

State of Louisiana

Parish of St. Charles

**ASSIGNMENT OF FLOOD CLOSURE STRUCTURE
OPERATION AND MAINTENANCE
WBV-75**

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 June 21, 2011, Assignor, through its predecessor, the Office of Coastal Protection and Restoration, executed a certain Flood Closure Structure Construction and Maintenance Agreement (herein sometimes referred to as "Agreement") with BNSF Railway Company (herein sometimes referred to as "Railway") for the purpose of constructing, operating and maintaining a hurricane protection floodgate and appurtenances for the West Bank and Vicinity New Orleans, Louisiana Hurricane protection project, WBV-75, Western Tie-In Railroad Crossing at BNSF Railroad, St. Charles Parish, Louisiana (herein sometimes referred to as "C&M Agreement"), and pursuant to its statutory authorization under La. R.S. 49:214.6.1(A)(2) acquired certain immovable property interests or rights of use required for the levee, floorwall and/or flood gate work on the West Bank and Vicinity, New Orleans, Louisiana Hurricane Project, WBV-75, Western Tie-In BNSF Railroad Crossing, St. Charles Parish, Louisiana (herein sometimes referred to as "Project"), more particularly described in the Exhibits A-1 and A-2, attached hereto; and

WHEREAS, in conjunction with said C&M Agreement, on or about June 21, 2011, Assignor and Railway entered into an Easement Agreement entitled Easement Agreement for West Bank and Vicinity, Louisiana Project, St. Charles Parish, Louisiana, WBV-75, Western Tie-In Railroad Crossing at BNSF Railway (herein sometimes referred to as "Easement Agreement"), a copy of which was recorded in the Conveyance Records of St. Charles Parish on July 18, 2011, in Book Number 759, Page 481, Entry Number 371600; and

WHEREAS the Project included installing railroad flood gates across Railroad's property more particularly described in said C&M Agreement, and depicted on Exhibits A-1 and A-2, attached hereto; and

WHEREAS, the flood gates have been constructed in accordance with said C&M Agreement; and

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

WHEREAS, pursuant to Article V, Section 13(b) of the C&M Agreement and La. R.S. 38:101(C), the responsibility for the maintenance and operation of the hurricane protection system of said Project shall be assumed by St. Charles Parish; and

WHEREAS, CPRA desires to assign to St. Charles Parish all of its rights under such C&M Agreement and Easement Agreement;

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 the C&M Agreement and the Easement Agreement.

Assignee hereby assumes all of Assignor's duties and obligations under said Agreement, including but not limited to the operation and maintenance of said Project.

Assignee agrees to adhere to the Standards Closure Structure Operation as enumerated in Exhibit I to the original Agreement, and attached hereto as Exhibit B.

This Assignment is subject to the rights of any third parties in the Property, including the Union Pacific Railroad Company, under that certain Use and Management Agreement dated September 1, 2000, affecting Railroad's property. In accordance with Article V(20) 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 the St. Charles Parish, Louisiana.

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 Government

Print Name: _____

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

Notary Public

Name: _____

Notary Identification No.: _____

My commission expires: _____

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT A-1
PROPERTY DESCRIPTION**

PARCEL NO. 71-10

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 part of the Southern Pacific Railroad right of way, designated as Parcel 71-10 and described as follows:

Commence from the intersection of the southerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,667.52 Y=521,802.81 and go South 05°12'41" East along the line between Sections 28 and 29 a distance of 982.14 feet; thence go South 14°13'20" East a distance of 1162.73 feet; thence go South 14°04'33" East a distance of 1017.94 feet to the northerly right of way line of the Southern Pacific Railroad, the POINT OF BEGINNING. Thence go North 63°53'19" East along the northerly right of way line of the Southern Pacific Railroad a distance of 395.05 feet; thence go South 14°16'14" East a distance of 102.17 feet to the southerly right of way line of the Southern Pacific Railroad; thence go South 63°53'19" West along the southerly right of way line of the Southern Pacific Railroad a distance of 395.40 feet; thence go North 14°04'33" West a distance of 102.25 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 3, 2011 and containing 0.9073 acres.

PARCEL NO. 71-11

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 part of the Southern Pacific Railroad right of way, designated as Parcel 71-11 and described as follows:

Commence from the intersection of the southerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,667.52 Y=521,802.81 and go South 05°12'41" East along the line between Sections 28 and 29 a distance of 982.14 feet; thence go South 14°13'20" East a distance of 1162.73 feet; thence go South 14°04'33" East a distance of 1017.94 feet to the northerly right of way line of the Southern Pacific Railroad; thence go North 63°53'19" East along the northerly right of way line of the Southern Pacific Railroad a distance of 395.05 feet to the POINT OF BEGINNING. Thence go North 63°53'19" East along the northerly right of way line of the Southern Pacific Railroad a distance of 92.75 feet; thence go South 15°21'45" East a distance of 101.79 feet to the southerly right of way line of the Southern Pacific Railroad; thence go South 63°53'19" West along the southerly right of way line of the Southern Pacific Railroad a distance of 94.73 feet; thence go North 14°16'14" West a distance of 102.17 feet to the POINT OF BEGINNING.

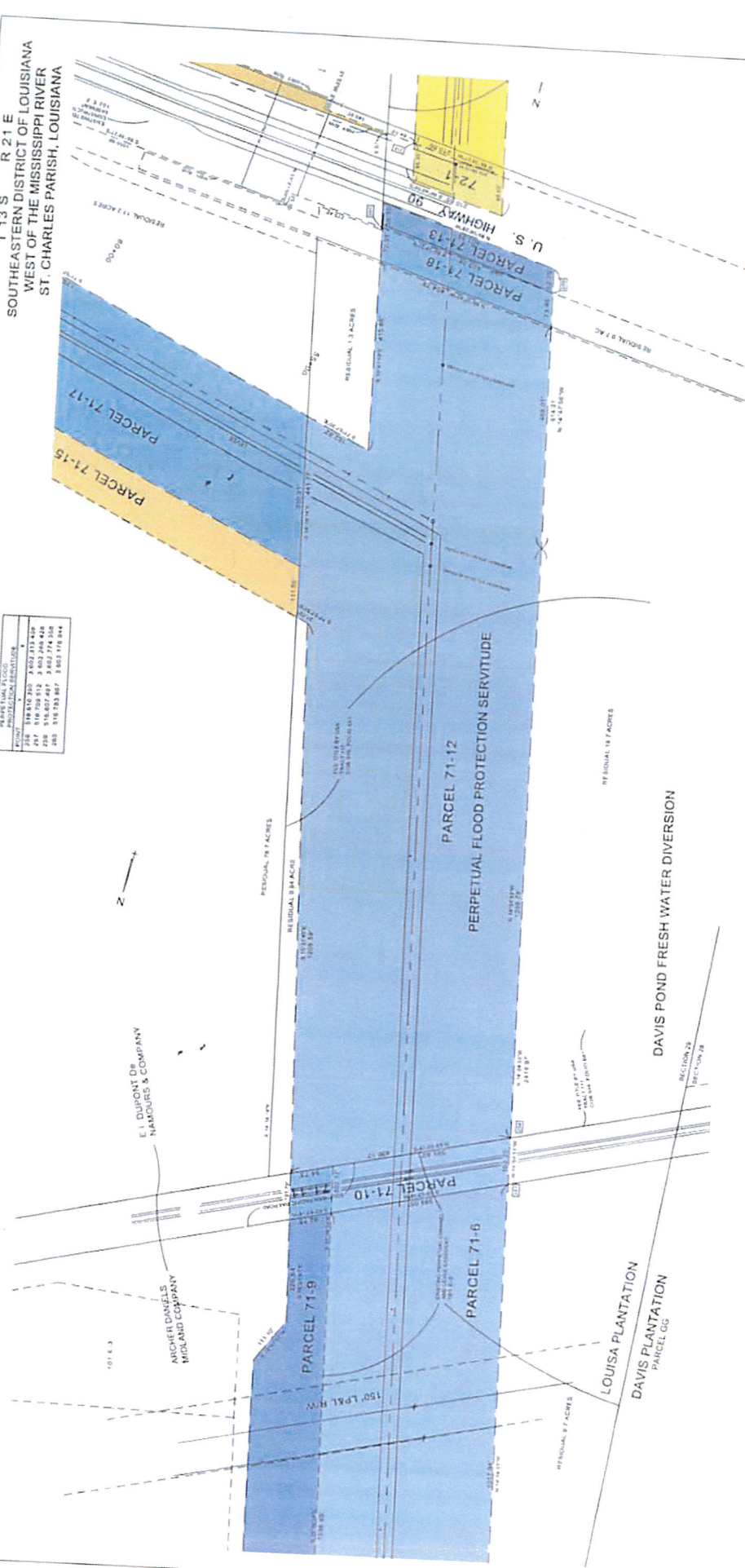
All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 3, 2011 and containing 0.2152 acres.

FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT

EXHIBIT A-2
PROPERTY DESCRIPTION (PICTURE)

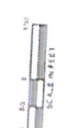
T 13 S R 21 E
 SOUTHEASTERN DISTRICT OF LOUISIANA
 WEST OF THE MISSISSIPPI RIVER
 ST. CHARLES PARISH, LOUISIANA

| POINT | NAD 83 Easting | NAD 83 Northing |
|-------|----------------|-----------------|
| 708 | 818 476 200 | 4 623 733 508 |
| 709 | 818 476 212 | 4 623 740 428 |
| 710 | 818 476 224 | 4 623 747 348 |
| 711 | 818 476 236 | 4 623 754 268 |



| PARCEL | OWNER | ACQUISITION | AREA | RECORD |
|--------|---------------------------------|--------------------|---------------|--------------------------|
| 71-6 | NOT USED | | | |
| 71-10 | ARCHER DANIELS MIDLAND COMPANY | COB 346, FOLIO 235 | 0.9073 ACRES | SEE 71-2 |
| 71-11 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 235 | 0.2172 ACRES | SEE 71-2 |
| 71-12 | UNITED STATES OF AMERICA | COB 546, FOLIO 884 | 37.1054 ACRES | 0.84 ACRES & 137.7 ACRES |
| 71-13 | E I DUPONT DE NEMOURS & COMPANY | COB DD, FOLIO 485 | 0.4857 ACRES | ROADWAY 60 |
| 71-16 | E I DUPONT DE NEMOURS & COMPANY | COB DD, FOLIO 485 | 0.6869 ACRES | SEE 71-8 |

REVISED JUNE 3, 2011
 WBV-70 THROUGH 77
 LAKE CATAOUCHE LEVEE
 WESTERN LEVEE
 WEST BANK AND VEIN
 HURRICANE PROTECTION PROJECT
 JEFFERSON PARISH, LA
 RIGHT OF WAY PLAN
 SUPREME SURVEYING & ENGINEERING INC.
 APRIL 14, 2011



NOTES:
 1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
 2. THIS PLAN IS TO BE USED FOR THE PURPOSES OF THE PERPETUAL FLOOD PROTECTION SERVICE.
 3. THE OWNER OF ANY PARCEL SHOWN HEREON SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED.
 4. THE ENGINEER HAS REVIEWED THIS PLAN AND FINDS IT TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MISSISSIPPI RIVER COMMISSION.
 5. THE ENGINEER HAS REVIEWED THIS PLAN AND FINDS IT TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MISSISSIPPI RIVER COMMISSION.

FLOOD CLOSURE STRUCTURE CONSTRUCTION AND MAINTENANCE AGREEMENT

EXHIBIT I STANDARDS FOR CLOSURE STRUCTURE OPERATION

CLOSURE:

Generally.

The Closure Structure will be closed by OCPR when the National Weather Service (the "NWS") has issued a hurricane warning for the Greater New Orleans ("GNO") area and wind speeds in New Orleans reach 39 MPH (34 knots) as determined by the NWS at www.weather.gov. However, closure will not occur earlier than H-24, nor later than H-12, both as defined below. The OCPR or its designee will coordinate its efforts with Owner as detailed in the standards set forth below. All notifications to Owner shall be by telephone to each of the following contacts:

| | |
|---|----------------|
| BNSF Railway Joint Corridor Manager Desk: | (281) 350-7231 |
| BNSF Railway Service Interruption Desk: | (817) 234-2350 |
| BNSF Manager Structures: | (817) 807-8600 |

Timeline for Closure of Closure Structure

- H-72 "H-72", or landfall minus 72 hours, occurs when the NWS issues an advisory for a Saffir-Simpson category 1 or above hurricane ("Hurricane Event") that depicts the potential 1-3 day landfall track area on the shores of Louisiana between Morgan City and Slidell. H-72 indicates that a Hurricane Event has the potential of affecting the GNO area within 72 hours. At H-72, OCPR will notify Owner of Closure Structure closure preparations, and will begin to monitor predicted wind speeds in New Orleans, Louisiana.
- H-48 "H-48", or landfall minus 48 hours, occurs when the NWS issues a hurricane watch for the GNO area. At H-48, OCPR will notify Owner and update the status of Closure Structure preparations and operations with regard to wind speed.
- H-24 "H-24", or landfall minus 24 hours, occurs when the NWS issues a hurricane warning for the GNO area. At H-24, the closure of the Closure Structure is imminent and may be ordered by OCPR at any time between H-24 and H-12 (landfall minus 12 hours). Closure of the Closure Structure will be ordered shortly after the NWS predicts that wind speeds in New Orleans will reach 39 MPH (34 knots), after H-24. OCPR will notify Owner when it appears that H-24 is likely to occur shortly. OCPR will provide at least three hour's notice to Owner prior to ordering closure, and will notify Owner when the instruction to close the gate is issued. 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.

REOPENING:

The Closure Structure shall be reopened by OCPR immediately upon the satisfaction of the following criteria (the "Reopening Conditions"):

- (i) The eye of the storm has passed the GNO area;
- (ii) According to the NWS, wind speeds at the Closure Structure are below 39 MPH (34 knots);
and

(iii) The water level at the Closure Structure is below the gate sill.

If the Closure Structure is not reopened immediately upon satisfaction of the Reopening Conditions, the Owner may provide notice to OCPR and take immediate action to reopen the Closure Structure and resume operations. Such notification shall be by telephone to the following contacts:

| | |
|-----------------------------|--|
| OCPR Incident Commander | (225) 342-3969 (O) or (985) 709-1099 (C) |
| OCPR Operations Coordinator | (225) 342-4525 (O) or (504) 432-7741 (C) |

FLOOD CLOSURE STRUCTURE CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF File: Salix, LA – USACE Flood Gate
Project
BNSF Gulf Division, Lafayette Subdivision
BNSF Line Segment: 1281
BNSF Railroad Milepost 19.43

This Flood Closure Structure Construction and Maintenance Agreement (this "**Agreement**") is entered into this 21ST day of JUNE, 2011 (the "**Effective Date**"), by and between OFFICE OF COASTAL PROTECTION AND RESTORATION of the State of Louisiana (the "**OCPR**") and BNSF RAILWAY COMPANY, a Delaware corporation (the "**Owner**").

RECITALS

WHEREAS, the Coastal Protection and Restoration Authority of Louisiana (the "**CPRA**") and the U.S. Army Corps of Engineers (the "**Government**") entered into a Project Partnership Agreement (the "**PPA**") for the West Bank and Vicinity, Louisiana Project (the "**WBV**");

WHEREAS the Government and the CPRA are jointly undertaking a flood control improvement project to install a set of flood gates across Owner's Property (as defined below) on the east side of Owner's bridge number 19.53 in Salix, Louisiana in order to protect citizens and property from flood;

WHEREAS, pursuant to Article III of the said PPA, the CPRA is required to provide the lands, easements, and rights-of-way necessary for the construction, operation, and maintenance of the Project (as defined below), including those required for relocation of interfering facilities;

WHEREAS, pursuant to La. R.S. 49:214.6.1, OCPR is the implementation and enforcement arm of CPRA, 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 CPRA to fulfill its obligations under the PPA, is authorized to enter into this Agreement to acquire certain lands, easements, and rights-of-way from Owner that are necessary for the construction, operation, and maintenance of the Project;

WHEREAS, the Owner and the Union Pacific Railroad Company (the "**UP**" and collectively with BNSF, the "**Owner Railroads**") are parties to that certain Property Use and Management Agreement, dated September 1, 2000 (the "**Use Agreement**"), affecting the Owner's Property;

WHEREAS, the Owner is willing to grant to the OCPR the Permanent Servitude (as defined below) for the Project and to cooperate, where practicable, but at no risk or cost to Owner except as may be expressly specified herein, with OCPR for the construction, operation, and maintenance of the Project, including the Closure Structure (as defined below);

WHEREAS, pursuant to the temporary assignment of the Temporary Construction Servitude (as defined below) by OCPR to Government, the Owner is willing to grant the Government temporary access to the Owner's Property in order for the Government's contractor to perform construction work on the Project;

WHEREAS, in accordance with the Use Agreement and as reflected by its execution of the Permanent Servitude, the UP consents to the grant of property interests by the Owner to the OCPR, provided that the protections extended to BNSF hereunder are extended on the same terms to the UP;

WHEREAS, upon completion of the construction work, the Government will turn over the Project to CPRA in accordance with the PPA, and OCPR and/or OCPR's assignee will thereafter operate and maintain the Project;

WHEREAS, the OCPR has been or its assignee will be duly authorized to operate and maintain the Project upon the completion of the construction and turnover of the Project to CPRA in accordance with the PPA;

WHEREAS, the Owner has constructed and is operating and maintaining railroad facilities on the Owner's Property, including, but not limited to track, signals, and other appurtenances (the "**Railroad Facilities**") which will be affected by the Project; and

WHEREAS, the Owner will be required to temporarily remove a portion of its Railroad Facilities and interrupt train movements in order to allow for the construction of the Project by the Government.

AGREEMENT

Now, therefore, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I - SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the construction of the proposed West Bank and Vicinity, Louisiana Project, St. Charles Parish, Louisiana WBV-75 Western Tie-In Railroad Crossing at BNSF Railway, which is a portion of WBV, pursuant to the plans and specifications attached hereto as Exhibit B, including, but not limited to the construction of the flood protection swing gates (the "**Closure Structure**") on and across the property of the Owner as described in Exhibit A-1 and depicted on Exhibit A-2 (the "**Owner's Property**"), which is near the City of Salix, Louisiana.

2. All construction shall be performed in accordance with this Agreement and the plans and specifications set forth on Exhibit B or subsequently approved by Owner. The sequence of construction is described on Exhibit B-1, attached hereto and made a part hereof.

ARTICLE II – OBLIGATIONS OF OWNER

In consideration of the covenants of OCPR set forth herein and the faithful performance thereof, the Owner agrees as follows:

1. In consideration of the faithful performance of the OCPR's covenants contained herein, Owner hereby grants to the OCPR, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive construction servitude (the "**Temporary Construction Servitude**"), transferrable to Government and its contractors in accordance with the terms of this Agreement, to construct the Project across or upon the Owner's Property in accordance with the plans and specifications attached hereto as Exhibit B, excepting and reserving the Owner's rights, and the rights of any others who have obtained, or may obtain, permission or authority from the Owner, to do the following:

- a. Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way, provided such activities do not materially interfere with the Government's construction of the Project in accordance with this Agreement and as limited by the provisions hereof;

- b. Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the Owner may from time to time deem appropriate, provided such facilities do not materially interfere with the Government's construction of the Project in accordance with this Agreement;
- c. Otherwise use or operate the right-of-way as the Owner may from time to time deem appropriate, provided such use or operations do not materially interfere with the Government's construction of the Project in accordance with this Agreement.

