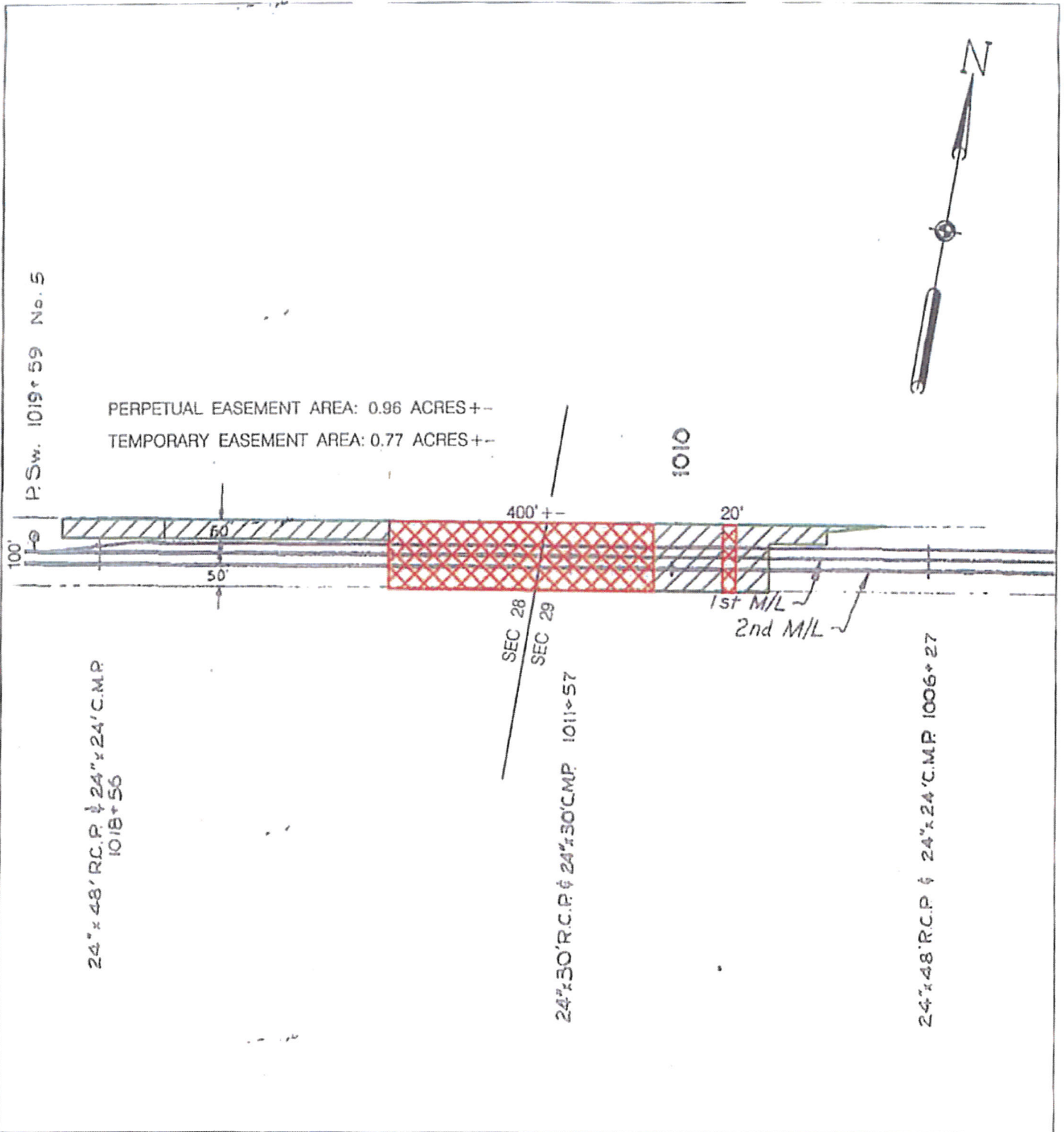
SEE SHEET 7 FOR PARCELS  
 71-1 THROUGH 71-7

REVISED AND 19 2017 SERVICE TITLE  
 REVISED JUNE 1 2011  
**WBV-70 THROUGH 77  
 LAKE CATAOUCHE LEVEE**  
 WESTERN TIER  
 WEST BAY AND LUNNY  
 HURRICANE PROTECTION PROJECT  
 JEFFERSON PARISH, LA  
**RIGHT OF WAY PLAN**  
 DUPRE SURVEYING  
 AN ENGINEERING INC.  
 APRIL 14 2011

TEMPORARY WORK AREA SERVITUDE	PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
	77-8	ANCHER DANIELS MIDLAND COMPANY	COB 348 FOLIO 235	19,890 SF	SEE 71-2
	77-9	NOT USED			
PERPETUAL DRAINAGE SERVITUDE	77-10	ANCHER DANIELS MIDLAND COMPANY	COB 348 FOLIO 235	2,000 SF	SEE 71-2
	77-11	ANCHER DANIELS MIDLAND COMPANY	COB 348 FOLIO 235	280 SF	SEE 71-2

TEMPORARY WORK AREA SERVITUDE	PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
	77-1	J.B. LEVITT LAND COMPANY INC	COB 350 FOLIO 235	70,986 SF	2834 AC
	77-2	J.B. LEVITT LAND COMPANY INC	COB 350 FOLIO 235	4,253 SF	SEE 77-1
	77-3	UNITED STATES OF AMERICA	COB 341 FOLIO 715	936 SF	SEE 71-1
	77-4	ANCHER DANIELS MIDLAND COMPANY	COB 348 FOLIO 235	2,292 SF	SEE 71-2
	77-5	ANCHER DANIELS MIDLAND COMPANY	COB 348 FOLIO 235	83,235 SF	SEE 71-2
	77-6	UNITED STATES OF AMERICA	474786 541814	25,741 SF	SEE 71-2
	77-7	UNITED STATES OF AMERICA	474786 541814	9,444 SF	SEE 71-2





SCALE: 1" = 200'

LEGEND




- U.P.R.R. RIGHT OF WAY 
- PERPETUAL EASEMENT AREA 
- TEMPORARY EASEMENT AREA 

EXHIBIT "A"  
 UNION PACIFIC RAILROAD CO.

AMA, ST. CHARLES PARISH, LA.  
 M.P. 19.15 +- LIVONIA SUB.  
 TP LA V 3 / 3  
 REAL ESTATE DEPARTMENT OMAHA NE.  
 FILE #2645-40 DATE: 6-28-2011 T.D.A.



LEGAL DESCRIPTION OF THE CROSSING AREA

Parcel 71-3

A certain portion of ground located in Davis Plantation, Section 28, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as Parcel 71-3 and described as follows:

Begin at the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 05°12'41" East and go along the line between Sections 28 and 29 a distance of 101.28 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 218.85 feet; thence go North 15°08'12" West a distance of 100.01 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 236.31 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 0.5225 acres.

Parcel 71-4

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as Parcel 71-4 and described as follows:

Begin at the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 161.92 feet; thence go South 15°08'12" East a distance of 100.01 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 179.38 feet to the line between Sections 28 and 29; thence go North 05°12'41" West along the line between Sections 28 and 29 a distance of 101.28 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 0.3918 acres.

Parcel 77-2

A certain portion of ground located in Davis Plantation, Section 28, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-2** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 75°40'03" West along the northerly right of way line of the Union Pacific Railroad a distance of 573.39 feet to the POINT OF BEGINNING. Thence go South 14°16'14" East a distance of 28.00 feet; thence go South 75°40'03" West a distance of 151.92 feet; thence go North 14°19'57" West a distance of 28.00 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 151.89 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 4,253 square feet.

Parcel 77-7

A certain portion of ground located in Davis Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-7** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 75°40'03" West along the northerly right of way line of the Union Pacific Railroad a distance of 236.31 feet to the POINT OF BEGINNING. Thence go South 15°08'12" East a distance of 28.00 feet; thence go South 75°40'03" West a distance of 337.50 feet; thence go North 14°16'14" West a distance of 28.00 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 337.08 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 9,444 square feet.

Parcel 77-8

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-8** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of

X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 161.92 feet to the POINT OF BEGINNING. Thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 344.56 feet to a point on a curve; thence go in a westerly direction along a curve to the right with a radius of 795.00 feet, an arc length of 88.43 having a chord of 88.38 bearing South 69°19'06" West; thence go South 14°19'57" East a distance of 18.23 feet; thence go South 75°40'03" West a distance of 85.42 feet; thence go South 15°08'12" East a distance of 72.01 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 170.92 feet; thence go North 15°08'12" West a distance of 100.01 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 19,990 square feet.

#### Parcel 77-10

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-10** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 265.32 feet to the POINT OF BEGINNING. Thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 20.00 feet; thence go South 14°19'57" East a distance of 100.00 feet to the southerly r right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 20.00 feet; thence go North 14°19'57" West a distance of 100.00 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 2,000 square feet.

## EXHIBIT B

### STANDARDS FOR RAILROAD FLOOD GATES CLOSURE AND REOPENING

Office of Coastal Protection and Restoration ("OCPR") shall ensure that the West Bank and Vicinity WBV 77 Flood Gates remain locked and secured in a completely open position at all times unless circumstances expressly set forth in these Standards arise and OCPR provides Union Pacific Railroad Company ("Owner") with prior notice as required hereunder, at which time OCPR may then close the Flood Gates.

#### **CLOSURE:**

For purposes of these Standards:

\* "H-72" (landfall of tropical force winds minus 72 hours) occurs when the National Weather Service ("NWS") issues an advisory for a Saffir-Simpson category 1 or above hurricane ("storm") that depicts the potential 1-3 day landfall track area on the shores of Louisiana between Morgan City and Slidell. This coincides with a storm that has the potential of affecting the Greater New Orleans ("GNO") area within 72 hours.

At "H-72", the OCPR shall notify Owner at its Response Management Communication Center (RMCC) in Omaha, (888) UPRR COP (888-877-7267) that OCPR is monitoring wind speeds in the GNO area and making preparations for possible Flood Gates closure.

\* "H-48" (landfall of tropical force winds minus 48 hours) occurs when the NWS issues a hurricane watch for the GNO area.

At "H-48", the OCPR shall notify Owner of the updated hurricane watch status and the status of GNO area wind speeds.

\* "H-24" (landfall of tropical force winds minus 24 hours) occurs when the NWS issues a hurricane warning for the GNO area.

At "H-24", OCPR shall notify Owner that NWS has issued a hurricane warning for the GNO area and that Flood Gates closure may be imminent if wind speeds are projected to reach 39 MPH. However, closure will be ordered only when the NWS predicts that wind speeds in New Orleans will reach 39 MPH (34 knots) as determined by the NWS at [www.weather.gov](http://www.weather.gov), "H-24" has occurred, and Owner has been provided not less than 3 hours notice. The closure will be ordered to occur at the time the wind speeds are projected to reach 39 MPH, after H-24 has occurred and the 3-hour notice has been given. OCPR may give the 3-hour notice as early as H-27, if a storm is moving fast enough to have predicted wind speeds in New Orleans of 39 MPH (34 knots) at H-24. OCPR shall also notify Owner when it appears that "H-24" is likely to occur shortly. OCPR shall also notify Owner when the instruction to close the Flood Gates is issued. If "H-12" (defined herein as landfall within 12 hours, as indicated by the NWS) occurs, OCPR may close the Flood Gates regardless of wind speeds and without advance notice, but OCPR shall notify Owner when the instruction to close the Flood Gates is issued.

OCPR will coordinate its efforts with Owner as follows. All notifications shall be by telephone to the point of contact designated by the Owner above or such other representative of Owner as Owner later designates to OCPR in writing.

**REOPENING:**

The Flood Gates shall be reopened by OCPR within 24 hours of the storm passing. The storm shall be deemed to have passed when all of the following criteria having been met:

- \* The eye of the storm has passed the GNO area;
- \* The wind speeds at the location of Flood Gates are below 39 MPH (34 knots); and
- \* The water level is below the sill of the Flood Gates.



**CONTRACT COVERING FLOOD GATES AND LEVEE  
NEAR AMA, ST. CHARLES PARISH, LOUISIANA**

THIS CONTRACT ("Contract"), entered into this 13<sup>th</sup> day of July, 2011, between **OFFICE OF COASTAL PROTECTION AND RESTORATION** of the State of Louisiana ("OCPR") and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Owner");

**RECITALS:**

A. Owner is a "rail carrier" (as defined in 49 U.S.C. § 10102(5) under the Interstate Commerce Commission Termination Act of 1995.

B. The Coastal Protection and Restoration Authority of Louisiana ("Sponsor") and the U.S. Army Corps of Engineers ("Government") entered into a Project Partnership Agreement, dated November 6, 2008 ("PPA") for the West Bank and Vicinity, Louisiana Project ("WBV"), which is a hurricane flood protection project covering parts of St. Charles, Jefferson, Orleans and Plaquemines Parishes. The Western Tie-In portion of WBV is designed to reduce flood risk due to hurricane-related surge in the western-most portion of Jefferson Parish on the west bank of the Mississippi River and eastern St. Charles Parish by connecting the Lake Cataouatche levee to the Mississippi River levee and providing for drainage structures, sector gate, earthen levees, floodwalls and railroad floodgates.

C. Pursuant to Article III of the PPA, Sponsor is required to provide the lands, easements, and rights-of-way necessary for the construction, operation, and maintenance of the Western Tie-In portion of WBV, including the Project (defined below). Pursuant to La. R.S. 49:214.6.1, OCPR is the implementation and enforcement arm of Sponsor, with authority to acquire, own, administer, alienate, and otherwise dispose of all kinds of property, movable and immovable, tangible and intangible. OCPR, in cooperation with Sponsor to fulfill its obligations under the PPA, enters into this Contract to acquire certain lands, easements, and rights-of-way from Owner that are necessary for the construction, operation, and maintenance of the Project. OCPR will then grant right of entry thereto to Government for construction of the Project. Government will construct the Project; and upon completion and turnover of the Project to Sponsor, OCPR and/or its assignee will operate and maintain the Project.

D. The Project includes installing railroad flood gates across Owner's property at the Crossing Area (defined below), which is located at Owner's Milepost 19.20 on Owner's Livonia Subdivision, and which is shown on the plat of survey dated April 14, 2011 and last revised June 28, 2011, marked **Exhibit A-1**, and described in the legal description marked **Exhibit A-2**, with the exhibits being attached hereto and hereby made a part hereof.

E. The parties desire to enter into this Contract to set forth their agreement involving the respective rights and responsibilities of the parties involving the Project.



**AGREEMENT:**

**SECTION 1. DEFINITIONS**

The following terms have the following meanings as used in this Contract:

A. "Betterment" means improved design, construction or capacity for the altered Railroad Facilities in excess of that required by Owner's then-current design standards. Use of new material in Owner's Work as described in Owner's Estimate is not a Betterment.

B. "Concurrence Letter" means the letter from the Government to OCPR wherein the Government concurs with the terms and conditions of this Contract applicable to the Government and agrees to be bound by such terms and conditions.

C. "Contract" means this written document as executed by OCPR and Owner.

D. "Contractor" means the contractor or contractors hired by the Government and/or OCPR, as appropriate, to perform any construction, operation, maintenance, repair, rehabilitation, or replacement related to the Project (defined below) on any portion of Owner's property and shall also include the Contractor's subcontractors, and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

E. "Crossing Area" means the portion of Owner's property occupied by the Levee and Flood Gates and used for Project work, as legally described in **Exhibit A-2**.

F. "Deferred Seasoning" means track and/or track foundation settlement destabilization, deterioration, failure, misalignment, or other dysfunction related to the Project that occurs beyond the construction period or a surge event.

G. "Effective Date" means the last date on which any party hereto has executed this Contract.

H. "Flood Gates" means the surge and flood control gate system crossing Owner's tracks when closed, in relation to the Western Tie-In portion of WBV.

I. "Flood Gates Manual" describes the agreed upon procedures for use, operation, maintenance and repair of the Flood Gates, which shall be prepared by Government prior to completion of construction of the Project and turnover to Sponsor. Government shall solicit and consider input of the Owner in preparing the Manual, and shall include reasonable requests by Owner, to the extent consistent with the safe and effective operation and maintenance of the Flood Gates. The Manual shall incorporate the Standards for Railroad Floodgate Closure and Reopening attached hereto as **Exhibit B**.

J. "Government's Work" means Project construction work performed by Government or its Contractors. Any construction work on the Project which Owner does not agree to perform shall be Government's Work.



K. "Levee" means the concrete and earthen surge and flood control embankment located on Owner's property, in relation to the Western Tie-In portion of WBV.

L. "Owner's Estimate" means the material and force account estimates prepared by Owner describing the Owner's Work and estimating the costs of the Owner's Work.

M. "Owner's Work" means Project work that Owner agrees to perform at Government's and/or OCPR's expense as described in an Owner's Estimate, attached hereto as **Exhibit D**, including without limitation work on Railroad Facilities that is related to the Project.

N. "Plans" means the final one hundred percent (100%) completed design plans and specifications for construction of the Flood Gates and Levee and appurtenances (including, without limitation, the plans and specifications for drainage, shoring, sheeting and excavations affecting Owner's right of way, other property, and Railroad Facilities, defined below), that affect Owner's property and are prepared by Government and approved in writing by Owner's Assistant Vice President Engineering-Design or his authorized representative. The Plans shall provide for or contemplate installation by Owner of a fourth railroad track of Owner as currently contemplated for railroad service to Archer Daniels Midland ("ADM"). The Plans are made a part of this Contract by reference.

O. "Project" means the Flood Gates and Levee and appurtenances, in relation to the Western Tie-In portion of WBV located on Owner's property.

P. "Railroad Facilities" means Owner's track, track foundation, signals, switches, bridges, communication lines, fiber optic wire lines and all other facilities of Owner located upon its right of way or other property within or near the Crossing Area.