The term of the Temporary Construction Servitude begins on the Effective Date and ends on the earlier of (i) completion of the Closure Structure and all other portions of the Project to be constructed on Owner's Property, or (ii) fifteen (15) months following the Effective Date. The Temporary Construction Servitude and related rights given by Owner to the OCPD in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. Government, Government's contractor, OCPD, and its assignees shall use and accept use of the Owner's Property "as is, where is." The Temporary Construction Servitude is for construction of the Project only and shall not be used by the Government or OCPD for any other purpose, except as expressly provided herein. The Government and OCPD acknowledge and agree that no party shall have the right under the Temporary Construction Servitude to use the Closure Structure. The foregoing notwithstanding, in accordance with Article VI, Section 1 of this Agreement, prior to completion of construction of the Project the Government may install and use temporary retaining structures and/or temporary flood protection measures in accordance with the Standards for Closure Structure Operation attached hereto as Exhibit I. In the event OCPD, the Government or its contractor is evicted by anyone owning, or claiming title to or any interest in said right-of-way, Owner will not be liable to the Government, Government's contractor, or OCPD for any damages, losses or any expenses of any nature whatsoever. The Owner will not grant rights to others, subsequent to the Effective Date that materially impair or interfere with the rights granted to the Government herein.

In consideration for the payment from OCPD described in the subsequent sentence and the other obligations undertaken by OCPD hereunder, Owner hereby agrees to execute the assignable perpetual servitude covering the parcels of the Owner's Property as described in Exhibit E-1, attached hereto as Exhibit E (the "**Permanent Servitude**"), for the Project to remain on the Owner's Property and for the operation and maintenance of the Project as detailed herein. OCPD must pay Owner the sum of Thirty-Eight Thousand and No/100 Dollars (\$38,000.00) as compensation for the Permanent Servitude within thirty (30) days of the Effective Date of this Agreement. If OCPD fails to pay Owner within the thirty day time period set forth in the preceding sentence, Owner may stop construction of the Project until full payment is received by Owner.

2. Owner will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, Owner may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D to add any reasonable actual cost. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of OCPD, which approval will not be unreasonably withheld. Construction of the Project includes the following railroad work by Owner:

- a. Procurement of materials, equipment and supplies necessary for the railroad work;
- b. Preliminary engineering, design, and contract preparation;
- c. Furnishing flagging services as required and set forth in further detail on Exhibit C;
- d. Furnishing engineering and inspection as required in connection with the construction of the Project;

- e. Furnishing track and signal construction as required and set forth in further detail on the Exhibit B and Exhibit B-1 of this Agreement; and
 - f. Construction of a 32-foot temporary construction at-grade crossing across the Owner's main track and siding track for use by the Government's contractor, as depicted in the plans and specification attached hereto as Exhibit B. Owner and Government's contractor shall execute a Temporary Crossing Agreement for the temporary crossing in the form attached hereto as Exhibit H-1. Upon completion of the Project, the temporary construction at-grade crossing will be converted into a permanent private crossing by the Agreement for Private Crossing with OCPD, attached hereto as Exhibit H-2, which Owner hereby agrees to execute.
3. Owner will do all railroad work set forth in Article II, Section 2 above on an actual reasonable cost basis, when Owner, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
4. Government will reimburse Owner's reasonable cost, through Government's contractor, for work of an emergency nature caused by Government or Government's contractor in connection with the Project which Owner deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons, equipment or Owner's Property. Such work may be performed by Owner without prior approval of Government, but with notice to the Government, and Government agrees to fully reimburse Owner its reasonable cost for all such emergency work, through Government's contractor. It is understood and agreed that, in accordance with Article V, Section 13 of this Agreement, OCPD shall be responsible for any failure by Government or Government's contractor to perform any obligation of such party under this Agreement.
5. Owner may charge Government for insurance expenses, through Government's contractor, including self-insurance expenses when such expenses cover the cost of employer's liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project, as set forth on the Cost Estimate attached hereto as Exhibit D. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to Owner's employees, if any.
6. Owner will have the right to stop all construction work on the Project if any of the following events take place, by notifying the Government's Contracting Officer as soon as reasonably possible and requesting that the Government's Contracting Officer also instruct the contractor to immediately stop the activity and initiate corrective action: (i) Government (or any of its contractors) performs Project work that affects railroad safety or operations in a manner contrary to the plans and specifications set forth on Exhibit B or subsequently approved by Owner; (ii) Government (or any of its contractors), in Owner's opinion, prosecutes the Project work in a manner which may cause imminent danger to Owner's Property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) the Government, Government's contractor, or OCPD breaches this Agreement, the Temporary Construction Servitude, or the Permanent Servitude. The work stoppage will continue until all necessary actions are taken by Government, its contractor, or OCPD, as appropriate, to rectify the situation to the satisfaction of Owner's Division Engineer, provided that such satisfaction will not be unreasonably withheld, or until the insurance specified on Exhibit C-1 has been delivered to and accepted by Owner. Upon work stoppage, the contractor shall immediately halt all work, shore up existing work as necessary, and clear all equipment, debris, and other project-related items from the Owner's Property. Any such work stoppage under this provision will not give rise to any liability on the part of Owner. Owner's right to stop the work is in addition to any other rights Owner may have including, but not limited to, actions or suits for damages or lost profits. Notwithstanding the foregoing, Government, Government's contractor, and OCPD agree that the Owner has no duty or obligation to monitor the use of the Owner's Property by the Government, its contractor or OCPD to determine the safety thereof, it being solely each entity's responsibility to ensure that its activities on the Owner's Property are safe. In the event that Owner desires to stop construction

work on the Project, Owner agrees to immediately notify the following individual in writing and request that such person also instruct any contractors to immediately stop all activity and initiate corrective action:

Lary Yorke
U.S. Army Corps of Engineers
Westbank Area Office
5750 Bayou Estates Blvd.
Marrero, LA 70073
Phone: 504-862-2754

James McMenis, P.E., Project Manager
Office of Coastal Protection and Restoration
P. O. Box 44027
Baton Rouge, LA 70804-4027
Phone : 225-342-4525

7. During the construction of the Project, Owner will send Government's contractor progressive invoices detailing the costs of the railroad work performed by Owner under this Agreement. Government's contractor will reimburse Owner for completed force-account work within sixty (60) days of the date of the invoice for such work. Upon completion of the Project, Owner will send Government's contractor a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article III, Section 5 herein, Government's contractor must pay the final invoice within ninety (90) days of the date of the final invoice. Owner will assess an interest charge and Government's contractor will pay interest, in accordance with the Prompt Payment Act, on any unpaid sums or other charges due under this Agreement which are past their credit terms. Interest charges will be noted on invoices sent to Government's contractor under this section.

ARTICLE III – OBLIGATIONS OF GOVERNMENT AND OCPH

In consideration of the covenants of Owner set forth herein and the faithful performance thereof, OCPH agrees that it will either perform, or in its assignment of these rights to the Government will require the Government or the Government's contractor to perform, as appropriate, as follows:

1. Government must furnish to BNSF plans and specifications for the Project. The set of said plans (reduced size 11" x 17"), together with the specifications in **English Units**, must be submitted to Owner for approval prior to commencement of any construction. Owner will give Government final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon Owner's final written approval of the plans and specifications, said plans and specifications will be marked as Exhibit B, attached to this Agreement, and made a part hereof. Any approval of the plans and specifications by Owner shall in no way obligate Owner in any manner with respect to the finished product design and/or construction, except to allow construction thereof by Government and its contractor and operation and maintenance thereof by OCPH and/or its assignee. Any approval by Owner shall mean only that the plans and specifications meet the subjective standards of Owner, and such approval by Owner shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes. No work shall be performed on the Owner's Property until the Owner provides written notification of its approval of the Exhibit B.

2. Government, through its contractor, shall obtain all necessary permits, licenses, and authority for the work to be performed by the Government, and shall provide in its contracts with third parties that they shall obey and abide by all applicable laws, regulations, ordinances, and other rules of the United States of America, the state or political subdivisions thereof wherein the work is performed, and of any other duly constituted public authority.

3. Government must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than Owner which may be necessary for the construction of the Project.

4. Government, through Government's contractor, must reimburse the Owner in full for all reasonable actual costs expended by Owner in connection with all work described in Article I and Article II or other work hereunder performed by Owner or its agents or contractors in connection with the Project, such costs to include all items of expense properly chargeable thereto, including, but not limited to, labor (direct and supporting), materials, transportation, insurance, overhead charges properly allocable to the work, supervision, surveys, permits, rental of tools, equipment and machinery employed in the work, together with such other items of reasonable expense as are incurred by Owner in connection with the work. An estimate for the costs associated with such work is attached hereto as Exhibit D. If any flagmen or other special protective or safety measures are performed by the Owner, such services will be provided at the expense of the contractor of the Government. Such reimbursement shall be paid by Government's contractor as set forth at Article II, Section 7.

5. Government must include Owner as an addressee on the concurrence letter accepting the provisions of any assignment of rights authorized hereunder to the Government. Government must copy Owner's Manager Public Projects on the notice to proceed to Government's contractor for the Project, and provide billing information and the billing point of contact for the contractor.

6. OCPD must pay Owner the sum of Thirty-Eight Thousand and No/100 Dollars (\$38,000.00) as compensation for the Permanent Servitude in accordance with Article II, Section 1.

7. Government must construct the Project as shown on the attached Exhibit B and do all work ("**Government's Work**") provided for in the plans and specifications for the Project, except railroad work that will be performed by Owner hereunder. Government must furnish all labor, materials, tools and equipment for the performance of Government's Work. In no event shall the Owner be responsible for any costs or expenses associated with the construction and placement of the Closure Structure. The principal elements of Government's Work are as follows:

- a. Construction and removal of the temporary jump span bridges;
- b. Construction of the Closure Structure;
- c. All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- d. Provide suitable drainage, both temporary and permanent;
- e. Construction of a temporary construction-use road and a future permanent maintenance access road, including appropriate gates with effective locking mechanisms;
- f. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of Owner.

8. Government's Work must be performed by Government or Government's contractor in a manner that will not endanger or interfere with the safe and timely operations of Owner and its facilities.

9. If any future maintenance work on the Closure Structure by Government on Owner's Property involving construction or reconstruction of the Project or the presence of vehicles or equipment within 25 feet of the centerline of any of Owner's tracks should be required, or if any other entry is necessary upon the property of the Owner within four feet of the tracks except at the crossing set forth at Article II, Section 2(f), Government shall require its contractor to execute the documents attached hereto as Exhibit C and Exhibit C-1. Prior to performing any future maintenance with its own personnel on Owner's Property,

Government shall: (a) comply with all of Owner's applicable safety rules and regulations, as set forth in Exhibit C and Exhibit C-1 hereto and at www.contractororientation.com, a copy of which will be provided by Owner upon request; (b) require any employee performing maintenance to complete the safety training program at the Owner's Internet Website "www.contractororientation.com"; (c) notify Owner when, pursuant to the requirements of Exhibit C, a flagger is required to be present; and (d) procure, and have approved by Owner's Risk Management Department, railroad protective liability insurance as required by Owner at the time of such work in an amount that reflects then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

10. In order to prevent damage to Owner's trains and property, Government and OCPR must require their respective contractor(s) to notify Owner's Roadmaster at least ten (10) calendar days prior to requesting a flagman from Owner in accordance with the requirements of Exhibit C attached hereto, for work that will take less than five (5) days; for work that will take more than five (5) days, the contractor must notify Owner's Roadmaster at least thirty (30) days prior to requesting a flagman. Additionally, Government must require its contractor(s) to notify Owner's Manager Public Projects thirty (30) calendar days prior to commencing construction work on Owner's Property or within 25 feet of the centerline of any of Owner's tracks.

11. Government or its contractor(s) must submit two copies of any plans not included in the plans and specifications set forth on Exhibit B (including two sets of calculations in **English Units**) for proposed shoring or cribbing to be used over, under, or adjacent to Owner's tracks to Owner's Manager Public Projects for approval. All shoring or cribbing used by Government's contractor shall comply with Owner's Bridge Requirements set forth on Exhibit G attached to this Agreement and incorporated herein. Additionally, all shoring and cribbing must comply with all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

12. Government must include the following provisions in any contract with its contractor(s) performing work on the Project on Owner's Property:

- a. The contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "**Lines**") owned by various telecommunications companies may be buried on Owner's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting Owner's Communications Network Control Center at 800-533-2891, Owner's Signal Representative (Supervisor Signals-Construction) at 817-740-7384, and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the Owner's right-of-way or on Owner's property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- b. The contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
- c. Failure to mark or identify these Lines will be sufficient cause for Owner's engineering representative to stop construction at no cost to the Government or Owner until these items are completed.
- d. In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless the Owner Railroads for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by contractor, and/or its

subcontractors, agents and/or employees, on Owner's property or within Owner's right-of-way, (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 Owner's property or within Owner's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY THE CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF THE OWNER RAILROADS, THEIR RESPECTIVE AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF AN OWNER RAILROAD.** The contractor must include coverage for the above described indemnity in the insurance policies required by this Agreement, and the contractor's obligation to indemnify the Owner Railroads for liabilities arising from the negligence of the Owner Railroads shall be strictly limited to the amount and terms of coverage of the contractor's insurance required under this Agreement. Upon receipt of an invoice for or evidence of the cost thereof, BNSF 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. All other provisions of this Agreement notwithstanding, including but not limited to Article II, Section 4 and Article V, Section 13, OCPD shall have no responsibility to indemnify, defend, or hold harmless the Owner Railroads or for its contractor(s) to do so pursuant to this Article III, Section 12(d). OCPD's responsibility to indemnify, defend, and hold harmless the Owner Railroads is set forth exclusively at Article IV, Section 6.

13. Government must require compliance with the obligations set forth in this Agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in the Agreement and (ii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

14. Except as otherwise provided in this Section 14, all construction work performed hereunder by Government for the Project will be pursuant to a contract or contracts to be let by Government, and all such contracts must include the following:

- a. All work performed under such contract or contracts on Owner's Property must be performed in a good and workmanlike manner in accordance with plans and specifications approved by Owner;
- b. Changes or modifications to the approved plans and specifications during construction that affect safety or Owner's operations will be subject to Owner's approval. Owner will provide such approval or written explanation of its specific objections to the changes or modifications within 10 days of receiving the proposed changes or modifications;
- c. No work will be commenced on Owner's Property until each of the prime contractors employed in connection with said work has (i) executed and delivered to Owner a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured Owner's approval of the required insurance; and
- d. To facilitate scheduling for the Project, Government shall have its contractor give Owner's representative four (4) weeks advance notice of the proposed times and dates for work windows, including Track Windows. Owner and Government's contractor will establish mutually agreeable work windows and Track Windows for the Project. Owner has the right at any time to revise or change the work windows and Track Windows, due to train operations or service obligations. Owner will not unreasonably revise or change work windows and Track Windows, and will do so only in response to a true business necessity.

Owner will not be responsible for any additional costs and expenses resulting from a change in work windows or Track Windows. Additional costs and expenses resulting from a change in work windows or Track Windows shall be accounted for in the contractor's expenses for the Project.

15. Government must give Owner's Manager Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad work after receipt of necessary funds for the Project. Owner will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Government.

16. Government must advise the appropriate Owner's Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Government must notify Owner's Manager Public Projects, in writing, of the date on which Government and/or its contractor will meet with Owner for the purpose of making final inspection of the Project. Government must copy Owner's Manager Public Projects on the notice of turnover of the Project to CPRA in accordance with the PPA.

17. Government will, to the extent provided for under 28 U.S.C. 2675 (Federal Tort Claims Act) or otherwise permitted by law, be liable for damages that may be caused by its employees or agents for work that the Government may perform on the Project. It is understood that the Government's ability to make payments required under this clause may be limited to the availability of appropriations for such payment and nothing contained in this Agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet any deficiencies.

ARTICLE IV – OBLIGATIONS OF OCPR

1. Upon completion of the Project and turnover to CPRA in accordance with the PPA, the Closure Structure constructed hereunder shall be the property of CPRA/OCPR. Upon completion of the Closure Structure and turnover to CPRA by Government in accordance with the PPA, OCPR or its assignee, at its sole cost and expense, shall maintain the Closure Structure in good working order so as not to interfere with safe operation by Owner of its Railroad Facilities and in such manner as to prevent unauthorized operations of the Closure Structure.

2. If any future maintenance work on the Closure Structure by the OCPR or its assignee on Owner's Property involving construction or reconstruction of the Project or the presence of vehicles or equipment within 25 feet of the centerline of any of Owner's tracks should be required, or if any other entry is necessary upon the property of the Owner within four feet of the tracks except at the crossing set forth at Article II, Section 2(f), OCPR shall require its contractor to execute the documents attached hereto as Exhibit C and Exhibit C-2. Prior to performing any future maintenance with its own personnel, OCPR or its assignee, as appropriate, shall: (a) comply with all of Owner's applicable safety rules and regulations, as set forth in Exhibit C and Exhibit C-2 hereto and at www.contractororientation.com, a copy of which will be provided by Owner upon request; (b) require any employee performing maintenance to complete the safety training program at the Owner's Internet Website www.contractororientation.com; (c) notify Owner when, pursuant to the requirements of Exhibit C, a flagger is required to be present and reimburse Owner for such flagging expenses; and (d) procure, and have approved by Owner's Risk Management Department, railroad protective liability insurance as required by Owner at the time of such work in an amount that reflects then-current risk management practices in the railroad industry and underwriting practices in the insurance industry. In the event of an assignment by OCPR, only the agency actually performing the maintenance work must perform the obligations of this paragraph 2.

3. OCPR hereby agrees that Owner shall not, at any time, be required to bear or assume any cost or expense in or incident to the construction, operation and maintenance of the Closure Structure, it being solely the responsibility of the Government and OCPR to bear and assume all such cost and expense.

4. OCPR agrees that it or its assignee will operate the Closure Structure in a manner that will cause the least disruption to Owner's railroad operations reasonably possible under the circumstances. OCPR

will include in its operating policy for the Closure Structure that the Closure Structure will be closed across Owner's tracks only in accordance with the Standards for Closure Structure Operation attached hereto as Exhibit I. 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 two times per year (not counting any emergency closures in accordance with Exhibit I), upon prior notice and at such times as will not cause delay or disruption to Owner's schedules. Flagging shall be required for such closures pursuant to Article IV, Section 2 if the closure involves the presence of vehicles or equipment within 25 feet of the centerline of any of Owner's tracks, or if any other entry is necessary upon the property of the Owner within four feet of the tracks except at the crossing set forth at Article II, Section 2(f).

5. Upon completion of the Project and turnover to CPRA in accordance with the PPA, OCPR or its assignee shall accept all responsibility for operation of the Closure Structure. Operation, testing, and inspection of the Closure Structure will be performed only by OCPR or its assignee, and shall not be performed by a contractor of OCPR or its assignee.