Q. "Reimbursable Costs" means all actual and reasonable costs and expenses incurred by Owner arising from the Project or Project work, including, but not limited to, labor, direct and indirect labor additives, materials, supplies, transportation, insurance (including self-insurance costs and expenses) and overhead charges allocable to the Project, supervision, engineering review, inspection, flagging and other protective services, surveys, permits, and rental of tools, equipment and machinery, together with such items of expense incurred by Owner in performing Owner's Work. Reimbursable Costs also include Train Delay Costs (defined below), and Owner's costs of replacing or repairing Railroad Facilities damaged by the fault or negligence of Government, OCPR or its agents, employees, contractors, or assigns, or their Contractors, respectively (including violation of the Standards (below defined)). Owner's costs or expenses hereunder shall be entitled to a presumption of reasonableness to the extent the amounts for any such costs or expenses are set forth herein or Owner charges or calculates such costs in a manner consistent with Owner's charges and calculations for such costs on other projects in Louisiana.

R. "Train Delay Costs" mean the actual and reasonable costs and expenses incurred by Owner caused by delay in returning Railroad Facilities to their fully operational status and Owner resuming normal train operations during a train service disruption caused by (1) as to Government, Government's work on the Project not in accordance with the Work Schedule or (2) as to OCPR, the Project, Project work not in accordance with the Work Schedule, or the



closure, testing, or maintenance of the Flood Gates other than in compliance with the Standards or without coordination with the Owner as set forth within Section 4(E); in either instance including, without limitation, car hire, alternative lading transportation, work train charges, direct and indirect labor costs and Owner's standard labor additives, congestion costs, loss of business, and penalties or liability, incurred by Owner due to Owner's inability to fully serve its shippers in a timely manner; but excluding any delay due to construction within the work windows set forth in the Work Schedule or otherwise agreed in writing to by Owner, due to Owner's performance of Owner's Work not in accordance with the Work Schedule, or due to operation of the Flood Gates in compliance with the Standards or paragraph 4(E) hereof. Train Delay Costs incorporate all of the aforementioned direct and indirect costs, including, without limitation, collateral congestion as calculated by any combination of Owner capacity analytics, bottleneck tools and/or rail dispatch or queuing simulation software. OCPR and Government acknowledge that calculation of such costs and expenses by any combination of Owner capacity analytics, bottleneck tools, and/or rail dispatch or queuing simulation software such as RTC (Rail Traffic Controller) or other proprietary software developed and maintained by Owner and used regularly for Owner's maintenance and infrastructure planning is presumed reasonable hereunder.

S. "Work Schedule" means the agreed-to timing and duration of the various Project construction work phases and sequences, approved in writing by the Government's Contractor and the Owner, involving the Government's Work and Owner's Work that is based on the "UPRR Track Windows and Construction Sequence" marked **Exhibit C**, attached hereto and hereby made a part hereof. The Government, Government's Contractor, and Owner shall meet promptly after the contract for the Project construction work is awarded to set the Work Schedule, and shall coordinate as necessary. The Government and Owner shall comply with this Work Schedule unless otherwise set forth in this Agreement. Owner hereby agrees to the minimum number, duration, and frequency of track windows as set forth in **Exhibit C**, which windows would not affect all three existing tracks at the same time unless agreed to by Owner. Any work windows beyond the minimum set forth in **Exhibit C** shall be subject to Owner's approval, in Owner's sole discretion.

## **SECTION 2. OBLIGATIONS OF OWNER**

A. Subject to Government's first having completed certain Government's Work as contemplated in the Work Schedule, Owner, at Government's expense for actual and reasonable costs, shall perform the Owner's Work described in the Owner's Estimate dated July 8, 2011 and November 30, 2010, marked **Exhibit D**, attached hereto and hereby made a part hereof, and in the manner prescribed by the Plans.

B. Owner, at Government's request, and at Government's expense for actual and reasonable costs, may agree to perform other, additional Owner's Work described in future Owner's Estimates established from time-to-time and agreed to by Owner and Government.

C. Owner shall send progressive billing for all Reimbursable Costs related to construction of the Project to Government's Contractor during construction of the Project and final billing to the Contractor within one hundred twenty (120) days after receiving written notice from OCPR that all Project work affecting the Crossing Area has been completed.



Owner shall prepare its billing in accordance with 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B.

D. Due to the insignificance of its value, Owner shall retain all salvage when performing Owner's Work and neither Government, Government's Contractor, nor OCPR will receive any salvage credits involving such work performed by Owner. Owner shall reuse on the Project any salvaged materials to the greatest extent practicable. The Owner's Estimate does not include any estimate for flagging and other protective services referred to in Section 3, though the actual and reasonable costs of such services are included in Reimbursable Costs.

E. Owner is responsible for all incremental costs for any Betterments. It is agreed that none of Owner's Work described in **Exhibit D** is a Betterment.

F. The following type of work on the Project shall always be performed only by Owner's work force or contractors hired by Owner:

1. work on Railroad Facilities that is required by Owner's labor contracts to be completed by Owner's work force or contractor;
2. work involving track, train control and road crossing signals, and train communication equipment;
3. coordination of train traffic; and
4. flagging services.

Track foundation work can be done by a party other than Owner, if Owner so consents in Owner's sole discretion.

G. Owner shall in a reasonable period of time inform Government and OCPR of any proposed changes involving an Owner's Estimate or Owner's Work. In the case of material changes to Owner's Work due to the discovery of unanticipated site conditions, Owner must not further disturb the site after initial discovery in order to allow Government and/or OCPR to inspect and verify the conditions, unless such conditions affect the safety or continuity of railroad operations. In any event, Owner shall reasonably document the unanticipated site conditions.

H. Owner's Estimate attached hereto shall be valid only for six (6) months. If Owner does not commence Owner's Work within six (6) months after the Effective Date due to delays caused by Government or OCPR, then Owner may elect to recalculate and update such Owner's Estimate based on current cost information and actual and reasonable costs.

I. Owner shall, during the progress of construction of the Project and for a period of three (3) years following the completion of the construction of the Project, make available all of Owner's original work items, unit costs, payrolls, and material records and accounts for all charges and expenditures for which reimbursement will be claimed by Owner from Government or OCPR. Government and OCPR, at their expense, may elect to check and audit the invoices submitted by Owner upon reasonable notice during normal business hours at Owner's



Headquarters Building in Omaha, Nebraska. So far as practicable, Owner shall maintain separate records on all items and accounts which constitute the basis for the information from which the invoices will be prepared.

J. Immediately upon the execution and delivery of this Contract, and Owner's receipt of the Concurrence Letter as provided in Section 4(K) below, Owner shall execute and deliver to OCPD a servitude (the "Servitude") for the Crossing Area in the form marked **Exhibit E**, attached hereto and hereby made a part hereof.

K. Construction of the Flood Gates and Levee may not commence on Owner's property until Owner receives an executed Owner's Contractor's Right of Entry Agreement in the form marked **Exhibit F**, attached hereto and hereby made a part hereof, and the insurance binders, certificates and endorsements required therein, for each of Government's Contractors that will work on construction of the Project on Owner's property. Immediately upon Owner's receipt of the Contractor's Right of Entry Agreement executed by Contractor, the insurance binders, certificates and endorsements required therein, and the Concurrence Letter as provided in Section 4(K) below, Owner shall execute and deliver the Contractor's Right of Entry Agreement to the Contractor. The Contractor's Right of Entry Agreement shall also cover the Contractor's temporary use of the existing at-grade crossing at Owner's DOT Crossing No. 920383U.

L. Owner may promptly replace or repair, at Government's expense, or if Government does not pay, then at OCPD's expense, Railroad Facilities that are damaged by construction of the Flood Gates or Levee, including without limitation power switches, signals, track, and track foundation, without the need for prior authorization from Government or OCPD.

### **SECTION 3. OBLIGATIONS OF GOVERNMENT**

A. Government or its Contractor, at Government's expense, shall construct the Flood Gates and Levee in compliance with the Plans and perform all other Government's Work required under the Project. Government or its Contractor shall be responsible for obtaining any permits or approvals which are required in order to construct the Project.

B. Government, through payments made to Contractor with Contractor then paying Owner, shall require its Contractor to pay all Reimbursable Costs billed by Owner to Contractor within sixty (60) days of Contractor's receipt of billings for costs for construction of the Project, including, without limitation, all of Owner's actual and reasonable Reimbursable Costs and other costs arising from construction of the Project, excluding any Betterments, regardless of whether Railroad's actual and reasonable costs exceed amounts stated on an Owner's Estimate or there are new or unanticipated actual and reasonable costs therefor incurred by Owner. Government concurs that Owner's Estimate attached hereto provides an estimate of costs that are reasonable, allowable and allocable costs associated with the Project, but reimbursement shall be limited to actual cost.

C. The Government's Work within the Crossing Area shall be performed in the sequence and construction work window periods set forth in the Work Schedule. Owner shall have the right if the need arises to cancel or modify a scheduled work window on short notice



including, without limitation, on the day of the scheduled work window due to train operations or congestion on Owner's line at the Crossing Area and/or the adjacent line of railroad jointly owned by the Owner and BNSF Railway Company ("BNSF"). If a work window is canceled or once work has begun or on the day of the scheduled work window, the Contractor shall be given a reasonable period of time to complete any tasks begun that day and to clear his equipment from the Crossing Area. Owner will not unreasonably cancel or modify work windows, and will do so only in response to a true business necessity. Government shall require its Contractor to strictly comply with the work window periods that are set forth in the Work Schedule, or as modified or cancelled by the Owner, or as mutually agreed upon in writing by the Contractor and the Owner representative that shall be designated by Owner, with the name and contact information for such Owner representative to be provided to Government and Contractor at the Project pre-construction meeting. Owner shall have the right to immediately shut down all work of Contractor on Owner's property involving the work described in **Exhibit C** requiring a work window and Government shall immediately require its Contractor to remove Contractor's equipment from such area, without Owner incurring any damages to Contractor, Government, OCPR or any other person or entity, if the Contractor has not both completed its scheduled work and removed all of its equipment and property to allow unobstructed train operations (except items that must remain in such area, in accordance with the Plans, such as forms) within the work windows that are described in the Work Schedule or that have been mutually agreed upon by Owner and Contractor.

D. If Owner determines, in Owner's sole discretion, that Contractor has failed to progress work or proceed with work in a manner such that Contractor will not be able to clear any such areas by the expiration of any applicable work window, Owner may so advise the Government's representative and request that the Government immediately require its Contractor to remove its equipment from such area. The Government shall comply with reasonable requests by Owner in this regard.

E. If Contractor exceeds the allocated work window periods including circumstances beyond the control of Contractor, Contractor shall pay Train Delay Costs to Owner for any resulting train delays. No Train Delay Costs are due or payable for delay arising from construction within the work windows set forth in the Work Schedule or otherwise agreed to in writing by Owner.

F. Further, if the Contractor exceeds a work window involving the work described in **Exhibit C** requiring a work window or fails to have a flagman as to work within twenty-five (25) feet of the centerline of any track involving work not requiring a work window, and Owner's railway operating schedule is disrupted as a result, all work windows after the excess ends shall be subject to being rescheduled until Owner recovers its railway operating schedule, at the sole discretion of the Owner, which shall not be exercised unreasonably.

G. In addition, if the Contractor exceeds a work window involving the work described in **Exhibit C** requiring a work window, Owner, in its sole discretion, shall have the right to require Contractor to cease Project work until such time that Railroad is reasonably assured that Contractor has modified its construction procedures in such a manner to ensure that it can complete its other work within the work window construction periods that are set forth in the Work Schedule or otherwise mutually agreed upon by the Contractor and the Owner



Construction Representative for the remainder of the Project. Owner's failure to remove any Contractor from Owner's property due to failure to comply with a work window shall not excuse such Contractor's failure to comply.

H. Government or its Contractor shall, upon completion of Government's Work, remove all of their Project-related machinery, equipment, temporary structures, debris and rubbish from the Crossing Area and Owner's other right of way and other property (unless Owner consents in writing to items remaining on some portion of Owner's property) and leave the right of way and other property in a neat condition reasonably satisfactory to Owner. At the conclusion of construction of the Project, Contractor shall also restore all portions of Owner's property to its drainage patterns prior to commencement of construction of the Project, except as modified by the Project in accordance with the Plans. All permanent improvements in accordance with the Plans will remain in place. When required by Owner, Contractor shall have ready for use near the Crossing Area, backup equipment to clear other equipment from the Crossing Area, should such other equipment malfunction or otherwise fail to operate.

I. Government shall inform its potential contractors receiving requests for bids that if chosen for the Project they will (i) be required to execute Owner's Contractor's Right of Entry Agreement, marked **Exhibit F**, attached hereto and hereby made a part hereof, and to obtain the insurance coverage and endorsements set forth therein, before commencing any work on any portion of Owner's right of way or other property, (ii) be responsible for Train Delay Costs as set forth in this Contract and the Right of Entry Agreement for exceeding the work windows set forth in the Work Schedule or otherwise agreed to in writing by Owner, and (iii) be responsible for flagging protection by Owner and that flagging will be required every day during the duration of Project work on Owner's property with such flagging estimated to be \$1,280.00 per day. Government concurs that the flagging estimate of One Thousand Two Hundred Eighty Dollars (\$1,280.00) per day is a reasonable, allowable and allocable estimated cost. Government shall also require its Contractor to acquire (at no cost to Owner) a performance bond issued by a reputable surety company in the amount of Six Hundred Thousand Dollars (\$600,000.00) that includes and insures the payment of all Train Delay Costs incurred by Owner. Government shall inform its Contractor that the \$600,000.00 figure is based on probabilistic model of outcomes, and the actual claim by Owner against such bond amount will be based on the Contractor's actual performance or nonperformance, and Owner's actual Train Delay Costs charged to Contractor may exceed \$600,000.00.

J. Government shall require its Contractor to comply with Owner's flagging requirements related to promoting safety and the continuity of Owner's railroad operations.

K. Government's Contractor shall reimburse Owner for all Reimbursable Costs arising from construction of the Project. Government's Contractor shall pay such actual and reasonable Reimbursable Costs to Owner within sixty (60) days of Government's Contractor's receipt of invoices supported by such evidence of payment made or incurred by Owner as may be required by Government's Contracting Officer.

L. Owner has the right to require and furnish all flagging and/or other protective services which, in its sole judgment, are appropriate for promoting continuity of railroad operations or the safety of its operations, trains, engines, Railroad Facilities, property and



personnel during the Project construction, whether Owner or another railroad operator is making use of the track. Government's Contractor shall pay Owner for all flagging and other protective services as Reimbursable Costs, limited to the actual and reasonable costs thereof. The following are examples, without limitation, of some of the conditions when flagmen, protective services and devices may be required by Owner:

1. When any work is performed over, under, within or has the potential to be over, under or within, twenty-five (25) feet of any railroad track.
2. When any hazard is presented to any Railroad Facilities or Owner's railroad communications or signals.

M. Government shall request its prospective contractors to attend a Project pre-bid meeting and shall require the Contractor awarded the contract to attend a Project pre-construction meeting, both as arranged by Government, and Owner shall have the right to have its representatives attend such meetings. Government shall provide at least thirty (30) days advance notice of such meetings to Paul Rathgeber, phone number 281-350-7637, e-mail address being pdrathge@up.com.

N. If Government has not already done so, Government shall provide a copy of Government's proposed bid specifications issued after the Effective Date of this Contract to Owner for Owner's review and comments prior to Government sending the proposed bid specifications to prospective contractors. If modifications to the specifications are necessary to comply with this Contract, Government shall make such modifications.

#### **SECTION 4. OBLIGATIONS OF OCPR**

A. OCPR shall pay Owner \$29,800.00 for the Servitude to be granted by Owner to OCPR pursuant to this Agreement. OCPR shall make this payment within 30 days after the Effective Date.

B. OCPR concurs that Owner's Estimate provides an estimate of costs that are reasonable, allowable and allocable costs associated with the Project.

C. OCPR, at its expense, shall be responsible for ensuring that Government constructs the Levee and Flood Gates in compliance with the Plans, the terms and conditions of this Contract and the terms and conditions of the PPA. If the terms of this Contract conflict with the terms of the PPA, then as between OCPR and Owner, the terms of this Contract shall control.

D. OCPR may assign any or all of its rights hereunder to Government and its Contractors. Any such assignment shall require the Government and its Contractors, as appropriate, to perform and fulfill the obligations hereunder that are addressed to Government or its Contractors, respectively. OCPR may also assign any or all of its rights hereunder to Sponsor, St. Charles Parish, or other governmental entity. Any such assignment may require the assignee to perform and fulfill some or all of the obligations under this Agreement; and shall designate Owner as a third party beneficiary of the assignment, such that Owner may enforce any such obligations directly against said assignee. Regardless of any assignment, OCPR shall remain responsible to Owner for all obligations of OCPR, Government or any Contractor,



Sponsor and St. Charles Parish under this Agreement, except as otherwise expressly provided herein. OCPR represents and warrants that it has the constitutional and statutory right to remain responsible for such obligations. Notwithstanding the foregoing, OCPR shall have no obligation to indemnify Owner for its own negligence pursuant to Section 8 of Exhibit B to any Contractor's Right of Entry Agreement, **Exhibit F** hereto.

E. OCPR shall coordinate Flood Gate closure testing, maintenance and drills with Owner, which shall allow closures of up to two hours each for testing and drills four times per year, upon prior notice and at such times as will not, in Owner's sole judgment, cause delay or disruption to Owner's train operations. In the event that OCPR and Owner seek to perform activities within the Crossing Area simultaneously, except in emergency situations including closure of the Flood Gate in accordance with the Standards, OCPR shall coordinate its maintenance, rehabilitation, replacement, and repair activities with Owner so that its activities shall not unreasonably interfere with Owner's railroad operations.

F. OCPR confirms that it shall, within 30 days after written demand by Owner, pay Owner for all Reimbursable Costs that are not paid by Government's Contractor within sixty (60) days of Government's Contractor's receipt of billing from Owner. The existence of a dispute between OCPR and Government or Contractor or a problem of lack of funding for Government shall not excuse OCPR from paying Owner any sum otherwise due hereunder.

G. Upon completion of construction of the Project and turnover to Sponsor, Sponsor, OCPR, and/or its assignee, at their sole expense, shall be the owners of the Flood Gates and Levee and appurtenances. OCPR and/or its assignee shall also be responsible for all maintenance, repair, replacement, use and operation of the Flood Gates and Levee, and for operation of the Flood Gates in strict compliance with the Standards for Railroad Floodgate Closure and Reopening attached hereto as **Exhibit B** (the "Standards") and the provisions of Section 4(E) hereof. Prior to performing any maintenance or repairs on the Flood Gates or Levees on Owner's property, OCPR shall require its Contractors to execute Owner's then-current form of Contractor's Right of Entry Agreement and obtain the insurance binders, certificates and endorsements required therein prior to the Contractor being allowed to perform any work on any portion of Owner's property. If OCPR or Sponsor fail to remove any item from the Crossing Area in a timely manner, Owner, at its election and upon notification (except in emergency situations, in which case no notice is required) to OCPR, has the right (but not the obligation) to perform such removal at OCPR's and Sponsor's expense. Owner's actual and reasonable expenses arising from such work shall be deemed a Reimbursable Cost.

H. OCPR shall strictly comply with the Standards and the provisions of Section 4(E) hereof and keep the Flood Gates and Levee in good condition and repair at all times. The measures of Owner's damages in the event of breach of this paragraph or operation of the Flood Gates in violation of the Standards, or Section 4(E) hereof, shall include, without limitation, Train Delay Costs and actual and reasonable replacement or repair expenses of locomotives, rolling stock, and other goods or property which Owner owns or for which Owner is otherwise responsible and which is damaged due to any such breach or to the fault or negligence of OCPR or its agents, employees, contractors, or assigns (including violation of the Standards).



I. OCPR shall promptly pay Owner the actual and reasonable costs for replacement or repair of all Railroad Facilities that are damaged due to the fault or negligence of OCPR or its agents, employees, contractors, or assigns (including violation of the Standards), including without limitation power switches, signals, track, and track foundation. Such actual and reasonable replacement or repair expenses are deemed Reimbursable Costs. Owner may immediately perform such replacement or repair work without first submitting an Owner's Estimate to OCPR, or obtaining prior authorization from OCPR, subject to the terms of the Servitude for Levee and Flood Gates attached hereto as Exhibit E. OCPR shall promptly pay Owner for Train Delay Costs arising out of Owner's inability to safely or normally operate trains on the Livonia Subdivision through the Crossing Area due to operation of the Flood Gates in violation of the Standards or paragraph 4(E) hereof. The Flood Gates shall not be closed except as provided in the Standards or paragraph 4(E) hereof. OCPR shall provide the advance notices required in **Exhibit B** to Owner before beginning the process of closing the Flood Gates. Under no circumstances shall OCPR close the Flood Gates prior to the closure Standards being in effect. Notwithstanding Owner's actions to inspect and maintain the electronic signal system connection with the Flood Gates, OCPR acknowledges that in the event the electronic signal system connection between the Flood Gates and Owner's signal system fails at any time to indicate the Flood Gates are secured in an "open" position, Owner must and shall act as though the Flood Gates are "closed." If this occurs due to the fault or negligence of OCPR or its agents, employees, contractors, or assigns (including violation of the Standards), any Train Delay Costs payable to Owner by OCPR resulting therefrom will accrue as though the Flood Gates were in fact closed. Government shall provide means to convey electric power to the electronic signal system connection between the Flood Gates and Owner's signal system at all times, including supplying a redundant, backup power source (battery).

J. OCPR shall ensure that (i) the Government signs the Concurrence Letter and that a copy of the Concurrence Letter is provided to Owner, (ii) the Government in the Concurrence Letter concurs with all of the terms and conditions of this Contract applicable by its terms to the Government or its Contractors and that the Government does not take any exceptions to any of the terms and conditions of this Contract applicable by its terms to the Government or its Contractors, and (iii) the Government in the Concurrence Letter agrees to be responsible for all obligations applicable to the Government or its Contractors as set forth in this Contract.

#### **SECTION 5. MUTUAL UNDERSTANDINGS OF OWNER, GOVERNMENT AND OCPR**

A. It is expressly made a condition of this Contract that Owner is not obligated to bear any costs or expenses (whether direct or indirect) for the construction, use, operation, maintenance, replacement, rehabilitation, or repair of the Project, Flood Gates, Levee and their appurtenances.

B. If Government's Contractor will be unable to quickly remedy any disruption to Owner's train operations beyond any authorized construction work window stated in the Work Schedule or otherwise agreed to by Owner, then Owner, after informing Government's resident engineer, at Contractor's actual and reasonable expense, has the right (but not the obligation) to immediately use Owner's personnel and equipment (or contracted personnel and equipment) to assist Government's contractor in remedying the disruption.



C. Owner, Government, and OCPR shall each use commercially reasonable efforts to communicate and maintain coordination with one another regarding Project construction activities and operation of the Flood Gates.

1. Government's contact person is Lary Yorke, Resident Engineer and Administrative Contracting Officer, phone number (504) 862-2754, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except holidays.
2. Owner's contact person prior to the Project construction start date is Paul Rathgeber, Manager of Industrial and Public Project, phone number (281) 350-7637, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except holidays.
3. Thirty (30) days before and during construction, Government and/or its Contractor shall plan, schedule, and coordinate all Government's Work with the Owner Construction Representative as set forth in Section 3(C) and also Owner's Manager of Track Maintenance ("MTM"). The MTM currently is:

LEWIS J. GOMEZ JR  
5245 RIVER RD  
AVONDALE, LA 70094

Work Phone: 504 342-3703  
Fax: 504 342-3772  
Cell Phone: 225 776-5996  
Pager: 888 858-7243

Government's Contractor shall provide the MTM with at least thirty (30) days' advance notice of when it wishes to commence Government's Work and/or require flagging protection. However, such notification by Government or its Contractor does not guarantee that Owner will be able to cease or modify rail operations at such time, except as set forth in the Work Schedule. The MTM may increase construction work window periods that are stated in the Work Schedule by so indicating in writing.

4. OCPR's contact person prior to completion of the Project construction work is James McMennis, P.E., Project Manager, phone number 225-342-4525, between 8:00 a.m. and 5:00 p.m., Monday through Friday, except holidays.
5. After the construction of the Flood Gates and Levee is complete and they are turned over to Sponsor, Owner's contact person is Superintendent Transportation Services, Union Pacific Railroad Company, 2173 Maringouin Road, Maringouin, LA 70757, Phone: 225-338-2929, and OCPR's contact person is John Monzon, P.E., Chief of Flood Protection, phone number 225-342-4501. Each party has the right to change the



contact information described in this Paragraph C by written notice sent to the other parties in accordance with Section 15 below.

D. Government and OCPR acknowledge that the continuous operation of Owner's Livonia Subdivision track in the vicinity of the Flood Gates (2 main, 1 side and 1 future main or side) is of great importance, as is the construction, operation, and maintenance of the Project to protect persons and property from flood, and that the disruption of Owner's operations may cause Owner and shippers to incur losses and expenses, and may regionally impair the transportation of goods in interstate commerce. OCPR shall keep the Project, Flood Gates, and Levee from disrupting the continuous or safe operation of the Owner's Livonia Subdivision track in the vicinity of the Flood Gates, except solely where the Flood Gates are permitted to close in accordance with the Standards, Section 4(E) hereof, or other written document agreed to by Owner.

E. If Owner seeks to obtain any permits from any federal, state or local governmental entity to construct the fourth track, Government and OCPR agree not to object to Owner obtaining such permits and shall provide assistance and support, if needed, in Owner obtaining such permits.

F. From time to time, Owner may, in its sole discretion and at its expense, complete work to raise or lower the grade of the railroad components in the Crossing Area if necessary or desirable as part of its maintenance efforts. In such an event where Owner raises the grade, Owner will provide notice to OCPR and coordinate its maintenance activities with OCPR. Such raising must not adversely affect, change or alter the Flood Gates or their operation or operability.

G. Owner may, in its sole discretion and at its expense, make future changes or additions to the railroad facilities in the Crossing Area if necessary or desirable, including without limitation the following: (i) the right to lay additional track or tracks, or (ii) the right to build other facilities in connection with the operation of its railroad; provided, however, that Owner provide advanced written notice of such changes or additions and the parties agree as to whether to apportion the costs related thereto, and if so, the apportionment thereof. Such changes or additions must not adversely affect, change or alter the Flood Gates or their operation or operability. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the Flood Gates to accommodate railroad projects, the cost of such work, including any costs incidental to alteration of railroad or flood control facilities made necessary by any such changes to the Flood Gates will be at the expense of the Owner unless otherwise agreed by OCPR at the time such changes are requested. Such changes, alternations, widening, or reconstruction must not adversely affect, change or alter the Flood Gates or their operation or operability. However, to the extent that the Flood Gates can be adjusted without adversely affecting, changing or altering the Flood Gates or their operation or operability and without cost, OCPR will do so upon written request by Owner.

## **SECTION 6. PLANS**

A. Owner has approved the Plans entitled:



West Bank & Vicinity, New Orleans, Louisiana  
Hurricane Protection Project, Lake Cataouatche, St. Charles, Parish, LA  
WBV-77 Western Tie-In  
LA Hwy 18 Crossing & UP Railroad Gate

Dated March 2011.

No changes in the Plans may be made unless such changes are approved in writing by Owner's Assistant Vice President Engineering-Design or his authorized representative. Such approval shall not be unreasonably withheld.

B. Upon completion of construction of the Flood Gates and Levee, Government, at its expense, shall furnish to Owner three (3) sets of reproducible "as constructed" Plans for the Flood Gates and Levee.

C. Notwithstanding Owner's approval of the Plans, Owner is not responsible for the design, functionality, permitting or construction of the Flood Gates or Levee or any defects therein. The Flood Gates shall be designed and constructed so as to accommodate and not be damaged by use and movement of railroad trains through the Flood Gates. Normal use of the Railroad Facilities for trains shall not be considered to be a cause of any defect in or damage to the Flood Gates.

#### **SECTION 7. OWNERSHIP OF RAILROAD FACILITIES, FLOOD GATES AND LEVEE**

A. The Railroad Facilities will be and remain the sole property of Owner.

B. The Flood Gates and Levee will be solely owned by Sponsor, OCPR and/or its assignee, which shall be another State or local governmental agency.

#### **SECTION 8. SUPERVISION, INSPECTION AND ACCEPTANCE**

Government and/or OCPR, at their sole expense, shall supervise all work on Owner's property related to the Project, Flood Gates and Levees to be performed by their Contractor. Their responsibility for safe conduct and adequate policing and supervision is not lessened or otherwise affected by Owner's approval of the Plans, or by Owner's collaboration in performance of any work, or by the presence at the work site of Owner's representatives, or by Government's or OCPR's (or their Contractor's) compliance with any requests or recommendations made by such Owner's representatives. If a representative of Owner is assigned to any Project, Flood Gate or Levee related work, Government and OCPR shall give due consideration to suggestions and recommendations made by such Owner's representative for the safety and protection of Owner's property and operations; provided, however, that Government and OCPR will in all events be responsible for such safety and protection.

#### **SECTION 9. COMPLETION OF OWNER'S WORK**

A. Subject to delays beyond the reasonable control of Owner, Owner shall use commercially reasonable efforts to commence and complete the Owner's Work in accordance



with the Work Schedule after receipt by Owner of notice to proceed from the Government; provided, however, Owner is not liable to Government, Government's Contractor, OCPR or any other person or entity if Owner does not complete such work within such time frame.

B. No notice by Government to Owner to proceed with the Owner's Work is valid without evidence provided by Government to Owner that Government has finalized its negotiations with its Contractor and that Government has contracted with its Contractor to perform the Government's Work.

C. Government has the right to inspect the Owner's Work to be performed under this Contract at any time during its progress and to make final inspection upon completion thereof. Failure of Government to object within ninety (90) days after final inspection indicates satisfactory performance of the Owner's Work. However, no payments shall be delayed by reason of or pending this final inspection.

#### **SECTION 10. DEFERRED SEASONING**

A. OCPR and Government acknowledge that conditions inherent in the Project may cause Deferred Seasoning and that completely remedying and correcting the Deferred Seasoning may impose extraordinary maintenance costs on Owner after Project construction is completed.

B. Government shall pay Owner the costs and expenses of extraordinary maintenance related to Deferred Seasoning, and incurred by Owner within four (4) years after completion of construction of the Project. The Deferred Seasoning costs and expenses include, without limitation, the cost in excess of normal maintenance costs for maintaining, embankments and the portion of tracks above subgrade, and maintaining proper alignment, proper surface, and use of ballast and other necessary materials. The work relating to remedying and correcting Deferred Seasoning will be performed by Owner either with its own forces or through contractors employed by Owner. Owner shall furnish to Government Estimates of costs and expenses relating to Deferred Seasoning. Government shall reimburse Owner for all of the reasonable actual costs and expenses relating to Deferred Seasoning within forty-five (45) days after receipt of invoices supported by such evidence of Owner's costs incurred as may be reasonably required by Government. Owner may submit multiple bills as Deferred Seasoning work progresses.

#### **SECTION 11. DISPUTES**

As a condition precedent to a party bringing any suit for breach of this Contract, that party shall notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties of this Contract involved in the dispute. The disputing persons shall each pay their respective share of any costs for the services provided by such third party as such costs are incurred. The existence of a dispute will not excuse the disputing persons from performance pursuant to this Contract.



## **SECTION 12. EQUAL OPPORTUNITY**

- A. During its performance of Owner's Work, Owner agrees as follows:
1. Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
  2. Owner shall 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. This includes, but is not limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
  3. Owner shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
  4. Owner shall, in all solicitations or advertisements for employees placed by or on behalf of Owner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

B. Notwithstanding any other clause in this Contract, disputes relative to this Article are governed by the procedures in 41 CFR 60-1.1.

## **SECTION 13. SUCCESSORS AND ASSIGNS**

This Contract is binding upon and will inure to the benefit of the parties hereto and to their successors and assigns.

## **SECTION 14. LIABILITY**

The liability of Government, OCPR and/or their Contractors, as appropriate, for obligations of Government, OCPR and/or their Contractors hereunder, respectively, or for damages, claims, suits, costs and expenses that arise from the activities of Government, OCPR and/or their Contractors under this Contract, respectively, shall be to the fullest extent permitted by law. To the fullest extent permitted by law, OCPR and Government release Owner from any claim, loss, damages, costs or expenses of any kind of OCPR or Government, respectively, related to or arising out of any injury to persons or death or damage to property caused or related in any manner to the failure of the Flood Gates to perform as desired or intended or to otherwise fulfill the purpose for which they were installed, except to the extent that Owner has modified or caused changes to the Flood Gates pursuant to Section 5(G) hereof. Nothing in this Contract is intended to confer any rights or remedies under or by reason of this Contract on any person other than OCPR or any express assignee of OCPR, and no provision in this Contract gives any third parties any right of subrogation or action over or against any party to this Contract. To the fullest extent permitted by law, OCPR releases Owner from any claim, loss, damages, costs or



expenses of any kind of OCPR for any damage to OCPR property, including the Flood Gates, or any injury to any employees, officers or agents of OCPR, occurring on the Crossing Area and to the extent arising in any way out of the exercise of the rights of OCPR hereunder.

#### **SECTION 15. NOTICES**

Except as provided in Section 5 with respect to communications regarding Project construction activities and operation of the Flood Gates before or during a surge or flood event, any notices required or desired to be given under this Contract must be in writing and personally served, given by overnight express delivery, or given by mail. Telecopy notices will be deemed valid only to the extent they are (a) actually received by the individual to whom addressed, and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Any notice given by mail must be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

Owner:	Union Pacific Railroad Company ATTN: Vice President Engineering – Design 1400 Douglas Street, Mail Stop 0910 Omaha, Nebraska 68179-0910 Facsimile: (402) 501-0478
With copies to:	Union Pacific Railroad Company ATTN: Senior Counsel – Real Estate, Law Department 1400 Douglas Street, Mail Stop 1580 Omaha, Nebraska 68179-1580 Facsimile: (402) 501-0132
Government:	New Orleans District U.S. Army Corps of Engineers Westbank Area Office 5750 Bayou Estates Blvd. Marrero, LA 70073 Facsimile: (504) 862-2896 ATTN: Lary Yorke
OCPR:	Office of Coastal Protection and Restoration P. O. Box 44027 Baton Rouge, LA 70804-4027 Facsimile: (225) 242-3391 ATTN: James McMenis, P.E., Project Manager

Express delivery notices will be deemed given upon receipt. Postal notices will be deemed given three (3) days after deposit with the United States Postal Service.

**SECTION 16. TERM; TERMINATION**

A. This Contract will take effect on the Effective Date and will continue in full force and effect for as long as the Flood Gates and Levee remain on the Crossing Area, unless sooner terminated as provided in this Contract.

B. This Contract will automatically terminate if no valid written notice to proceed with Owner's Work is received by Owner from Government within two (2) years after the Effective Date (but with such two-year period being extended by the extent of any delay in Government's issuance of notice to proceed that is caused by Owner, provided that Government gives Owner written notice of such delay within thirty (30) days after the occurrence of such delay).