6. Indemnification.

- a. As a major inducement and in consideration of the servitude and permission herein granted, and without limitation of any other provision herein, OCPR agrees, to the extent permitted under state law, to indemnify, defend, and hold harmless the Owner Railroads from any Liability which is due to or arises from:
 - (i) the prosecution of any work contemplated by this Agreement, including the installation, construction, maintenance, repair, renewal, modification or removal of the Closure Structure or any parts thereof;
 - (ii) the presence, operation or use of the Closure Structure or contents escaping therefrom; or
 - (iii) any act or omission or failure to perform any obligation contained in this Agreement by OCPR or any of its contractors.
- b. For purposes of this section, the term "**Liability**" shall include:
 - (i) costs and loss associated with the necessity of repairing or replacing any property of the Owner Railroads or others damaged or destroyed in connection with the performance of any work under this Agreement by or on behalf of OCPR; and
 - (ii) all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including the officers and employees of the Owner Railroads, OCPR and its contractors, and for loss and damage to property belonging to any person (including, without limitation, environmental damage).
- c. Nothing herein shall be construed as indemnifying or holding an Owner Railroad harmless against a Liability to the extent proximately caused by: (i) the Owner Railroad's own negligence or that of its agents, employees, contractors, successors, assigns and transferees; or (ii) a hurricane, storm surge, or other natural disaster. In addition, OCPR shall have no obligation to indemnify or hold harmless the Owner Railroads for any train delay or other operational interruptions caused by the closure of the Closure Structure, provided that the Closure Structure is operated in compliance with the Standards for Closure Structure Operation attached hereto as Exhibit I.
- d. **THE INDEMNIFICATION OBLIGATION ASSUMED BY OCPR SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST AN OWNER RAILROAD UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT OR STATE BASED WORKERS' COMPENSATION LAWS AND REGULATIONS ARISING FROM THE MATTERS LISTED**

IN PARAGRAPH 6(a) ABOVE; INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE, WHENEVER SO CLAIMED.

- e. In addition, to the extent permitted under state law, the OCPD agrees to release the Owner Railroads from any claims arising from the matters listed in Paragraph 6(a) above which OCPD or any of its employees, contractors, agents or invitees could otherwise assert against the Owner Railroads. However, nothing herein shall be construed as releasing an Owner Railroad from any claims to the extent proximately caused by its own negligence or that of its agents, employees, contractors, successors, assigns and transferees.
- f. OCPD agrees, at its expense, in the name and on behalf of the Owner Railroads, to defend, adjust and/or settle all claims made against an Owner Railroad, and, at such Owner Railroad's discretion, to appear and defend any suits or actions, whether at law or in equity, brought against an Owner Railroad on any claim or cause of action arising or growing out of or in any manner connected with any indemnity to the Owner Railroads by OCPD under this Agreement. The Owner Railroads shall promptly give notice to OCPD, in writing, of the receipt or pendency of suits or claims and thereupon OCPD shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against an Owner Railroad, such Owner Railroad may forward summons and complaint or other process in connection therewith to OCPD, and OCPD, at such Owner Railroad's discretion, agrees to defend, adjust, and/or settle such suits and protect, indemnify, and save harmless the Owner Railroads from and against all damages, verdicts, judgments, orders, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits. However, OCPD's responsibility to pay any damages, verdicts, judgments, orders, decrees, attorney's fees, costs, or expenses shall be reduced to the extent that Owner's untimeliness in notifying OCPD of said claims or suits has exacerbated the amount of the liability or caused the loss of a defense thereto.
- g. In addition to any other provision of this Agreement, in the event that all or any portion of this Section shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Section shall be interpreted as requiring OCPD to indemnify the Owner Railroads to the fullest extent permitted by applicable law.
- h. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

ARTICLE V – JOINT OBLIGATIONS

1. It is agreed that the safety and continuity of the Owner's railroad operations are of the utmost importance and that in order for railroad operations to be adequately safeguarded, the Government, OCPD and their respective contractors shall not obstruct, interfere with, or delay the maintenance or operations of Railroad Facilities in the performance of work related to the Project or any time thereafter in the operation and maintenance of the Closure Structure, except as expressly permitted herein. The Government shall require its contractors to exercise like precaution and will diligently supervise its own work and that of its contractors to ensure that any work carried on in proximity to the Owner's Railroad Facilities shall not obstruct, interfere with, or delay the operations of the Owner, except as expressly permitted herein.

2. Notwithstanding anything to the contrary contained herein, it is the responsibility of the Government, OCPD and their respective contractors, to ensure that such entity's presence on the Owner's Property is safe. The Government, OCPD and each of their contractors, as applicable, will ensure the safety of their respective employees and agents performing or supervising any work on the

Project. The Owner shall have the right to furnish all flagging and other protective services as in its judgment may be necessary for the safety of its operations during the Project construction. Wherever safeguarding the operations of the Owner is mentioned in this Agreement, it is intended to cover and include all users of the Owner's right-of-way having permission for such use. The Owner will submit to the Government's contractor current bills for flagging and other protective services and devices during progress of the Project and a final billing for these services promptly following written notice from the Government of the Project's completion. The Government shall require its contractor to promptly pay all invoices properly submitted by the Owner.

3. The Government and OCPR shall have the right to inspect the work being performed hereunder at any time during its progress and to make final inspection upon completion thereof. The Owner shall permit and facilitate reasonable access for the Government and OCPR for the reasonable inspection of the Project and shall cooperate fully with Government and OCPR inspection personnel. The presence or absence of a Government or OCPR inspector does not relieve the Owner from any requirement in this Agreement, nor is any inspector authorized to change any term or condition of this Agreement.

4. Under no circumstances shall Government, OCPR or any contractors enter on Owner's Property within 25 feet of Owner's railroad tracks unless and until a flagman or flagmen are provided by Owner. Flagmen shall act under the direction and control of Owner. Government and OCPR further agree to obey and follow and to cause their contractors to obey and follow all directions and instructions of said flagman or flagmen while on or about Owner's Property. Notwithstanding the foregoing, no flagmen shall be required for operating the floodgate in an emergency situation in compliance with Exhibit I hereto; crossing the tracks at the private crossing set forth at Article II, Section 2(f); or for inspections of the Closure Structure or adjoining floodwall or levee, provided that no vehicle or equipment enters closer than 25 feet from the centerline of any track and no person enters closer than four feet from the tracks themselves.

5. When not in use, the Government's machinery and materials shall be kept off of Owner's Property. There shall be no crossings of Owner's tracks except at Owner-approved construction crossings or existing open public crossings.

6. Government and OCPR shall cause any contractor, at its own expense, to obtain and maintain and shall require its subcontractors to obtain and maintain in force during the term of this Agreement, if the contractor or subcontractor will perform any construction of the Closure Structure on Owner's Property within 25 feet of the Railroad Facilities, the following insurance:

- a. Commercial General Liability Insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
 - ◆ Bodily Injury and Property Damage
 - ◆ Personal Injury and Advertising Injury
 - ◆ Fire legal liability
 - ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to Railroad payments related to the Federal Employers Liability Act or a Railroad Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 25 feet of railroad property.

- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

- b. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
 - ◆ Bodily injury and property damage
 - ◆ Any and all vehicles owned, used or hired
- c. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
 - ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- d. Railroad Protective Liability insurance naming only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:
 - ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - ◆ Endorsed to include the Limited Seepage and Pollution Endorsement
 - ◆ Endorsed to include Evacuation Expense Coverage Endorsement
 - ◆ No other endorsements restricting coverage may be added
 - ◆ The original policy must be provided to the Railroad prior to performing any work or services under this Agreement
- e. Other Requirements:
 - (i) All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.
 - (ii) Contractor's Workers Compensation insurer, through the terms of the policy or policy endorsement, waive its right of subrogation against Railroad for all claims and suits and contractor agrees to waive its right of recovery against Railroad for all claims and suits.
 - (iii) Contractor's insurance policies through policy endorsement, must include wording which states that the policy will be primary and non-contributing with respect to any insurance carried by Railroad. The certificate of insurance must reflect that the above wording is included in evidenced policies.
 - (iv) All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and Railroad must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming Railroad as additional insured must be indicated on the certificate of insurance.
 - (v) Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by contractor's insurance will be covered as if

contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

- (vi) Prior to commencing the Work, contractor must furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

- (vii) Any insurance policy must be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- (viii) Contractor represents that the insurance requirements under this Agreement have been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.
- (ix) Beginning two years after the Effective Date, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry. Railroad may do so no more than one time every five years.
- (x) If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractor release, indemnify, defend, and hold harmless Railroad to the same extent and under the same terms, limitations, and conditions as contractor is required to release, indemnify, defend, and hold harmless Railroad herein.
- (xi) Failure to provide evidence as required by this section will entitle, but not require, Railroad to stop work until the required insurance has been obtained by the appropriate contractor or subcontractor, and provided to and accepted by Owner. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.
- (xii) The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

- f. For purposes of this section, "**Railroad**" means "Burlington Northern Santa Fe LLC", "BNSF RAILWAY COMPANY", "UNION PACIFIC RAILROAD COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

7. In case the Closure Structure shall at any time cease to be used as a flood control structure or shall by operation of law become vacated or abandoned, the rights and benefits to OCPR under this Agreement shall cease after ninety (90) days written notice to OCPR and the Government and the Owner shall be entitled to repossess the land to which it has executed servitudes and permits to OCPR and to use such land thereafter as if this Agreement had never been executed, without necessity of any further legal proceedings. OCPR will be responsible for the costs of removal of the Closure Structure on the Owner's Property.

8. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit G; Owner, Government and OCPR agree to the following terms upon completion of construction and turnover of the Project to CPRA in accordance with the PPA:

- a. Owner will, at its sole cost and expense, accept, own, and maintain its roadbed, track, railroad drainage, and all other railroad facilities.
- b. OCPR or its assignee will own and maintain, at its sole cost and expense, the Closure Structure in a manner that will cause the least disruption to Owner's railroad operations, except that operation of the Closure Structure in accordance with Standards set forth at Exhibit I shall be permissible.
- c. OCPR must, at OCPR's sole cost and expense keep the Closure Structure reasonably painted and free from graffiti.
- d. To the extent that OCPR has the authority to do so and without any warranty as to the existence or extent of such authority, OCPR hereby grants to Owner, at no cost or expense to Owner, a permanent right of access across the existing access road on property owned by OCPR from U.S. Highway 90 to Owner's Property for maintenance purposes, at times to be approved by OCPR in advance. Such access shall not interfere with the construction, use, operation, or maintenance of the Closure Structure or appurtenances. Owner shall promptly repair any damage arising from Owner's use of OCPR's property, at Owner's sole cost; and if said damage is not repaired promptly, OCPR may repair any such damage and charge the actual and reasonable cost thereof to Owner, which shall pay such costs within 30 days after receiving an invoice therefor. OCPR makes no warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. Owner shall use and accept use of OCPR's property "as is, where is." Owner shall defend, indemnify, and hold harmless OCPR against, for, and from any claim, suit, cost, or loss of any nature arising from Owner's use of OCPR's property, except to the extent the claim, suit, cost, or loss arises from the negligence of OCPR or its agents, employees, or contractors.
- e. The Owner and OCPR agree to jointly participate in at least one annual inspection of the Closure Structure.

OWNER CONTACTS FOR ANNUAL INSPECTION OR ROUTINE MAINTENANCE:

BNSF Roadmaster (Lafayette) – 337-572-2502

BNSF Supervisor Structures (Lafayette) – 337-572-2503

BNSF Signal Supervisor (Lafayette) – 337-572-2504

OCPR CONTACTS FOR ANNUAL INSPECTION OR ROUTINE MAINTENANCE:

John Monzon, P.E., Chief of Flood Protection - 225-342-4501

- f. It is mutually recognized by the parties hereto that conditions inherent in the Closure Structure may cause the complete stabilization of adjacent embankment side-slopes of Owner's track roadbed to be deferred beyond the construction period, and that Owner's operation over the roadbed during the seasoning period may impose extraordinary maintenance costs in the event of caving, sliding, slipping, sinking or settling, including damage to rip rapping or protective work in connection therewith, as well as settlement and consolidation of tracks and ballast, until the seasoning period is complete. Therefore, the Government shall pay that part of the actual and reasonable cost and expense of extraordinary maintenance ("deferred construction") of said facilities which can be attributed to failure of subgrade, settlement and consolidation of subballast, or roadbed, or any combination thereof, which are incurred during the period commencing immediately following completion of the work by the Government's contractor and ending five (5) years thereafter. The deferred construction costs shall include reimbursement of the extra costs, in excess of normal maintenance costs, of maintaining embankments and that portion of tracks above subgrade in accordance with acceptable maintenance standards, and will include cost of maintaining proper alignment, proper surface, and use of ballast and other necessary materials. The deferred construction shall normally be performed by the Owner either with its own forces or through contractors employed by it. In the event major construction is required for deferred construction, the Government may accomplish such major items by contract, subject to approval and inspection by the Owner, all at the expense of the Government. If work involves Railroad Facilities, it will be done in accordance with Owner's current labor union contract. Except in cases where the continuity of train service is involved or threatened, the Owner shall submit to the Government plans, specifications and estimates for deferred construction work and shall not commence such work until the plans, specifications and estimates shall have been approved by the Government. Government will complete its review of plans, specifications and estimates, and provide Owner with the results of the review within ten (10) business days. The Owner shall furnish the Government quarterly estimates of costs of deferred construction thirty (30) days prior to the beginning of each quarter. The Government shall reimburse the Owner, as provided herein, upon receipt of proper invoices. The Owner will accomplish the final work of deferred construction within one (1) year after termination of the five-year period defined above. Owner shall provide the Government a good faith estimate of anticipated actual and reasonable cost of deferred construction.
- g. It is expressly understood by OCPD and Owner that any right to install utilities will be governed by a separate permit or servitude agreement between the parties hereto.
- h. OCPD must keep the Closure Structure and surrounding areas reasonably clean and free from birds, vermin and other animals.

9. The provisions of this Agreement shall survive the completion and turnover to CPRA of the Project in accordance with the PPA and OCPD's assumption of maintenance obligations.

10. Track Maintenance and Alterations.

- a. From time to time, Owner may, in its sole discretion and at its expense, raise or lower the grade of the railroad components of the Closure Structure if necessary or desirable as part of its maintenance efforts. In such an event, Owner will provide notice to OCPD and coordinate its maintenance activities with OCPD. Such changes or additions must not adversely affect, change or alter the flood control components of the Closure Structure.
- b. Owner may, in its sole discretion and at its expense, make future changes or additions to the railroad components of the Closure Structure 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 control components of the Closure Structure. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the flood control components of the Closure Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or flood control facilities made necessary by any such changes to the Closure Structure, will be at the expense of the Owner unless otherwise agreed by OCPR at the time such changes are requested. Such changes, alterations, widening, or reconstruction must not adversely affect, change or alter the flood control components of the Closure Structure. However, to the extent that the Closure Structure can be adjusted without adversely affecting, changing, or altering the flood control components of the Closure Structure and without cost, OCPR will do so upon written request by Owner.

11. OCPR or the Government may, at OCPR's or the Government's sole expense, as appropriate, alter or reconstruct the flood control components of the Closure Structure if necessary or desirable, due to drainage conditions; provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of Owner's right-of-way to a greater extent than is contemplated by the plans and specifications to be approved by Owner pursuant to Article III, Section 1 herein, without obtaining Owner's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.

12. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto for a period of three (3) years from the date of completion of the Closure Structure.

13. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party, except as provided in this Section 13.

- a. OCPR may assign all or part of its rights hereunder to the Government; provided that such assignment shall be in writing and require the assignee to accede to the terms and conditions of this Agreement applicable to the Government or its contractor and agree to undertake all obligations set forth in this Agreement applicable to the Government or its contractor.-
- b. OCPR may also assign all or part of its rights hereunder to CPRA, St. Charles Parish, or another state or local governmental agency or political subdivision; provided that such assignment shall be in writing, require the assignee to accede to the terms and conditions of this Agreement and specify the obligations set forth in this Agreement to be undertaken by the assignee. Further, the consent of Owner shall be required for any such assignment other than to CPRA or St. Charles Parish, which consent shall not be unreasonably withheld.
- c. No assignment under this Section 13 shall relieve OCPR of any responsibility, obligation or liability under this Agreement. Should any assignee fail to perform any responsibility or obligation as stated in this Agreement or as assigned by OCPR, OCPR is and shall remain responsible for performing any such responsibility or obligation and shall be liable for any failure to perform under this Agreement.
- d. For ease of drafting, the Government may be named in this Agreement in provisions where a right or duty is expected to be assigned to the Government or its contractor. Regardless of such drafting convenience, it is understood and agreed that all rights, responsibilities, obligations and liabilities of the Government or its contractor under this Agreement are initially vested in OCPR, which may then assign such rights, responsibilities, obligations or

liabilities to the Government in accordance with this Agreement. The OCPR is and shall remain responsible for performing all such responsibilities and obligations and shall be liable for any failure to perform under this Agreement.

14. In the event construction of the Project does not commence within one (1) year of the Effective Date, this Agreement will become null and void.

15. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

16. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

17. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between Owner and OCPR with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

18. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

Owner: BNSF Railway Company
Attn: Manager Public Projects
5800 North Main Street
Saginaw, TX 76179

OCPR: Office of Coastal Protection and Restoration
Attn: James McMennis, P.E., Project Manager
Office of Coastal Protection and Restoration
P. O. Box 44027
Baton Rouge, LA 70804-4027

19. Gratuities.

a. The right of the Owner and OCPR to proceed may be terminated by written notice if; after notice and hearing, the Government head or a designee determines that the Owner, OCPR, their respective agents, or another representative:

- (i) offered or gave a gratuity (an entertainment or gift) to an officer, official, or employee of the Government; and
- (ii) intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

b. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

20. The parties intend and agree that the UP shall be considered a third party beneficiary to this Agreement and shall be entitled to enforce the rights and benefits conferred upon it hereunder. Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement, other than UP.

ARTICLE VI – OPERATION OF THE CLOSURE STRUCTURE.

1. Prior to completion of the Closure Structure, the Government may require use of the Owner's Property in order to implement emergency flood control measures through the use of Temporary Retaining Structures ("TRS") that will also serve as Temporary Flood Protection ("TFP") when combined with a HESCO (or equal) gap closure across Owner's tracks. In accordance with the terms and conditions set forth in the Agreement, the Government's contractor shall construct all elements of the TRS and TFP as depicted on the plans attached hereto as Exhibit B, other than the HESCOs (or equal). The TRS and TFP shall be constructed in advance of hurricane season, which is the period between June 1 and November 30 of each year ("**Hurricane Season**"). The TFP measures shall be implemented in strict accordance with the Standards for Closure Structure Operation attached hereto as Exhibit I and made part hereof.

2. Upon completion, the Closure Structure shall be operated by the OCPR in strict accordance with the Standards for Closure Structure Operation attached hereto as Exhibit I and made part hereof.

ARTICLE VII – EQUAL OPPORTUNITY.