C. If the Government files a Notice of Termination of the Project in the local land records, then this Contract shall automatically terminate to the extent that the Crossing Area is included in said Notice of Termination.

**SECTION 17. REMOVAL OF LEVEE AND FLOOD GATES**

Within sixty (60) days after termination howsoever of this Contract, OCPR, at its sole expense, shall (a) peaceably and quietly vacate and surrender the Crossing Area (b) if the Flood Gates or Levee have been constructed, remove the Flood Gates and Levee from the Crossing Area and restore the Crossing Area and such other portions of Owner's affected by the removal to the satisfaction of Owner, failing in which Owner may (but is not obligated to) perform such removal and restoration work at OCPR's sole expense, and (c) deliver to Owner a fully executed release and quitclaim of the Servitude in recordable form satisfactory to Owner.

**SECTION 18. TIME OF THE ESSENCE**

Time is of the essence with respect to the performance by Government, OCPR, and Owner of all their obligations hereunder.

**SECTION 19. ADM LEASE**

This Contract is subject to the rights of any third parties in and to the Crossing Area, including the rights of ADM under that certain Lease of Track between Owner and ADM, dated October 4, 2010, for the lease of certain tracks which cross the Crossing Area.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Contract in duplicate as of the Effective Date.

**OFFICE OF COASTAL PROTECTION  
AND RESTORATION**

By: Steve Mathies

Title: Executive Director

Printed name: Steve Mathies

Date: July 13 2011

**UNION PACIFIC RAILROAD COMPANY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Printed name: \_\_\_\_\_

Date: \_\_\_\_\_



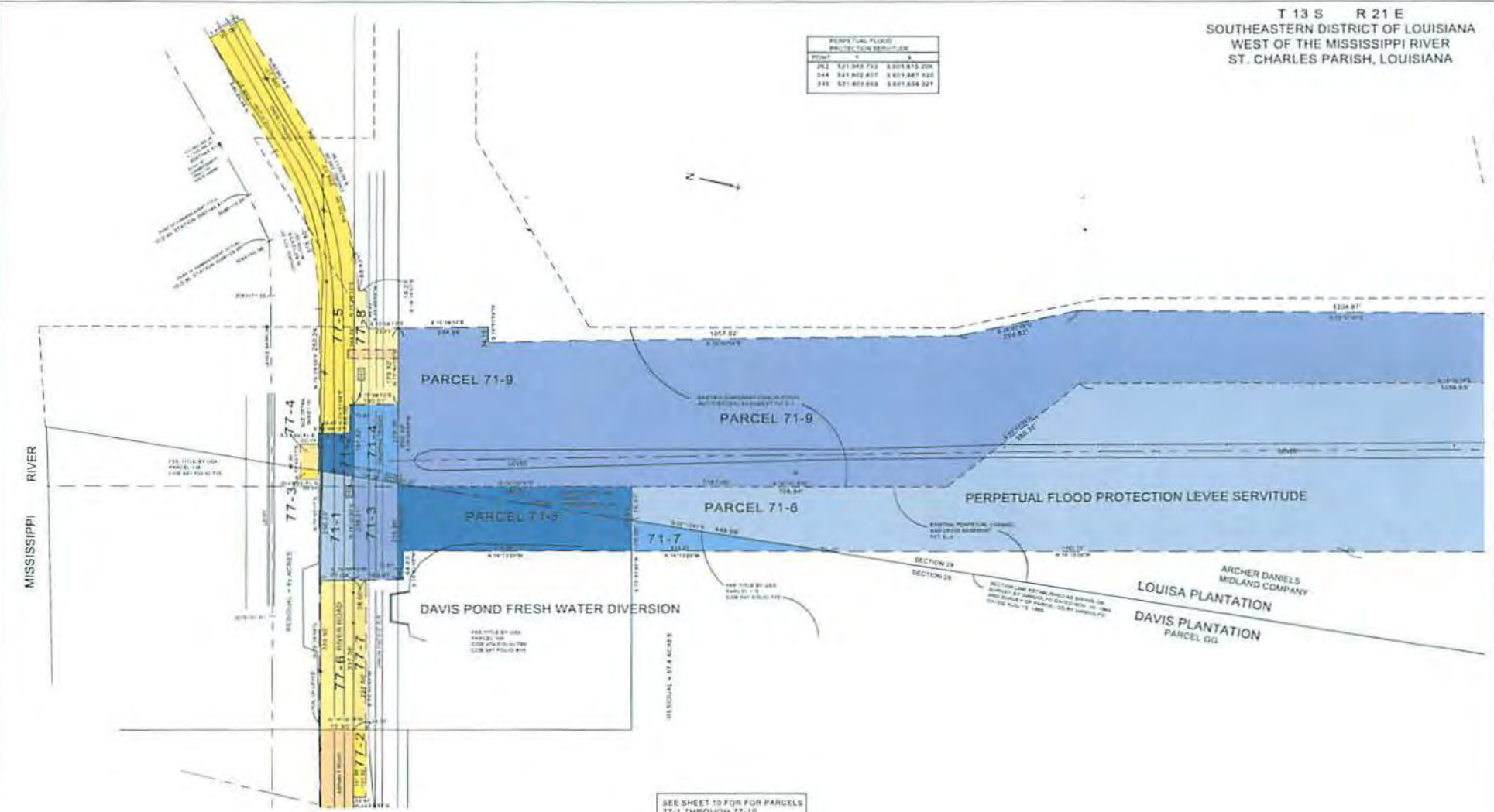


**EXHIBIT A-1**

SURVEY PLAT OF THE CROSSING AREA

T 13 S R 21 E  
 SOUTHEASTERN DISTRICT OF LOUISIANA  
 WEST OF THE MISSISSIPPI RIVER  
 ST. CHARLES PARISH, LOUISIANA

PERPETUAL FLOOD PROTECTION LEVEE
342 521.843.752 5.801.812.208
344 521.802.457 5.801.867.525
346 521.801.658 5.801.854.321



SEE SHEET 10 FOR PARCELS 77-1 THROUGH 77-10

PERPETUAL FLOOD PROTECTION LEVEE SERVITUDE				
PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
71-1	UNITED STATES OF AMERICA	474/786 541/814 541/715	0.4375 ACRES	84 AC 57.4 AC
71-3	UNITED STATES OF AMERICA	474/786 541/814 541/715	0.5225 ACRES	SEE 71-1
71-5	UNITED STATES OF AMERICA	474/726 541/814 503/249	1.7852 ACRES	SEE 71-1

PERPETUAL FLOOD PROTECTION LEVEE SERVITUDE				
PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
71-2	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	0.1619 ACRES	810 AC & 97 AC & 2.5 AC & 9.9 ACRES
71-4	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	0.3818 ACRES	SEE 71-2
71-6	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	17.7577 ACRES	SEE 71-2
71-7	UNITED STATES OF AMERICA	COB 541, FOLIO 715	0.3573 ACRES	SEE 71-2
71-9	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	16.4110 ACRES	SEE 71-2



THIS PLAN AND ALL INFORMATION HEREON IS THE PROPERTY OF DURENE SURVEYING & ENGINEERING, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF DURENE SURVEYING & ENGINEERING, INC.

REVISED JUNE 28, 2011 - SERVICE TITLE  
 REVISED JUNE 9, 2011

**WBV-70 THROUGH 77  
 LAKE CATAOUCHE LEVEE  
 WESTERN TIE-IN  
 WEST BANK AND VICINITY  
 HURRICANE PROTECTION PROJECT  
 JEFFERSON PARISH, LA**

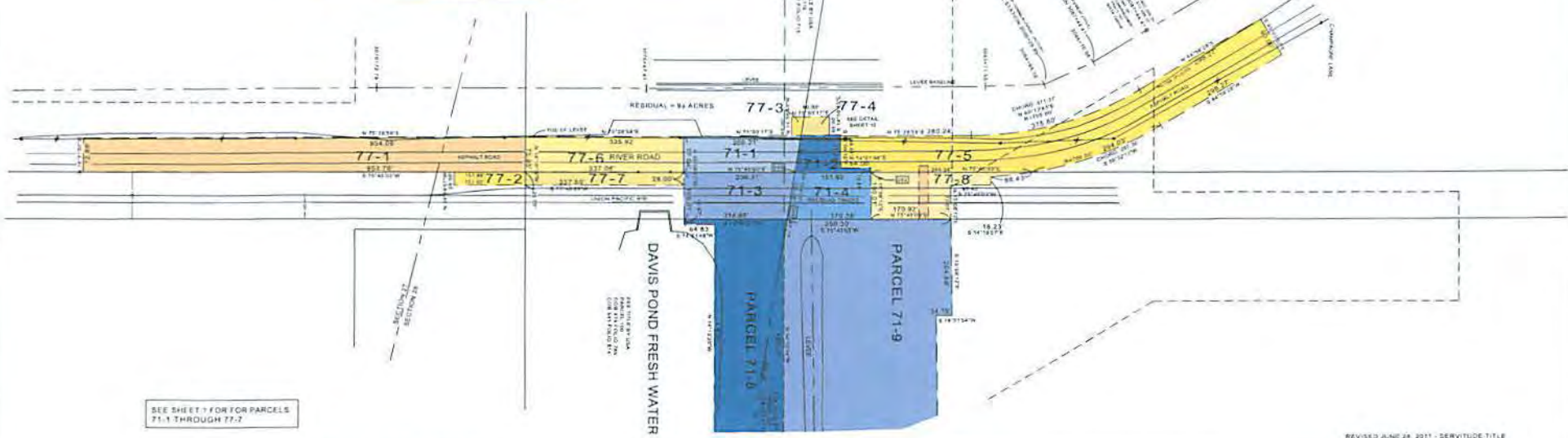
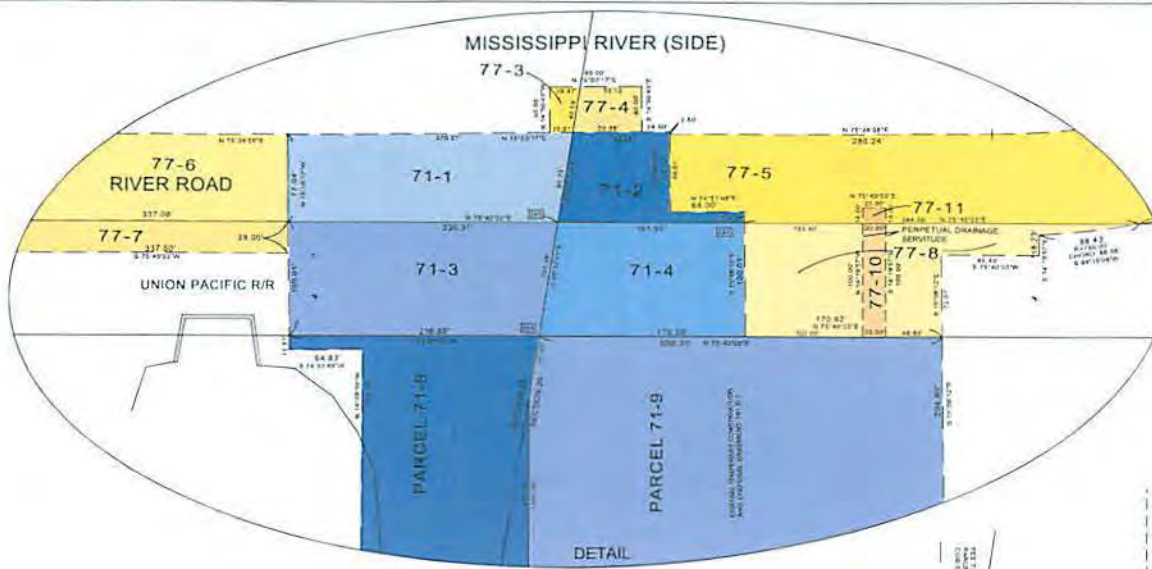
**RIGHT OF WAY PLAN**

DURENE SURVEYING  
 & ENGINEERING, INC.

APRIL 14, 2011 T 422V-L

T 13 S R 21 E  
 SOUTHEASTERN DISTRICT OF LOUISIANA  
 WEST OF THE MISSISSIPPI RIVER  
 ST. CHARLES PARISH, LOUISIANA

POINT	X	Y
262	521,843.753	3,801,815.208
344	521,802.807	3,801,667.520
345	521,802.870	3,801,658.231



SEE SHEET 7 FOR PARCELS  
 71-1 THROUGH 77-2

PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
77-1	J.B. LEVERT LAND COMPANY INC.	COB 580, FOLIO 235	70,986 SF	283+ AC.
77-2	J.B. LEVERT LAND COMPANY INC.	COB 580, FOLIO 235	4,253 SF	SEE 77-1
77-3	UNITED STATES OF AMERICA	COB 541, FOLIO 715	936 SF	SEE 71-1
77-4	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	2,262 SF	SEE 71-2
77-5	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	83,235 SF	SEE 71-2
77-6	UNITED STATES OF AMERICA	474/786 541/814	25,741 SF	SEE 71-2
77-7	UNITED STATES OF AMERICA	474/786 541/814	9,444 SF	SEE 71-2

PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
77-8	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	19,990 SF	SEE 71-2
77-9	NOT USED			

PERPETUAL DRAINAGE SERVITUDE				
PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
77-10	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	2,000 SF	SEE 71-2
77-11	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	280 SF	SEE 71-2



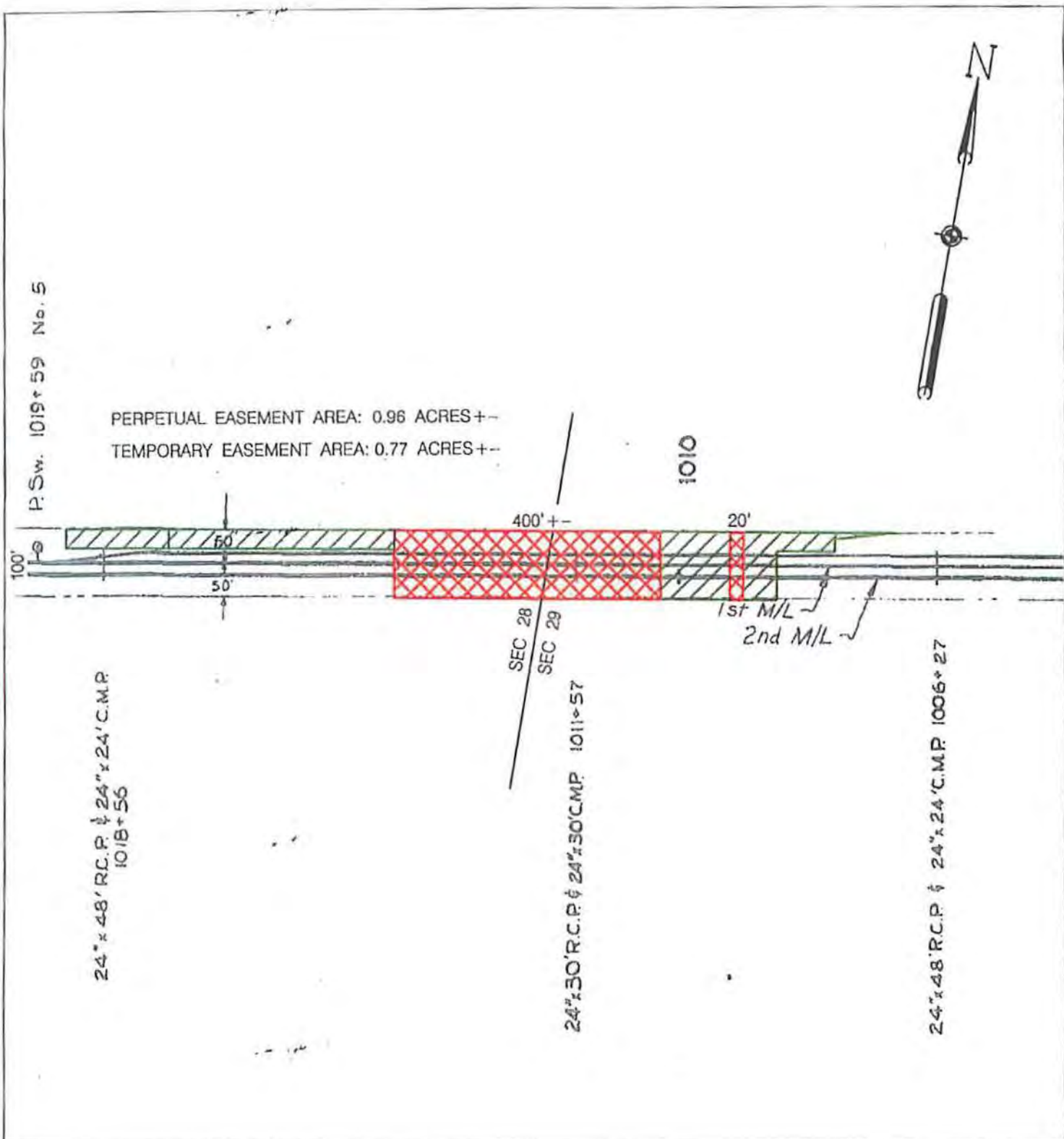
Mapmaker and Consultant are not responsible for any errors or omissions in this plan or for any consequences arising therefrom. The user of this plan is advised to verify all data and information shown hereon with the appropriate authorities. The user of this plan is advised to verify all data and information shown hereon with the appropriate authorities.

REVISED JUNE 28, 2011 - SERVITUDE TITLE  
 REVISED JUNE 3, 2011

**WBV-70 THROUGH 77  
 LAKE CATAOUATCHE LEVEE  
 WESTERN TIE-IN  
 WEST BANK AND VICINITY  
 HURRICANE PROTECTION PROJECT  
 JEFFERSON PARISH, LA  
 RIGHT OF WAY PLAN**

DUFRENE SURVEYING  
 & ENGINEERING INC.  
 14229 L  
 APRIL 14 2011





SCALE: 1" = 200'

LEGEND

- U.P.R.R. RIGHT OF WAY
- PERPETUAL EASEMENT AREA
- TEMPORARY EASEMENT AREA

EXHIBIT "A"  
**UNION PACIFIC RAILROAD CO.**

AMA, ST. CHARLES PARISH, LA.  
 M.P. 19.15+- LIVONIA SUB.  
 TP LA V 3 / 3  
 REAL ESTATE DEPARTMENT OMAHA NE.  
 FILE #2645-40 DATE: 6-28-2011 T.D.A.



LEGAL DESCRIPTION OF THE CROSSING AREA

Parcel 71-3

A certain portion of ground located in Davis Plantation, Section 28, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 71-3** and described as follows:

Begin at the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 05°12'41" East and go along the line between Sections 28 and 29 a distance of 101.28 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 218.85 feet; thence go North 15°08'12" West a distance of 100.01 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 236.31 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 0.5225 acres.

Parcel 71-4

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 71-4** and described as follows:

Begin at the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 161.92 feet; thence go South 15°08'12" East a distance of 100.01 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 179.38 feet to the line between Sections 28 and 29; thence go North 05°12'41" West along the line between Sections 28 and 29 a distance of 101.28 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 0.3918 acres.



Parcel 77-2

A certain portion of ground located in Davis Plantation, Section 28, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-2** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 75°40'03" West along the northerly right of way line of the Union Pacific Railroad a distance of 573.39 feet to the POINT OF BEGINNING. Thence go South 14°16'14" East a distance of 28.00 feet; thence go South 75°40'03" West a distance of 151.92 feet; thence go North 14°19'57" West a distance of 28.00 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 151.89 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 4,253 square feet.

Parcel 77-7

A certain portion of ground located in Davis Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-7** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 75°40'03" West along the northerly right of way line of the Union Pacific Railroad a distance of 236.31 feet to the POINT OF BEGINNING. Thence go South 15°08'12" East a distance of 28.00 feet; thence go South 75°40'03" West a distance of 337.50 feet; thence go North 14°16'14" West a distance of 28.00 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 337.08 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 9,444 square feet.

Parcel 77-8

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-8** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of



X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 161.92 feet to the POINT OF BEGINNING. Thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 344.56 feet to a point on a curve; thence go in a westerly direction along a curve to the right with a radius of 795.00 feet, an arc length of 88.43 having a chord of 88.38 bearing South 69°19'06" West; thence go South 14°19'57" East a distance of 18.23 feet; thence go South 75°40'03" West a distance of 85.42 feet; thence go South 15°08'12" East a distance of 72.01 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 170.92 feet; thence go North 15°08'12" West a distance of 100.01 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 19,990 square feet.

#### Parcel 77-10

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-10** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 265.32 feet to the POINT OF BEGINNING. Thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 20.00 feet; thence go South 14°19'57" East a distance of 100.00 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 20.00 feet; thence go North 14°19'57" West a distance of 100.00 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 2,000 square feet.



## EXHIBIT B

### STANDARDS FOR RAILROAD FLOOD GATES CLOSURE AND REOPENING

Office of Coastal Protection and Restoration ("OCPR") shall ensure that the West Bank and Vicinity WBV 77 Flood Gates remain locked and secured in a completely open position at all times unless circumstances expressly set forth in these Standards arise and OCPR provides Union Pacific Railroad Company ("Owner") with prior notice as required hereunder, at which time OCPR may then close the Flood Gates.

#### CLOSURE:

For purposes of these Standards:

\* "H-72" (landfall of tropical force winds minus 72 hours) occurs when the National Weather Service ("NWS") issues an advisory for a Saffir-Simpson category 1 or above hurricane ("storm") that depicts the potential 1-3 day landfall track area on the shores of Louisiana between Morgan City and Slidell. This coincides with a storm that has the potential of affecting the Greater New Orleans ("GNO") area within 72 hours.

At "H-72", the OCPR shall notify Owner at its Response Management Communication Center (RMCC) in Omaha, (888) UPRR COP (888-877-7267) that OCPR is monitoring wind speeds in the GNO area and making preparations for possible Flood Gates closure.

\* "H-48" (landfall of tropical force winds minus 48 hours) occurs when the NWS issues a hurricane watch for the GNO area.

At "H-48", the OCPR shall notify Owner of the updated hurricane watch status and the status of GNO area wind speeds.

\* "H-24" (landfall of tropical force winds minus 24 hours) occurs when the NWS issues a hurricane warning for the GNO area.

At "H-24", OCPR shall notify Owner that NWS has issued a hurricane warning for the GNO area and that Flood Gates closure may be imminent if wind speeds are projected to reach 39 MPH. However, closure will be ordered only when the NWS predicts that wind speeds in New Orleans will reach 39 MPH (34 knots) as determined by the NWS at [www.weather.gov](http://www.weather.gov), "H-24" has occurred, and Owner has been provided not less than 3 hours notice. The closure will be ordered to occur at the time the wind speeds are projected to reach 39 MPH, after H-24 has occurred and the 3-hour notice has been given. OCPR may give the 3-hour notice as early as H-27, if a storm is moving fast enough to have predicted wind speeds in New Orleans of 39 MPH (34 knots) at H-24. OCPR shall also notify Owner when it appears that "H-24" is likely to occur shortly. OCPR shall also notify Owner when the instruction to close the Flood Gates is issued. If "H-12" (defined herein as landfall within 12 hours, as indicated by the NWS) occurs, OCPR may close the Flood Gates regardless of wind speeds and without advance notice, but OCPR shall notify Owner when the instruction to close the Flood Gates is issued.



OCPR will coordinate its efforts with Owner as follows. All notifications shall be by telephone to the point of contact designated by the Owner above or such other representative of Owner as Owner later designates to OCPR in writing.

**REOPENING:**

The Flood Gates shall be reopened by OCPR within 24 hours of the storm passing. The storm shall be deemed to have passed when all of the following criteria having been met:

- \* The eye of the storm has passed the GNO area;
- \* The wind speeds at the location of Flood Gates are below 39 MPH (34 knots); and
- \* The water level is below the sill of the Flood Gates.

**EXHIBIT C**

**Exhibit C** shall be a copy of the UPRR Track Windows and Construction Sequence.



**UPRR TRACK WINDOWS AND CONSTRUCTION SEQUENCE**

	ACTIVITY	No. 6-hr WINDOW (hrs)	No. 12-hr WINDOW (hrs)
Stage 1	Phase (5A)	10	
	RR Remove rails for TRACK 010, Contractor installs both rows of TRACK 010 shoring and cross-sheeting b/w TRACK 010 and ML 02		
	RR Remove rails for ML 02, Contractor installs both rows of ML 02 shoring and cross-sheeting b/w ML 02 and ML 01		
	RR remove rails for ML 01, Contractor installs both rows of ML 01 shoring.		
Stage 2	Phase (5B-5D)	2	
	RR remove rails for all three tracks, Contractor installs all cut-off sheeting		
Stage 3	Phase (5E)	13	
	RR removes ties, KTR drives falsework piles/H-piles (4)		
	RR removes ties, KTR drives falsework piles/H-piles (5)		
	RR removes ties, KTR drives falsework piles/H-piles (4)		
	RR removes ties, KTR drives falsework piles/H-piles (5)		
	RR removes ties, KTR drives falsework piles/H-piles (4)		
	RR removes ties, KTR drives falsework piles/H-piles (5)		
	RR removes ties, KTR drives falsework piles/H-piles (3)		
Stage 4	Phase (5F-5H)	1	3
	RR removes track 010, KTR excavates, installs bracing, installs jump span		
	RR removes ML 02 track, KTR excavates, installs bracing, installs jump span		
	RR removes ML 01 track, KTR excavates, installs bracing, installs jump span		
	Contractor works beneath jump-span to complete excavation, prep of foundation, placement of reinforcement & embedded metals, forming, and pouring base slab, stems, pilasters		
Stage 5	Phase (5I-5K)		3
	Contractor removes all jump span bridges, installs sections of precast sill, grouts in place, and backfills sub-grade and sub-ballast		
	Contractor completes site-work adjacent to tracks		
	Contractor hangs North Gate		
	Contractor hangs South Gate		
	Contractor performs test-closure of both gates		
	KTR Removes Jump Span and Installs Sill, installs subgrade, completes track	1	
	<b>Totals</b>	<b>27</b>	<b>6</b>

Assumptions:

1. When using a 6-hour windows assumed 3 per week and when a 12 hr window is assumed only use 1 per week.

Details:

1. Since it was assume that the amount of days/week will be 3, a 12 hr window will actually be considered as a 3 day work week.
2. The 166 CD does not include mob, demob, and Fertilizing & Seeding.
3. The 166 CD does include weather days.

		Windows	
		6 hr windows	12 hr
	Stage 1 (5A)	10	0
	Stage 2 (5B-5D)	2	0
	Stage 3 (5E)	13	0
	Stage 4 (5F-5H)	1	3
	Stage 5 (5I-5K)	1	3
		27	6
	<b>Total Days</b>	<b>27</b>	<b>18</b>
	Total Work Days	45 work days	
	Work Week Schedule	3 days/week	
	Total CD	166 CD	

**EXHIBIT D**

**Exhibit D** shall be the Owner's Estimate.



DATE: 2011-07-06

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE  
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2012-01-06

DESCRIPTION OF WORK:  
2011 RECOLLECTIBLE PROGRAM  
LIVONIA SUBDIVISION  
MP 19.06 FLOODWALL MAIN 1,2 AND TBO 019-610  
PROJECT IS BUILT 100% MATERIAL AND LABOR USACE/OCPR  
WITH FEDERAL ADDITIVES W INDIRECT AND OVERHEAD AT 205%

PID: 75351 AWO: MP,SUBDIV: 19.06, LIVONIA  
SERVICE UNIT: 08 CITY: AMA JCT STATE: LA

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			16153		16153		16153
LABOR ADDITIVE 205%			33114		33114		33114
TOTAL ENGINEERING			49267		49267		49267
SIGNAL WORK							
LABOR ADDITIVE 205%			21760		21760		21760
SALES TAX				3	3		3
SIGNAL			10615	77	10692		10692
TOTAL SIGNAL			32375	80	32455		32455
TRACK & SURFACE WORK							
BALAST	6.00	CL	4261	5181	9442		9442
BILL PREP				900	900		900
BRIDGE-RENEW			284		284		284
BR SUPR				297	297		297
BRTIE	39.00	EA		4601	4601		4601
CONTRACT INSPECTION				475000	475000		475000
ENVIRONMENTAL PERMIT				1	1		1
EQUIPMENT RENTAL/OPERAT				140000	140000		140000
FLAGGING				475000	475000		475000
FOREIGN FREIGHT				27596	27596		27596
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 205			64986		64986		64986
MATL STORE EXPENSE				253	253		253
OTM			771	4068	4839		4839
RAIL	480.00	LF	1186	10761	11947		11947
SALES TAX				11061	11061		11061
SUPVR MKT			3018		3018		3018
TRACK-INSTAL			27979		27979		27979
TRK-SURF, LIN			9274		9274		9274
WELD			267	1014	1281		1281
XTIE	3000.00	EA	1154	250710	251864		251864
TOTAL TRACK & SURFACE			113180	1407343	1520523		1520523
LABOR/MATERIAL EXPENSE			194822	1407423			
RECOLLECTIBLE/UPRR EXPENSE					1602245	0	
ESTIMATED PROJECT COST							1602245
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

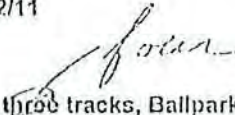
# Preliminary Estimate

Estimate Creation Date: 11/30/2010    Number: 57436    Version: 2

Estimate Good for 6 Months Until 09/22/11

Location: LIVONIA SUB, SIMN, 20.87-66.91

Description of Work: Livonia Sub. AMA Jct. C.P. L021 Flood Gate crossing ~~three~~ tracks, Ballpark estimate.



COMMENTS	Description	SubDivision	QTY	UOM	LABOR	MATERIAL	TOTAL
----------	-------------	-------------	-----	-----	-------	----------	-------

**SIGNAL**

	ELECTRIC LOCK	LIVONIA SUB	2	EA	144,160	70,502	223,070
	SIGNAL TIE-IN		1	EA	7,500	7,500	15,000
	UNDERGROUND CABLE/1000'		2	EA	13,000	9,000	22,000
	FIVE MAN GANG DAY		4	EA	14,400	0	14,400
Sub-Total =					170,060	85,402	274,470

**PROJECT LEVEL COST**

	CONTINGENCY		15	%	20,800	14,310	41,171
Sub-Total =					20,800	14,310	41,171

Totals =                    205,928    109,712    315,641

**Grand Total =                    \$315,641**

This is a "Shotgun" estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. This estimate is not to be used for budget authority. This estimate is based on a conceptual design, without detailed engineering or site investigation. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.



SERVITUDE FOR LEVEE AND FLOOD GATES

UNITED STATES OF AMERICA)  
STATE OF NEBRASKA ) ss  
COUNTY OF DOUGLAS )

BE IT KNOWN, that on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me, the undersigned Notary Public duly commissioned, sworn and qualified in and for the County of Douglas, State of Nebraska, therein residing, and in the presence of the witnesses hereinafter named and undersigned:

PERSONALLY CAME AND APPEARED

Mr. Tony K. Love, personally known to me to be the Assistant Vice President of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“Grantor”) whose Federal Employer Identification Number is 94-6001323, who declared that he appears and acts herein for and in behalf and in the name of Grantor, and is duly authorized to appear herein pursuant to authority granted to him under Grantor’s Management Policy Statement.

And who further declared that Grantor does by these presents, in consideration of the sum of Twenty-Nine Thousand Eight Hundred Dollars (\$29,800.00), the receipt of which is hereby acknowledged by Grantor, and subject to the terms and conditions contained herein, does hereby grant unto the **OFFICE OF COASTAL PROTECTION AND RESTORATION** of the State of Louisiana (“Grantee”), herein represented by Steve Mathies, Ph.D., Executive Director, accepting and acknowledging delivery for Grantee, the below-listed servitudes on, along and across the property located in St. Charles Parish, Louisiana, shown on Grantor’s print dated April 14, 2011 and last revised June 28, 2011, marked **Exhibit A-1**, and described in the legal descriptions marked **Exhibit A-2**, both attached hereto and hereby made a part hereof (the “Crossing Area”), for the sole purpose of constructing, keeping, using, operating, maintaining, repairing, reconstructing, and/or replacing a flood control levee and flood control gate system on the Crossing Area at Grantor’s Milepost 19.20 on Grantor’s Livonia Subdivision.

As to the portion of the Crossing Area shown on **Exhibit A-1** and described in **Exhibit A-2** as the “Perpetual Flood Protection Easement” (Parcels 71-3, and 71-4), the right herein granted is:

A perpetual and assignable right and servitude in the Perpetual Flood Protection Easement to construct, maintain, repair, operate, patrol and replace a flood protection levee/floodwall/floodgate, including all appurtenances thereto.

As to the portion of the Crossing Area shown on **Exhibit A-1** and described in **Exhibit A-2** as the “Perpetual Drainage Easement” (Parcel 77-10), the right herein granted is:



A perpetual and assignable right and servitude in the Perpetual Drainage Easement to construct, maintain, repair, operate, patrol and replace an underground drainage pipe, including all appurtenances thereto.

As to the portion of the Crossing Area shown on **Exhibit A-1** and described in **Exhibit A-2** as the "Temporary Work Area Easement" and/or the "Perpetual Drainage Easement" (Parcels 77-2, 77-7, 77-8, and 77-10), the right herein granted is:

A temporary servitude and right-of-way in, on, over and across the Temporary Work Area Easement, for a period not to exceed fifteen months or until completion of construction, whichever is later, beginning with date possession of the land is granted to OCP, for use by OCP, its representatives, agents, contractors, and assigns as a work area, including the right to deposit fill, spoil and waste material thereon and to perform any other work necessary and incident to the construction of the WBV 77 Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way.

The servitude granted herein is for the purposes described herein. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, and telephone lines, or the right to use, or to obtain ingress and egress to or from such Crossing Area over, any other property of Grantor.

The Grantor acknowledges and agrees that the consideration of \$29,800.00 constitutes full and final settlement for the value of the Crossing Area to be used by Grantee for its levee and flood gates and for any and all diminution in the value of Grantor's remaining property as a result of the granting of this Servitude.

The granting of this Servitude is subject to (i) the extent of Grantor's right, title and interest in and to the Crossing Area, (ii) all outstanding and future rights reserved below and Grantor's right to renew such rights described below, and (iii) the terms and conditions of that separate construction and maintenance contract titled Contract Covering Flood Gates and Levee Near Ama, St. Charles Parish, Louisiana and dated \_\_\_\_\_, 20\_\_\_\_, between Grantee and Grantor, a copy of which shall be maintained by Grantee at its offices. To the extent the terms and conditions of this Servitude conflict with the terms and conditions of such Contract, the terms and conditions of such Contract shall control.

Grantor reserves unto itself, its grantees, licensees, lessees, successors and assigns, the rights to continue to keep, operate, maintain, repair and reconstruct and/or replace all existing tracks and other existing facilities located on, upon, over, under and across the Crossing Area, and to install, operate, maintain, repair and reconstruct and/or replace additional tracks, facilities, fiber optics and structures on, upon, over, under and across the Crossing Area, but in such a way as does not materially interfere with the flood control levee/flood wall/flood gate or the operation of the flood gate in the Crossing Area. Grantor also reserves the right to grant to



others permission to install and use or operate other facilities, fiber optics and structures, including, but not limited to, underground pipes and conduits, upon and beneath the surface of the Crossing Area and overhead wires, cables, poles and/or other structures for the support of such facilities that may now or hereafter be on the Crossing Area, but in such a way as does not materially interfere with the flood control levee/flood wall/flood gate or the operation of the flood gate in the Crossing Area.