1. In its performance of the railroad work under this Agreement, the Owner agrees as follows:

- a. The Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- b. The 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 shall include, but not be 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.
- c. The Owner shall, in all solicitations or advertisements for employees placed by or on behalf of the Owner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

2. Notwithstanding any other clause in this Agreement, disputes relative to this Article VII will be governed by the procedures in 41 CFRE 60-1.1.

ARTICLE VIII – NO PRECEDENT

The terms and conditions of this Agreement and the Exhibits hereto reflect the special consideration paid to this project by the parties hereto due to its potential to uniquely impact the region and its population. The parties agree that this Agreement shall not be used as a template for future agreements and nothing in this Agreement shall be referenced as evidence of a course of dealing between the parties hereto.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

OWNER

BNSF RAILWAY COMPANY

By: 

Name: Robert J. Boileau

Title: ~~Asst. Vice President Engineering Services~~

OCPR

OFFICE OF COASTAL PROTECTION AND RESTORATION

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

OWNER

BNSF RAILWAY COMPANY

By: _____
Name: _____
Title: _____

OCPR

OFFICE OF COASTAL PROTECTION AND RESTORATION

By: Steve Mathios
Name: STEVE MATHIOS
Title: EXECUTIVE DIRECTOR

Exhibit List

| | |
|-------------|--|
| Exhibit A-1 | Property description |
| Exhibit A-2 | Property description (picture) |
| Exhibit B | Plans and Specifications |
| Exhibit B-1 | Construction Work Sequence |
| Exhibit C | Contractor Requirements |
| Exhibit C-1 | Contractor Agreement (Government) |
| Exhibit C-2 | Contractor Agreement (OCPR) |
| Exhibit D | Owner's Estimate of Material and Force Accounts Work |
| Exhibit E | Permanent Servitude |
| Exhibit E-1 | Property description for Permanent Servitude |
| Exhibit F | Owner's Approval Letter of Plans and Specifications |
| Exhibit G | BNSF Bridge Requirements |
| Exhibit H-1 | Agreement for Temporary Private Crossing |
| Exhibit H-2 | Agreement for Perpetual Private Crossing |
| Exhibit I | Standards for Closure Structure Operation |

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT A-1
PROPERTY DESCRIPTION**

PARCEL NO. 71-10

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 part of the Southern Pacific Railroad right of way, designated as Parcel 71-10 and described as follows:

Commence from the intersection of the southerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,667.52 Y=521,802.81 and go South 05°12'41" East along the line between Sections 28 and 29 a distance of 982.14 feet; thence go South 14°13'20" East a distance of 1162.73 feet; thence go South 14°04'33" East a distance of 1017.94 feet to the northerly right of way line of the Southern Pacific Railroad, the POINT OF BEGINNING. Thence go North 63°53'19" East along the northerly right of way line of the Southern Pacific Railroad a distance of 395.05 feet; thence go South 14°16'14" East a distance of 102.17 feet to the southerly right of way line of the Southern Pacific Railroad; thence go South 63°53'19" West along the southerly right of way line of the Southern Pacific Railroad a distance of 395.40 feet; thence go North 14°04'33" West a distance of 102.25 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 3, 2011 and containing 0.9073 acres.

PARCEL NO. 71-11

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 part of the Southern Pacific Railroad right of way, designated as Parcel 71-11 and described as follows:

Commence from the intersection of the southerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,667.52 Y=521,802.81 and go South 05°12'41" East along the line between Sections 28 and 29 a distance of 982.14 feet; thence go South 14°13'20" East a distance of 1162.73 feet; thence go South 14°04'33" East a distance of 1017.94 feet to the northerly right of way line of the Southern Pacific Railroad; thence go North 63°53'19" East along the northerly right of way line of the Southern Pacific Railroad a distance of 395.05 feet to the POINT OF BEGINNING. Thence go North 63°53'19" East along the northerly right of way line of the Southern Pacific Railroad a distance of 92.75 feet; thence go South 15°21'45" East a distance of 101.79 feet to the southerly right of way line of the Southern Pacific Railroad; thence go South 63°53'19" West along the southerly right of way line of the Southern Pacific Railroad a distance of 94.73 feet; thence go North 14°16'14" West a distance of 102.17 feet to the POINT OF BEGINNING.

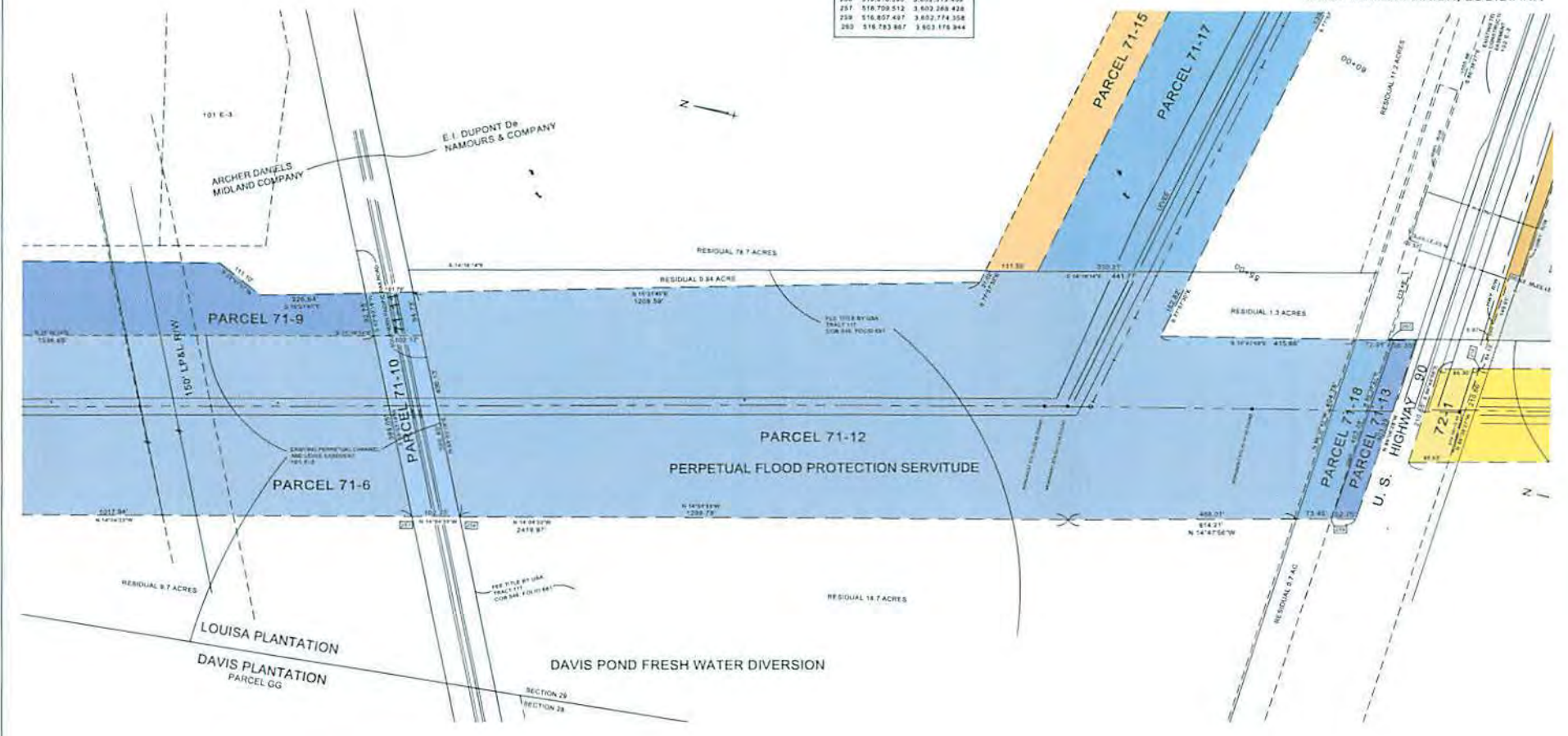
All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 3, 2011 and containing 0.2152 acres.

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT A-2
PROPERTY DESCRIPTION (PICTURE)**

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

| POINT | X | Y |
|-------|-------------|---------------|
| 256 | 519,610.350 | 3,492,313.400 |
| 257 | 519,709.512 | 3,492,269.428 |
| 258 | 516,857.697 | 3,493,274.358 |
| 260 | 516,783.907 | 3,503,176.944 |



| PARCEL | OWNER | ACQUISITION | AREA | RESIDUAL |
|--------|----------------------------------|--------------------|---------------|------------------------------------|
| 71-8 | NOT USED | | | |
| 71-10 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 235 | 0.9073 ACRES | SEE 71-2 |
| 71-11 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 235 | 0.2152 ACRES | SEE 71-2 |
| 71-12 | UNITED STATES OF AMERICA | COB 546, FOLIO 681 | 21.1054 ACRES | 0.94 ACRE & 1.3 ACRES & 18.7 ACRES |
| 71-13 | E.I. DUPONT De NAMOURS & COMPANY | COB DD, FOLIO 485 | 0.4807 ACRES | HIGHWAY 90 |
| 71-16 | E.I. DUPONT De NAMOURS & COMPANY | COB DD, FOLIO 485 | 0.6469 ACRES | SEE 71-8 |

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

DUFRENE SURVEYING
 & ENGINEERING INC

APRIL 14, 2011

14-0001-01-0001-14 14-0001-01-0001-14 SHEET 3 OF 11



1:10000

1" = 100'

DATE PLOTTED: 04/14/11 09:58 AM

PLT: J. DUFRENE

APP: J. DUFRENE

SCALE: 1/8" = 100'

DATE: 04/14/11

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

FILE: 14-0001-01-0001-14

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT B
PLANS AND SPECIFICATIONS**