**NOW UNTO THESE PRESENTS** comes Archer Daniels Midland Company (hereinafter referred to as "Intervenor"), a Delaware Corporation, duly authorized to do business in the State of Louisiana, represented herein by Craig E. Huss, its Senior Vice President, who declared that he appears and acts herein for and on behalf and in the name of Intervenor, and is duly authorized to appear herein pursuant to authority granted to him under a resolution of the Board of Directors of Intervenor on October 15, 1987, appearing herein by virtue of an unrecorded Lease of Track between Grantor and Intervenor covering one or more of the railroad tracks affected hereby, and who declares that Intervenor does hereby accept, ratify, and affirm this Servitude for Levee and Flood Gates in all of its terms and conditions.

[Remainder of page intentionally left blank.]

THUS DONE, SIGNED AND PASSED, in the City of Omaha, Douglas County, Nebraska, in the presence of the undersigned, competent witnesses, who have hereunto signed their names, together with me, Notary, after due reading of the whole.

WITNESS:

UNION PACIFIC RAILROAD COMPANY

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Print Name on Above Line

\_\_\_\_\_  
Print Name on Above Line

\_\_\_\_\_  
Print Title on Above Line

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Print Name on Above Line

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name on Above Line

My Commission Expires: \_\_\_\_\_

Notary Seal:



THUS DONE, SIGNED AND PASSED, in the City of Decatur, Macon County, Illinois, in the presence of the undersigned, competent witnesses, who have hereunto signed their names, together with me, Notary, after due reading of the whole.

WITNESS: ARCHER DANIELS MIDLAND COMPANY

\_\_\_\_\_  
Print Name on Above Line

By \_\_\_\_\_  
Craig E. Huss  
Senior Vice President

WITNESS:

\_\_\_\_\_  
Print Name on Above Line

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Print Name on Above Line

My Commission Expires: \_\_\_\_\_

Notary Seal:

ACCEPTED:

Accepted on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, in East Baton Rouge Parish, Louisiana, in the presence of the undersigned competent witnesses who have accepted and signed these presents with said Grantee and me, Notary, after due reading of the whole.

WITNESS:

OFFICE OF COASTAL PROTECTION AND RESTORATION

\_\_\_\_\_

By \_\_\_\_\_  
Steve Mathies, Ph.D.  
Executive Director

\_\_\_\_\_  
Print Name on Above Line

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Print Name on Above Line

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name on Above Line

My Commission Expires: \_\_\_\_\_

Notary Seal:

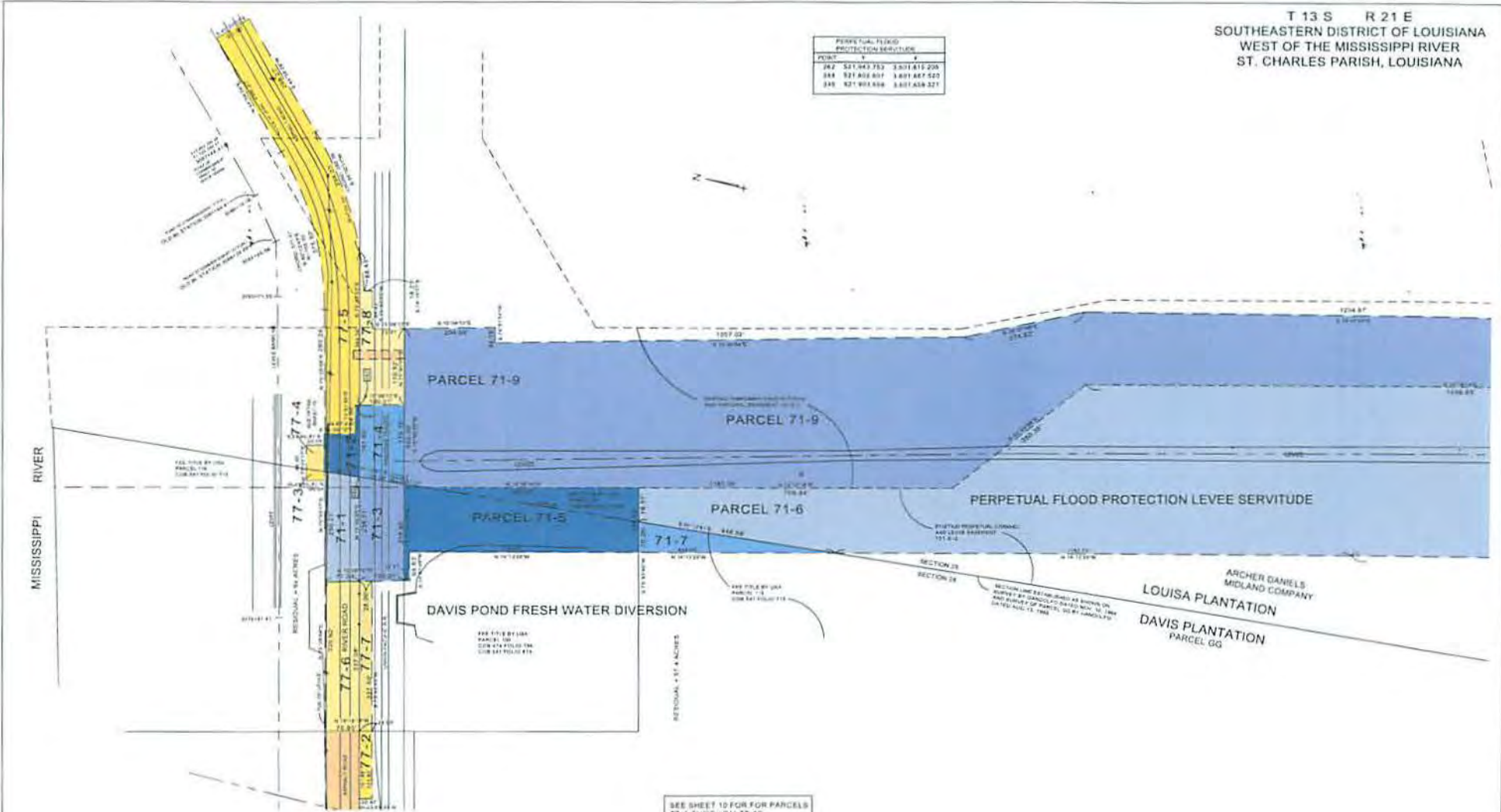


EXHIBIT A-1

SURVEY PLAT OF THE CROSSING AREA

T 13 S R 21 E  
 SOUTHEASTERN DISTRICT OF LOUISIANA  
 WEST OF THE MISSISSIPPI RIVER  
 ST. CHARLES PARISH, LOUISIANA

PERPETUAL FLOOD PROTECTION LEVEE SERVITUDE	
POINT	X
102	521,963.753 3,817,613.200
104	521,852.617 3,817,667.520
106	521,901.656 3,817,654.321



SEE SHEET 10 FOR PARCELS 77-1 THROUGH 77-10

PERPETUAL FLOOD PROTECTION LEVEE SERVITUDE				
PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
71-1	UNITED STATES OF AMERICA	474/766 541/814 541/715	0.4375 ACRES	31 AC 57.4 AC
71-3	UNITED STATES OF AMERICA	474/790 541/814 541/715	0.3225 ACRES	SEE 71-1
71-5	UNITED STATES OF AMERICA	474/786 541/814 503/249	1.7957 ACRES	SEE 71-1

PERPETUAL FLOOD PROTECTION LEVEE SERVITUDE			
PARCEL	OWNER	ACQUISITION	AREA
71-2	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	0.1819 ACRES
71-4	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	0.3818 ACRES
71-6	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	17.7577 ACRES
71-7	UNITED STATES OF AMERICA	COB 541, FOLIO 715	0.3573 ACRES
71-9	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	16.4110 ACRES

REVISED JUNE 14, 2011 - SERVITUDE TITLE  
 REVISED JUNE 5, 2011

**WBV-70 THROUGH 77  
 LAKE CATAOUATCHE LEVEE  
 WESTERN TIE-IN  
 WEST BANK AND VICINITY  
 HURRICANE PROTECTION PROJECT  
 JEFFERSON PARISH, LA  
 RIGHT OF WAY PLAN**

DUPRE SURVEYING  
 & ENGINEERING INC

APRIL 14, 2011

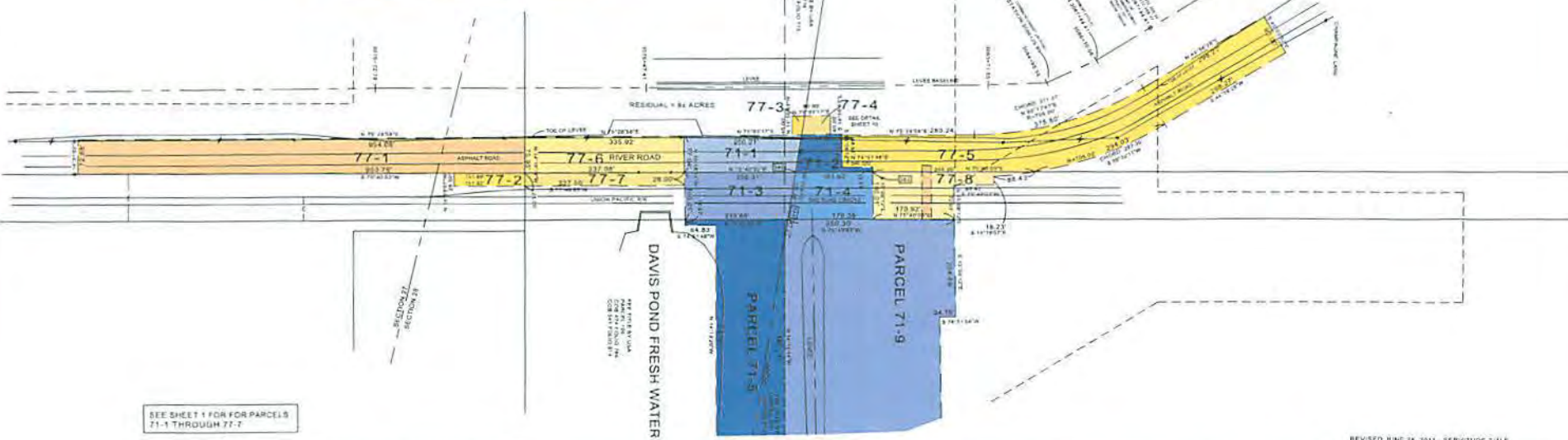
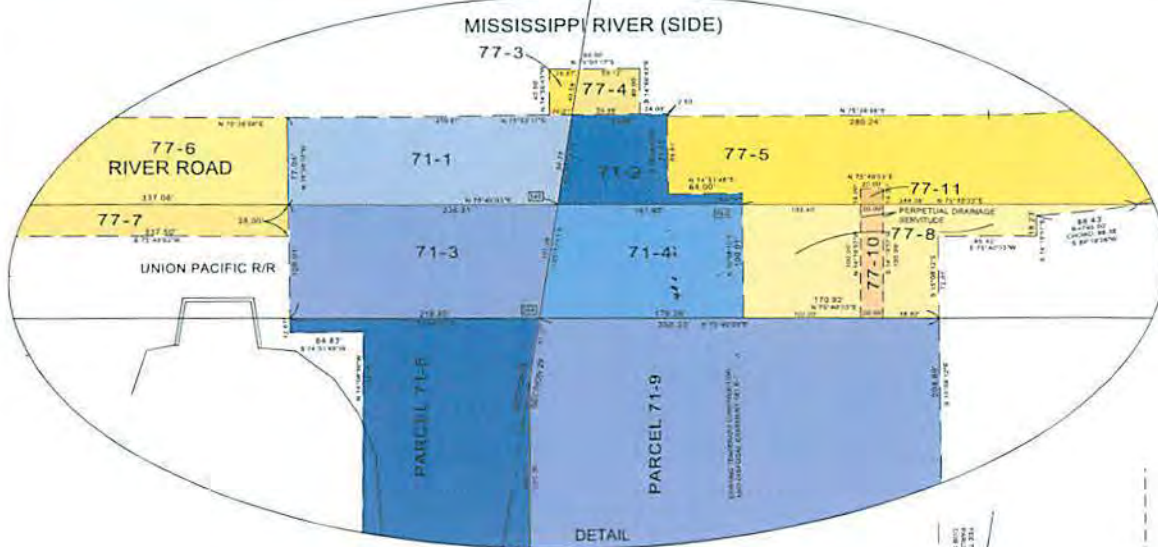


Scale in Feet



T 13 S R 21 E  
 SOUTHEASTERN DISTRICT OF LOUISIANA  
 WEST OF THE MISSISSIPPI RIVER  
 ST. CHARLES PARISH, LOUISIANA

POINT	X	Y
292	521 848.753	3 801 815.008
344	521 803.827	3 801 847.528
345	521 803.870	3 801 854.327



SEE SHEET 1 FOR PARCELS  
 71-1 THROUGH 77-7



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PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
77-1	J.B. LEVERT LAND COMPANY INC.	COB 540, FOLIO 235	70,986 SF	2634 AC
77-2	J.B. LEVERT LAND COMPANY INC.	COB 580, FOLIO 235	4,253 SF	SEE 77-1
77-3	UNITED STATES OF AMERICA	COB 541, FOLIO 715	938 SF	SEE 71-1
77-4	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	2,262 SF	SEE 71-2
77-5	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	83,235 SF	SEE 71-2
77-6	UNITED STATES OF AMERICA	474/786 541/814	25,741 SF	SEE 71-2
77-7	UNITED STATES OF AMERICA	474/786 541/814	9,444 SF	SEE 71-2

PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
77-8	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	19,990 SF	SEE 71-2
77-9	NOT USED			

PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
77-10	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	2,000 SF	SEE 71-2
77-11	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	260 SF	SEE 71-2

REVISED JUNE 28, 2011 SERVITUDE TITLE  
 REVISED JUNE 3, 2011

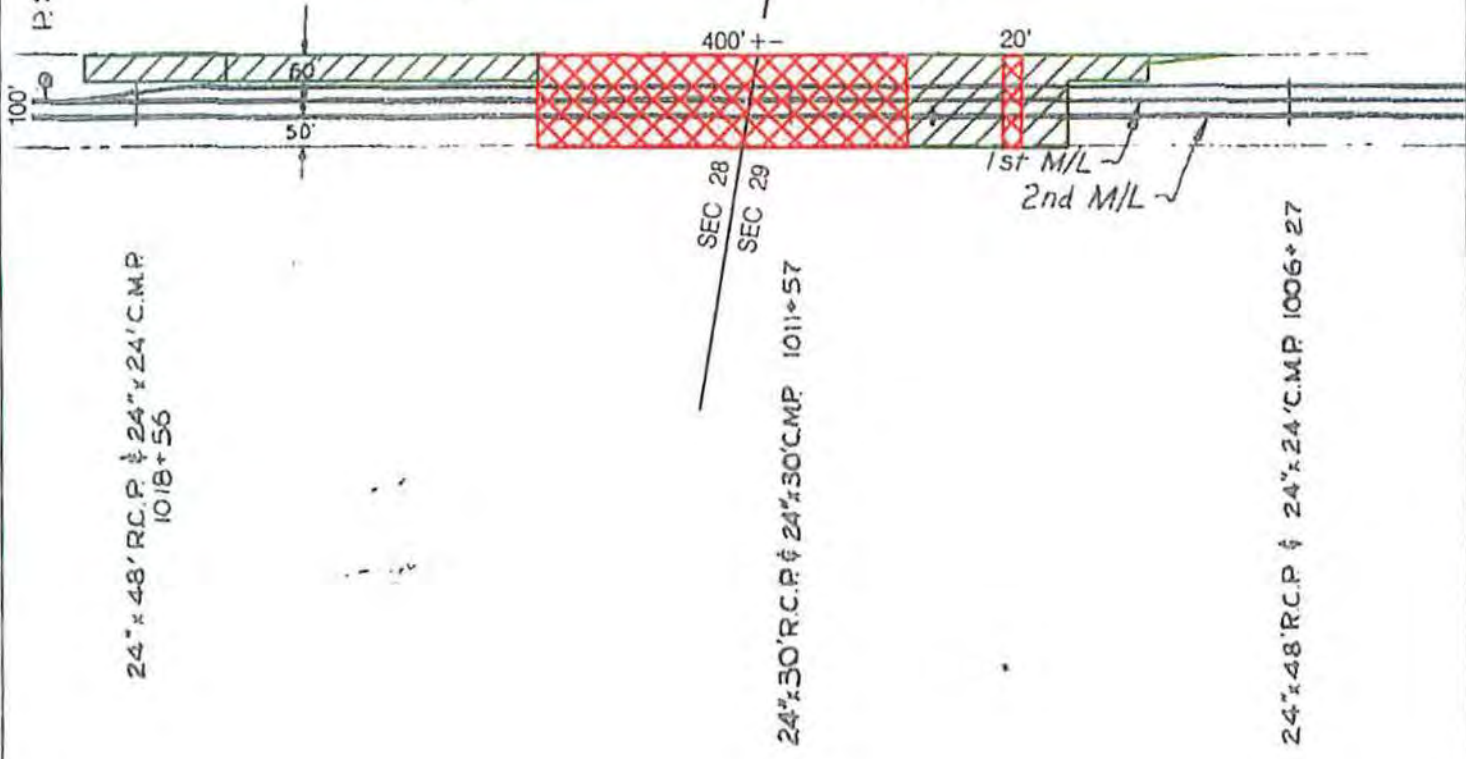
**WBV-70 THROUGH 77  
 LAKE CATAOUCHE LEVEE  
 WESTERN TIE-IN  
 WEST BANK AND VICINITY  
 HURRICANE PROTECTION PROJECT  
 JEFFERSON PARISH, LA**  
**RIGHT OF WAY PLAN**

GUFRENE SURVEYING  
 & ENGINEERING, INC.  
 1000 W. MONROE ST., SUITE 100  
 MONROE, LA 70601  
 APRIL 14, 2011 T-4229-L



P. Sw. 1019 + 59 No. 5

PERPETUAL EASEMENT AREA: 0.96 ACRES +-  
TEMPORARY EASEMENT AREA: 0.77 ACRES +-



SCALE: 1" = 200'

LEGEND

- U.P.R.R. RIGHT OF WAY
- PERPETUAL EASEMENT AREA
- TEMPORARY EASEMENT AREA

EXHIBIT "A"  
**UNION PACIFIC RAILROAD CO.**

AMA, ST. CHARLES PARISH, LA.  
M.P. 19.15 +- LIVONIA SUB.  
TP LA V 3 / 3  
REAL ESTATE DEPARTMENT OMAHA NE.  
FILE #2645-40 DATE: 6-28-2011 T.D.A.



LEGAL DESCRIPTION OF THE CROSSING AREA

Parcel 71-3

A certain portion of ground located in Davis Plantation, Section 28, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 71-3** and described as follows:

Begin at the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 05°12'41" East and go along the line between Sections 28 and 29 a distance of 101.28 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 218.85 feet; thence go North 15°08'12" West a distance of 100.01 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 236.31 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 0.5225 acres.

Parcel 71-4

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 71-4** and described as follows:

Begin at the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 161.92 feet; thence go South 15°08'12" East a distance of 100.01 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 179.38 feet to the line between Sections 28 and 29; thence go North 05°12'41" West along the line between Sections 28 and 29 a distance of 101.28 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 0.3918 acres.



Parcel 77-2

A certain portion of ground located in Davis Plantation, Section 28, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-2** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 75°40'03" West along the northerly right of way line of the Union Pacific Railroad a distance of 573.39 feet to the POINT OF BEGINNING. Thence go South 14°16'14" East a distance of 28.00 feet; thence go South 75°40'03" West a distance of 151.92 feet; thence go North 14°19'57" West a distance of 28.00 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 151.89 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 4,253 square feet.

Parcel 77-7

A certain portion of ground located in Davis Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-7** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 75°40'03" West along the northerly right of way line of the Union Pacific Railroad a distance of 236.31 feet to the POINT OF BEGINNING. Thence go South 15°08'12" East a distance of 28.00 feet; thence go South 75°40'03" West a distance of 337.50 feet; thence go North 14°16'14" West a distance of 28.00 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 337.08 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 9,444 square feet.

Parcel 77-8

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-8** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of



X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 161.92 feet to the POINT OF BEGINNING. Thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 344.56 feet to a point on a curve; thence go in a westerly direction along a curve to the right with a radius of 795.00 feet, an arc length of 88.43 having a chord of 88.38 bearing South 69°19'06" West; thence go South 14°19'57" East a distance of 18.23 feet; thence go South 75°40'03" West a distance of 85.42 feet; thence go South 15°08'12" East a distance of 72.01 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 170.92 feet; thence go North 15°08'12" West a distance of 100.01 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 19,990 square feet.

#### Parcel 77-10

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-10** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 265.32 feet to the POINT OF BEGINNING. Thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 20.00 feet; thence go South 14°19'57" East a distance of 100.00 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 20.00 feet; thence go North 14°19'57" West a distance of 100.00 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 2,000 square feet.

**CONTRACTOR'S  
RIGHT OF ENTRY AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Contractor").

**RECITALS:**

Contractor has been hired by the United States of America, U.S. Army Corps of Engineers or Office of Coastal Protection and Restoration or its assignee other than the U.S. Army Corps of Engineers [~~strike whichever has not engaged the Contractor~~] ("Government") to perform work relating to the construction and installation of a flood gate system and a flood control levee as part of Government's West Bank and Vicinity Hurricane Protection Project near Ama, St. Charles Parish, Louisiana (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost 19 on Railroad's Livonia Subdivision, on the portion of Railroad's property shown on the plat of survey dated April 14, 2011 and last revised June 28, 2011, marked **Exhibit A-1**, and described in the legal description marked **Exhibit A-2**, both attached hereto and hereby made a part hereof (the "Crossing Area").

The work is the subject of a contract titled Contract Covering Flood Gates and Levee Near Ama, St. Charles Parish, Louisiana and dated \_\_\_\_\_ between Railroad and Office of Coastal Protection and Restoration (the "Contract"); and is further the subject of a concurrence letter issued by the Government to Office of Coastal Protection and Restoration dated \_\_\_\_\_ (the "Concurrence Letter").

"Project Agreement" means "Concurrence Letter" if Contractor has contracted for the work with U.S. Army Corps of Engineers, and "Contract" if Contractor has contracted with Office of Coastal Protection and Restoration or its assignee other than the U.S. Army Corps of Engineers.

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement.

**AGREEMENT:**

**NOW, THEREFORE**, it is mutually agreed by and between Railroad and Contractor, as follows:



**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

**ARTICLE 2 - RIGHT GRANTED; PURPOSE.**

A. Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and use the Crossing Area described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to the Crossing Area, or other land as designated by the Railroad Representative named in Article 5.

B. Subject to the terms and conditions of this Agreement, Contractor shall have the right during its performance of the work described herein to the use of the existing at-grade crossing located at Railroad's DOT Crossing No. 920383U. The Contractor shall not use such crossing unless a Railroad flagman is present at the work site and is providing flagging protection at the crossing. The Contractor, at its expense, shall be responsible for upgrading the approach surfaces if needed. In addition, if the Railroad Representative determines that improvements are needed to the crossing surface between the track tie ends in order to handle the amount or type of construction traffic over the crossing, the Railroad shall make such improvements at Contractor's expense.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.**

The terms and conditions contained in Exhibit B, Exhibit C and Exhibit D, attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - CONTRACTOR'S WORK.**

Contractor shall perform its work in compliance with final plans approved by Railroad and the terms and conditions of the Project Agreement.

**ARTICLE 5 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.**

A. Contractor confirms that all Reimbursable Costs incurred by Owner as set forth in the Project Agreement, shall be billed by Owner to Contractor and that Contractor shall pay such billing within sixty (60) days of its receipt of billing from Owner. Contractor confirms that it shall make its own arrangements with the Government concerning its reimbursement of such payments to Owner.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):



LEWIS J. GOMEZ, JR  
5245 RIVER ROAD  
AVONDALE, LA 70094  
Work Phone: 504-342-3703  
Fax: 504-342-3772  
Cell Phone: 225-776-5996 / Pager: 888-858-7243

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 6 - SCHEDULE OF WORK ON A MONTHLY BASIS.**

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 5B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

**ARTICLE 7 - TERM; WORK SCHEDULES AND WORK WINDOWS; FLAGGING**

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until completion of construction of the work and turnover to the Coastal Protection and Restoration Authority. Contractor agrees to notify the Railroad Representative in writing of such completion and turnover.

B. Contractor confirms that it shall comply with work schedules and work windows as set forth in the and that its work may be restricted and rescheduled as set forth in the Project Agreement. Contractor confirms that the Railroad Representative shall have the right if the need arises to cancel or modify a scheduled work window on short notice including, without limitation, on the day of the scheduled work window due to train operations or congestion on Railroad's line at the work site and/or the adjacent line of railroad jointly owned by the Railroad and the BNSF Railway Company. Owner will not unreasonably cancel or modify work windows, and will do so only in response to a true business necessity.

C. Contractor confirms that a Railroad flagman shall be present for the entire duration of construction work on Railroad's property and that Railroad's flagging protection is estimated to cost \$1,280.00 per day.



**ARTICLE 8 - CERTIFICATE OF INSURANCE.**

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street  
Mail Stop 1690  
Omaha, Nebraska 68179  
Attn: Folder No. 2645-40

**ARTICLE 9 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor hereunder shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 10- ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad One Thousand and no/100 Dollars (\$1,000.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 11 - CROSSINGS.**

Contractor confirms that the only crossing of Owner's tracks for construction purposes that the Owner is allowing for this Project is the existing crossing at Owner's DOT Crossing No. 920383U and that Contractor's use of such crossing is subject to the terms and conditions of this Agreement and the Project Agreement.

**ARTICLE 12- EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.



**ARTICLE 13- TRAIN DELAY COSTS;  
RIGHT OF RAILROAD TO REMEDY TRACK DISRUPTION.**

A. "Train Delay Costs" are the actual and reasonable costs and expenses incurred by Railroad caused by delay in returning Railroad's facilities to their fully operational status and Railroad resuming normal train operations during a train service disruption caused by Contractor's work or omission, including, without limitation, car hire, alternative lading transportation, work train charges, direct and indirect labor costs and Railroad's standard labor additives, congestion costs, loss of business, and penalties or liability, incurred by Railroad due to Railroad's inability to fully serve its shippers in a timely manner; but excluding any delay due to construction within the work windows set forth in the Work Schedule or otherwise agreed to by Owner, or due to Railroad's performance of Owner's Work not in accordance with the Work Schedule. Train Delay Costs incorporate all of the aforementioned direct and indirect costs, including, without limitation, collateral congestion as calculated by any combination of Railroad capacity analytics, bottleneck tools and/or rail dispatch or queuing simulation software. Contractor acknowledges that calculation of such costs and expenses by any combination of Railroad capacity analytics, bottleneck tools, and/or rail dispatch or queuing simulation software such as RTC (Rail Traffic Controller) or other proprietary software developed and maintained by Railroad and used regularly for Railroad's maintenance and infrastructure planning is presumed reasonable hereunder.

B. Contractor acknowledges that the continuous operation of Railroad's main rail line is of great importance and that the disruption of Railroad's operations may cause Railroad to incur losses and expenses, and may impair the transportation of goods in interstate commerce. Contractor shall perform its work in strict compliance with the Work Schedule, or other work window periods that have been mutually agreed upon by Contractor and the Railroad Representative named in Article 5. "Work Schedule" means the agreed-to timing and duration of the various Project construction work phases and sequences, approved in writing by Contractor and Railroad, that is based on the "UPRR Track Windows and Construction Sequence" marked **Exhibit F**, attached hereto and hereby made a part hereof. The Government, Contractor, and Railroad shall meet promptly after the contract for the Project construction work is awarded to set the Work Schedule, and shall coordinate as necessary. Railroad hereby agrees to the minimum number, duration, and frequency of track windows as set forth in Exhibit F. Any work windows beyond the minimum set forth in Exhibit F shall be subject to Railroad's approval, in Railroad's sole discretion. Contractor agrees that the Railroad Representative shall have the right to shut down all work of Contractor on Railroad's property if Contractor has not completed its scheduled work within the time periods set forth in the Work Schedule or as otherwise mutually agreed upon between Contractor and the Railroad Representative.

C. Contractor will reimburse Railroad for actual and reasonable Train Delay Costs related to nonscheduled disruptions to Railroad's operations caused by any work performed by Contractor under this Agreement or any Contractor omission, other than construction within the agreed-upon work windows, but including without limitation failure to clear track areas in a timely manner. No Train Delay Costs are due or payable for delay arising from construction within the work windows set forth in the Work Schedule or that have been otherwise agreed to by Railroad.



D. Contractor agrees that if it will be unable to quickly remedy any disruption to Railroad's train operations beyond any work window authorized by the Work Schedule or Railroad Representative, Railroad, at Contractor's actual and reasonable expense, has the right (but not the obligation) to immediately use Railroad's personnel and equipment (or contracted personnel and equipment) to assist Contractor in remedying the disruption, upon concurrence or request by Government.

E. Contractor, at no cost to Railroad, shall acquire a performance bond issued by a reputable surety company in the amount of Six Hundred Thousand Dollars (\$600,000.00) that includes and insures, among other things, the payment of all Train Delay Costs incurred by Railroad. Contractor confirms that the \$600,000.00 figure is based on probabilistic model of outcomes, and the actual claim by Railroad against such bond amount will be based on the number of curfews and performance, and Railroads actual Train Delay Costs charged to Contractor may exceed \$600,000.00.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
**(Name of Contractor)**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

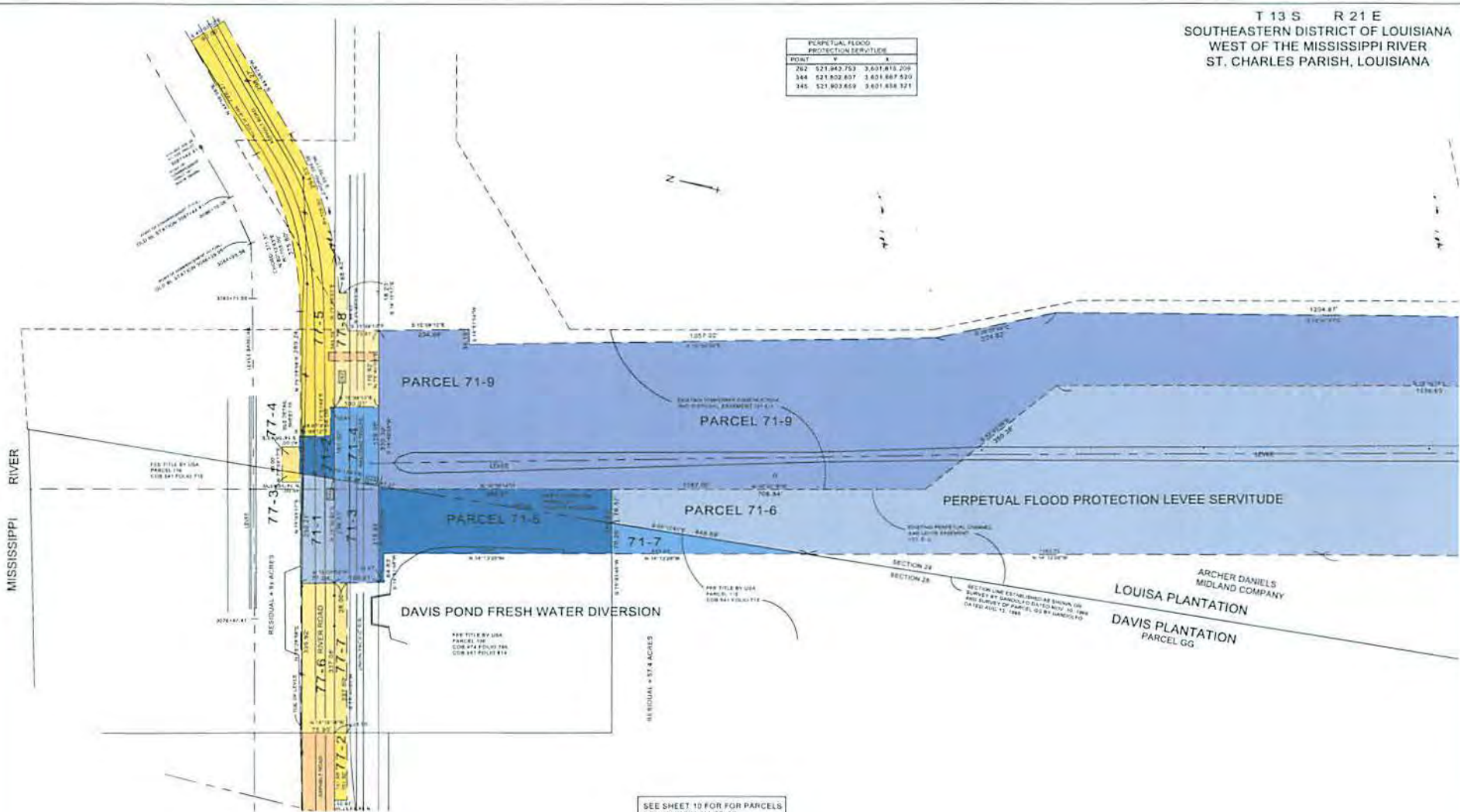
EXHIBIT A-1  
TO  
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

SURVEY PLAT OF THE CROSSING AREA



T 13 S R 21 E  
 SOUTHEASTERN DISTRICT OF LOUISIANA  
 WEST OF THE MISSISSIPPI RIVER  
 ST. CHARLES PARISH, LOUISIANA

PERPETUAL FLOOD PROTECTION LEVEE SERVITUDE			
POINT	X	Y	Z
262	521,842.753	3,601,815.209	
344	521,802.837	3,601,867.523	
345	521,803.659	3,601,434.321	



SEE SHEET 10 FOR PARCELS 77-1 THROUGH 77-10.

PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
71-1	UNITED STATES OF AMERICA	474/786 541/814 541/715	0.4375 ACRES	3+ AC 57.4 AC
71-3	UNITED STATES OF AMERICA	474/786 541/814 541/715	0.5225 ACRES	SEE 71-1
71-5	UNITED STATES OF AMERICA	474/786 541/814 503/249	1.7952 ACRES	SEE 71-1

PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
71-2	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	0.1819 ACRES	810 AC & 9.7 AC & 2.5 AC & 5.9 ACRES
71-4	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	0.3918 ACRES	SEE 71-2
71-6	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	17.7577 ACRES	SEE 71-2
71-7	UNITED STATES OF AMERICA	COB 841, FOLIO 715	0.3573 ACRES	SEE 71-2
71-9	ARCHER DANIELS MIDLAND COMPANY	COB 348, FOLIO 235	16.4110 ACRES	SEE 71-2



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REVISED JUNE 28, 2011 - SERVITUDE TITLE  
 REVISED JUNE 2, 2011

**WBV-70 THROUGH 77  
 LAKE CATAOUATCHE LEVEE  
 WESTERN TIE-IN  
 WEST BANK AND VICINITY  
 HURRICANE PROTECTION PROJECT  
 JEFFERSON PARISH, LA**

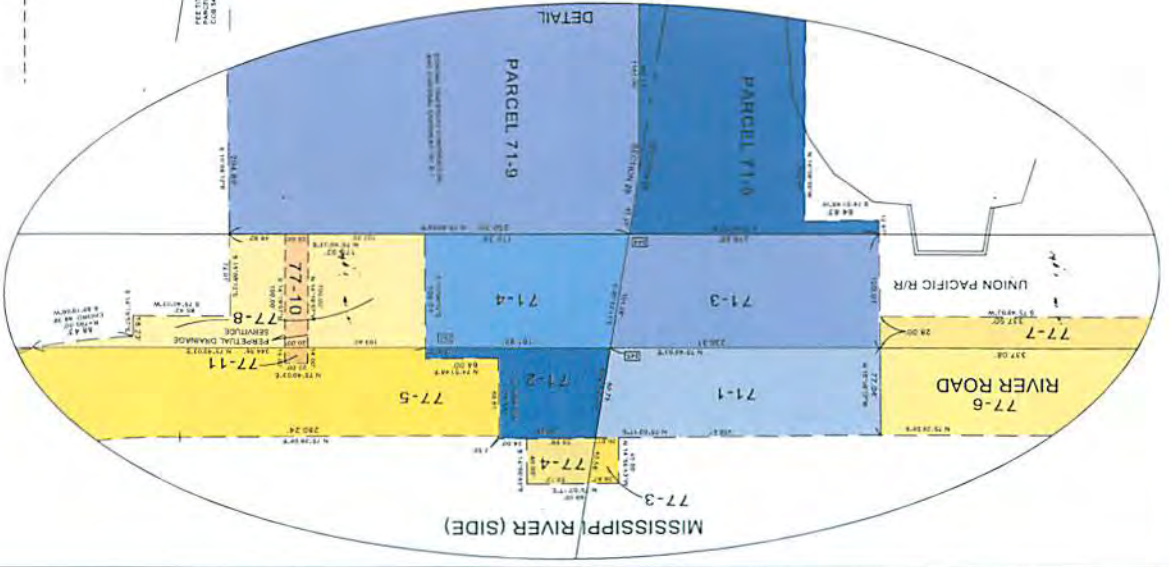
**RIGHT OF WAY PLAN**

**DUFRENE SURVEYING  
 & ENGINEERING INC**

APRIL 14, 2011

T 13 S R 21 E  
 SOUTHEASTERN DISTRICT OF LOUISIANA  
 WEST OF THE MISSISSIPPI RIVER  
 ST. CHARLES PARISH, LOUISIANA

POINT	X	Y
245	527.903 729	2.007 108 231
244	527.902 807	2.007 108 230
243	527.901 907	2.007 108 229



SEE SHEET 1 FOR PARCELS 71-1 THROUGH 77-2

PARCEL	OWNER	ACQUISITION	AREA	RESIDUAL
77-1	J.B. LEVERT LAND COMPANY INC	COB 348 FOLIO 235	70 988 SF	223 AC
77-2	J.B. LEVERT LAND COMPANY INC	COB 348 FOLIO 235	4 253 SF	SEE 77-1
77-3	UNITED STATES OF AMERICA	COB 541 FOLIO 715	938 SF	SEE 71-1
77-4	ANCHER DANIELS MIDLAND COMPANY	COB 348 FOLIO 235	2 262 SF	SEE 71-2
77-6	ANCHER DANIELS MIDLAND COMPANY	COB 348 FOLIO 235	83 235 SF	SEE 71-2
77-7	UNITED STATES OF AMERICA	474786 541/814	26 741 SF	SEE 71-2
77-7	UNITED STATES OF AMERICA	474786 541/814	9 444 SF	SEE 71-2

TEMPORARY WORK AREA SERVICE	ACQUISITION	AREA	RESIDUAL	
77-8	ANCHER DANIELS MIDLAND COMPANY	COB 348 FOLIO 235	19 880 SF	SEE 71-2
77-9	NOT USED			

PERPETUAL DRAINAGE SERVICE	ACQUISITION	AREA	RESIDUAL	
77-10	ANCHER DANIELS MIDLAND COMPANY	COB 348 FOLIO 235	2 000 SF	SEE 71-2
77-11	ANCHER DANIELS MIDLAND COMPANY	COB 348 FOLIO 235	289 SF	SEE 71-2

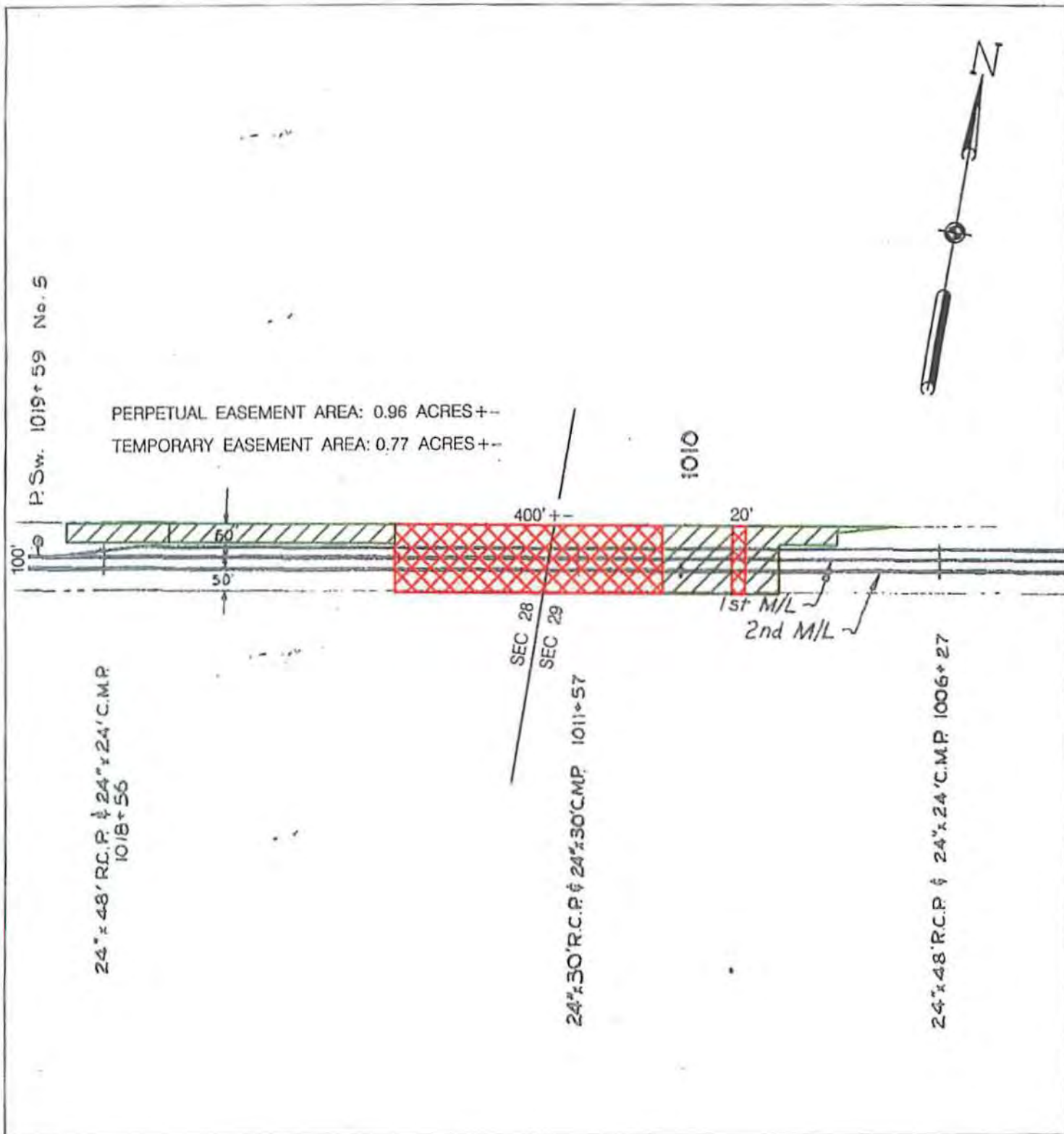


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WBV-70 THROUGH 77  
 LAKE CATAWATCHE LEVEE  
 WESTERN TIE-IN  
 HURRICANE PROTECTION PROJECT  
 WEST BANK AND VICINITY  
 JEFFERSON PARISH, LA  
 DURENE SURVEYING  
 & ENGINEERING, INC.  
 APRIL 14, 2011

REVISED JUNE 29, 2011 - SERVICE TITLE





SCALE: 1" = 200'

LEGEND




- U.P.R.R. RIGHT OF WAY 
- PERPETUAL EASEMENT AREA 
- TEMPORARY EASEMENT AREA 

EXHIBIT "A"  
 UNION PACIFIC RAILROAD CO.

AMA, ST. CHARLES PARISH, LA.  
 M.P. 19.15+- LIVONIA SUB.  
 TP LA V 3 / 3  
 REAL ESTATE DEPARTMENT OMAHA NE.  
 FILE #2645-40 DATE: 6-28-2011 T.D.A.

**EXHIBIT A-2**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY Agreement**  
**LEGAL DESCRIPTION OF THE CROSSING AREA**

Parcel 71-3

A certain portion of ground located in Davis Plantation, Section 28, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 71-3** and described as follows:

Begin at the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 05°12'41" East and go along the line between Sections 28 and 29 a distance of 101.28 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 218.85 feet; thence go North 15°08'12" West a distance of 100.01 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 236.31 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 0.5225 acres.

Parcel 71-4

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 71-4** and described as follows:

Begin at the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 161.92 feet; thence go South 15°08'12" East a distance of 100.01 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 179.38 feet to the line between Sections 28 and 29; thence go North 05°12'41" West along the line between Sections 28 and 29 a distance of 101.28 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 0.3918 acres.



Parcel 77-2

A certain portion of ground located in Davis Plantation, Section 28, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-2** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 75°40'03" West along the northerly right of way line of the Union Pacific Railroad a distance of 573.39 feet to the POINT OF BEGINNING. Thence go South 14°16'14" East a distance of 28.00 feet; thence go South 75°40'03" West a distance of 151.92 feet; thence go North 14°19'57" West a distance of 28.00 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 151.89 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 4,253 square feet.

Parcel 77-7

A certain portion of ground located in Davis Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-7** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go South 75°40'03" West along the northerly right of way line of the Union Pacific Railroad a distance of 236.31 feet to the POINT OF BEGINNING. Thence go South 15°08'12" East a distance of 28.00 feet; thence go South 75°40'03" West a distance of 337.50 feet; thence go North 14°16'14" West a distance of 28.00 feet to the northerly right of way line of the Union Pacific Railroad; thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 337.08 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 9,444 square feet.

Parcel 77-8

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-8** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of



X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 161.92 feet to the POINT OF BEGINNING. Thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 344.56 feet to a point on a curve; thence go in a westerly direction along a curve to the right with a radius of 795.00 feet, an arc length of 88.43 having a chord of 88.38 bearing South 69°19'06" West; thence go South 14°19'57" East a distance of 18.23 feet; thence go South 75°40'03" West a distance of 85.42 feet; thence go South 15°08'12" East a distance of 72.01 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 170.92 feet; thence go North 15°08'12" West a distance of 100.01 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 19,990 square feet.

#### Parcel 77-10

A certain portion of ground located in Louisa Plantation, Section 29, T13S, R21E, Southeastern District of Louisiana, West of the Mississippi River, St. Charles Parish, Louisiana, being a portion of the Union Pacific Railroad right of way, designated as **Parcel 77-10** and described as follows:

Commence from the intersection of the northerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,658.32 Y=521,903.67 and go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 265.32 feet to the POINT OF BEGINNING. Thence go North 75°40'03" East along the northerly right of way line of the Union Pacific Railroad a distance of 20.00 feet; thence go South 14°19'57" East a distance of 100.00 feet to the southerly right of way line of the Union Pacific Railroad; thence go South 75°40'03" West along the southerly right of way line of the Union Pacific Railroad a distance of 20.00 feet; thence go North 14°19'57" West a distance of 100.00 feet to the POINT OF BEGINNING.

All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 28, 2011 and containing 2,000 square feet.



**EXHIBIT B**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union



collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

**Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad, except during the work windows established in the Work Schedule or as otherwise agreed by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative, except during work windows established in the Work Schedule or as otherwise agreed by Railroad. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, except during work windows established in the Work Schedule or as otherwise agreed by Railroad, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.



**Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

**Section 5. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 6. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractors shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation of other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any such claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.



**Section 7. SAFETY.**

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 8. INDEMNITY.**

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss.



C. The right to indemnity under this Section 8 shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party. However, this Section 8C shall not apply to any contractor of Office of Coastal Protection and Restoration or its assignee, other than Government or its Contractor. Moreover, this Section 8C shall not apply to any Contractor of Government unless Railroad has paid to the contractor the increased cost of the additional coverage described in Section G of **Exhibit C** of this Agreement, in excess of the cost of the insurance required herein without said additional coverage.

D. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

E. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

F. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

G. Notwithstanding other provisions to the contrary in this Section 8, the Contractor's liability under this Section 8 shall be limited to amounts equal to the levels of insurance coverage required to be carried by Contractor as set forth in **Exhibit C** of this Agreement.

#### **Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon with exception of the improvements constructed pursuant to the Project.

**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law: (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.



**EXHIBIT C**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**Union Pacific Railroad Company**  
**Insurance Provisions For**  
**Contractor's Right of Entry Agreement**

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.



- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$5,000,000 per occurrence and an aggregate of \$10,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.
- E. Umbrella or Excess insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. In any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from



the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### Other Requirements

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement. Upon receipt of an invoice for or evidence of the cost thereof, Railroad shall pay to the contractor the increased cost of the additional coverage described in the previous sentence, to the extent that it exceeds the cost of the insurance required herein without said additional coverage.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all right of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by contractor required by this agreement, where permitted by law. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement except as set forth in Section 8 of **Exhibit B** of the Contractor's Right of Entry Agreement.

**EXHIBIT D**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

**I. Clothing**

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
  - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

**II. Personal Protective Equipment**

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- A. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- B. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.



- C. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- D. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

### **III. On Track Safety**

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- A. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Construction Representative is present to authorize movements.
- B. Wear an orange, reflectorized workwear approved by the Railroad Representative.
- C. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

### **IV. Equipment**

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

**V. General Safety Requirements**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.



- E. All employees must comply with all federal and state regulations concerning workplace safety.

**EXHIBIT E**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**Exhibit E** shall be the UPRR Track Windows and Construction Sequence



**UPRR TRACK WINDOWS AND CONSTRUCTION SEQUENCE**

	ACTIVITY	No. 6-hr WINDOW (hrs)	No. 12-hr WINDOW (hrs)
Stage 1	Phase (5A)	10	
	RR Remove rails for TRACK 010, Contractor installs both rows of TRACK 010 shoring and cross-sheeting b/w TRACK 010 and ML 02		
	RR Remove rails for ML 02, Contractor installs both rows of ML 02 shoring and cross-sheeting b/w ML 02 and ML 01		
	RR remove rails for ML 01, Contractor installs both rows of ML 01 shoring.		
Stage 2	Phase (5B-5D)	2	
	RR remove rails for all three tracks, Contractor installs all cut-off sheeting		
Stage 3	Phase (5E)	13	
	RR removes ties, KTR drives falsework piles/H-piles (4)		
	RR removes ties, KTR drives falsework piles/H-piles (5)		
	RR removes ties, KTR drives falsework piles/H-piles (4)		
	RR removes ties, KTR drives falsework piles/H-piles (5)		
	RR removes ties, KTR drives falsework piles/H-piles (4)		
	RR removes ties, KTR drives falsework piles/H-piles (5)		
	RR removes ties, KTR drives falsework piles/H-piles (3)		
Stage 4	Phase ( 5F-5H)	1	3
	RR removes track 010, KTR excavates, installs bracing, installs jump span		
	RR removes ML 02 track, KTR excavates, installs bracing, installs jump span		
	RR removes ML 01 track, KTR excavates, installs bracing, installs jump span		
	Contractor works beneath jump-span to complete excavation, prep of foundation, placement of reinforcement & embedded metals, forming, and pouring base slab, stems, pilasters		
Stage 5	Phase (5I-5K)		3
	Contractor removes all jump span bridges, installs sections of precast sill, grouts in place, and backfills sub-grade and sub-ballast		
	Contractor completes site-work adjacent to tracks		
	Contractor hangs North Gate		
	Contractor hangs South Gate		
	Contractor performs test-closure of both gates		
	KTR Removes Jump Span and Installs Sill, installs subgrade, completes track	1	
	<b>Totals</b>	<b>27</b>	<b>6</b>

**Assumptions:**

1. When using a 6-hour windows assumed 3 per week and when a 12 hr window is assumed only use 1 per week.

**Details:**

1. Since it was assume that the amount of days/week will be 3, a 12 hr window will actually be considered as a 3 day work week.
2. The 166 CD does not include mob, demob, and Fertilizing & Seeding.
3. The 166 CD does include weather days.

		<b>Windows</b>	
		6 hr windows	12 hr
	Stage 1 (5A)	10	0
	Stage 2 (5B-5D)	2	0
	Stage 3 (5E)	13	0
	Stage 4 ( 5F-5H)	1	3
	Stage 5 (5I-5K)	1	3
		27	6
	<b>Total Days</b>	27	18
	Total Work Days	45 work days	
	Work Week Schedule	3 days/week	
	Total CD	166 CD	