EXHIBIT B - INDEX OF DRAWINGS - Final Plans & Specifications for WBV-75 (Revised 6-15-11)

| INDEX OF DRAWINGS | | INDEX OF DRAWINGS | |
|-------------------|--|-------------------|--|
| SHEET ID | SHEET TITLE | SHEET ID | SHEET TITLE |
| G-001 | COVER SHEET | S-109 | FALSEWORK BNSF |
| G-002 | LOCATION MAP, PROJECT VICINITY & PROJECT LOCATION MAP | S-110 | FALSEWORK MISC. |
| G-003 | GENERAL NOTES AND SHEET INDEX | S-111 | RAILS AND COMPONENT PARTS DETAILS |
| G-004 | GENERAL NOTES (CIVIL) | S-112 | PRECAST SILL DETAILS (SHEET 1 OF 2) |
| G-005 | GENERAL NOTES (STRUCTURES) | S-113 | PRECAST SILL DETAILS (SHEET 2 OF 2) |
| G-006 | TABLE OF EXISTING UTILITIES | S-113A | 22" INSULATED TIE PLATE DETAIL |
| B-100 | WBV-75 BORING LEGEND | S-114 | SWING GATES SEAL DETAIL (SHEET 1 OF 2) |
| B-101 | WBV-75 BORING | S-115 | SWING GATES SEAL DETAIL (SHEET 2 OF 2) |
| H-101 | STAGE HYDROGRAPH MISSISSIPPI RIVER AT BONNET CARRE | S-116 | SWING GATE UPPER HINGE DETAILS (SHEET 1 OF 2) |
| H-102 | STAGE HYDROGRAPH MISSISSIPPI RIVER AT HARVEY LEVEE | S-117 | SWING GATE UPPER HINGE DETAILS (SHEET 2 OF 2) |
| C-101 | PLAN & PROFILE AT BNSF RAILROAD | S-118 | SWING GATE DETAILS |
| C-102 | TYPICAL SECTIONS AT FLOODWALL MONOLITHS (SHEET 1 OF 2) | S-119 | SWING GATE LOWER HINGE DETAILS (SHEET 1 OF 3) |
| C-102a | TYPICAL SECTIONS AT FLOODWALL MONOLITHS (SHEET 2 OF 2) | S-120 | SWING GATE LOWER HINGE DETAILS (SHEET 2 OF 3) |
| C-103 | TYPICAL SECTIONS AT ACCESS ROAD | S-121 | SWING GATE LOWER HINGE DETAILS (SHEET 3 OF 3) |
| C-104 | EXISTING TOP OF RAIL ELEVATIONS | S-122 | SWING GATE HINGE DETAILS (SHEET 1 OF 2) |
| C-105 | BNSF ACCESS PLAN | S-123 | SWING GATE HINGE DETAILS (SHEET 2 OF 2) |
| C-106 | BNSF ACCESS ROAD PLAN & PROFILE (SHEET 1 OF 2) | S-124 | LATCHING DETAILS (SHEET 1 OF 2) |
| C-107 | BNSF ACCESS ROAD PLAN & PROFILE (SHEET 2 OF 2) | S-125 | LATCHING DETAILS (SHEET 2 OF 2) |
| C-108 | NOT USED | S-126 | WALL JOINTS AND POSITIVE CUT-OFF |
| C-109 | NOT USED | S-127 | MISCELLANEOUS DETAILS |
| C-110 | NOT USED | S-128 | SCOUR PROTECTIONS DETAILS (SHEET 1 OF 2) |
| C-111 | BNSF ACCESS ROAD CROSS SECTIONS STA. 64+75 TO STA. 65+75 | S-129 | SCOUR PROTECTIONS DETAILS (SHEET 2 OF 2) |
| C-112 | BNSF ACCESS ROAD CROSS SECTIONS STA. 66+00 TO STA. 67+25 | S-130 | T-WALL JOINTS DETAILS |
| C-113 | BNSF ACCESS ROAD CROSS SECTIONS STA. 67+50 TO STA. 68+75 | S-131 | TRUCK WASH DOWN RACK AND TIMBER MAT BRIDGE DETAILS |
| C-114 | BNSF ACCESS ROAD CROSS SECTIONS STA. 69+00 TO STA. 70+25 | S-132 | CHAIN LINK FENCING AND GATE DETAILS |
| C-114A | BNSF ACCESS ROAD CROSS SECTIONS AT STA. 69+22 & STA. 70+22 | S-133 | FARM STYLE FENCING AND GATE DETAILS |
| C-115 | BNSF ACCESS ROAD CROSS SECTIONS STA. 70+50 TO STA. 71+75 | S-140 | BNSF CONSTRUCTION SEQUENCING PHASE 1 |
| C-116 | BNSF ACCESS ROAD CROSS SECTIONS STA. 72+00 TO STA. 73+25 | S-141 | BNSF CONSTRUCTION SEQUENCING PHASE 2 |
| C-117 | BNSF ACCESS ROAD CROSS SECTIONS STA. 73+50 TO STA. 74+75 | S-142 | BNSF CONSTRUCTION SEQUENCING PHASE 3 |
| C-118 | BNSF ACCESS ROAD CROSS SECTIONS STA. 75+00 TO STA. 76+00 | S-143 | BNSF CONSTRUCTION SEQUENCING PHASE 4 |
| S-100 | FOUNDATION PLAN | S-144 | BNSF CONSTRUCTION SEQUENCING PHASE 5 |
| S-101 | T-WALLS PLAN AND SECTION | S-145 | BNSF CONSTRUCTION SEQUENCING PHASE 6 (SHEET 1 OF 2) |
| S-102 | H-PILE DETAILS AND PILE SCHEDULE | S-146 | BNSF CONSTRUCTION SEQUENCING PHASE 6 (SHEET 2 OF 2) |
| S-103 | BNSF MONOLITH | S-147 | BNSF CONSTRUCTION SEQUENCING PHASE 7 |
| S-104 | BNSF REINFORCEMENT | S-148 | FLOOD GATE AT BNSF RR TEMPORARY RETAINING STRUCTURE (TRS) (1 OF 2) |
| S-105 | BNSF SWING GATE (SHEET 1 OF 2) | S-149 | FLOOD GATE AT BNSF RR TEMPORARY RETAINING STRUCTURE (TRS) (2 OF 2) |
| S-106 | BNSF SWING GATE (SHEET 2 OF 2) | S-150 | FLOOD GATE AT BNSF RR TRS PHASES 1 & 2 PROFILE VIEW |
| S-107 | ADJUSTABLE SEAL DETAILS | S-151 | FLOOD GATE AT BNSF RR TRS PHASE 1 PLAN VIEW |
| S-108 | SCREW JACK DETAILS | S-152 | FLOOD GATE AT BNSF RR TRS PHASE 2 PLAN VIEW |

FLOOD CLOSURE STRUCTURE CONSTRUCTION AND MAINTENANCE AGREEMENT

EXHIBIT B-1 SEQUENCE OF CONSTRUCTION WORK (Revised on 4/25/2011)

1. Government contractor will provide Owner a construction schedule for work on, over or under Owner's property. The construction schedule must include the date and duration of all proposed Railroad Track Windows. The Owner must review and approve all Railroad Track Windows. Approved Railroad Track Windows are subject to cancellation by the Owner up to and including the day of the scheduled track window. Government contractor should plan for alternate work activities in the event of cancellation of Railroad Track Window.
2. Government contractor will coordinate with Owner's Roadmaster to mark (on the four rails) the centerline locations of the construction access road and the sill wall (flood gate).
3. Owner will raise 450 feet of the Siding (south) Track approximately 4 to 8 inches to match the elevation of the Main (north) Track -- common track elevation to be maintained from the east end of the Owner's Davis Pond Bridge (RR Milepost 19.47) to a point approximately 50 feet east of the proposed maintenance access road crossing (RR Milepost 19.39) prior to transitioning the Siding Track elevation down to the existing Salix Siding Track elevation.
4. Government contractor will enter into a Temporary Construction Crossing Agreement with Owner for two 32-ft concrete crossing surfaces for a construction (and future maintenance) access road.
5. Owner will schedule one 6-HOUR stoppage of train operations ("Track Window") to remove 80-ft section of track, perform any necessary stabilization of the subballast, place new ballast, install 80-ft welded track panel with 10-ft timber crossties, surface and compact new ballast, and install 32-ft concrete crossing panels on the Siding (south) Track for the construction access road located approximately one hundred ninety (190) feet east of the proposed sill wall (or approximately 385 feet from the east end of the Owner's Davis Pond Bridge). See Sheets C-105, C-107, S-140. Note that the concrete crossing panels will be placed between the rails and approximately 2-ft outside of the rails (or end of railroad's 10-ft long timber cross-ties).
6. Owner will schedule one 6-hour Track Window to remove 80-ft section of track, perform any necessary stabilization of the subballast, place new ballast, install 80-ft welded track panel with 10-ft timber crossties, surface and compact new ballast, and install 32-ft concrete crossing panels on the Main (north) Track for the construction access road (see Sheets C-105, C-107, S-140).
7. Government contractor will construct a 28-ft wide construction (and future maintenance) access road (maximum width across Owner's right of way) and roadway approaches up to the new concrete crossing panels, including the area between the Main Track and Siding Track (see Sheet S-140). Roadway to intersect the tracks at 90 degrees and maintain the elevation of top-of-rail for distance of at least 35 feet from outside rail prior to transitioning to a different elevation/grade. Access road to have effectively locking gates to control access to the crossing.
8. Government contractor will install two walls of SHORING SHEET PILING (behind the Jump Span Bridge Abutment locations, see Sheet S-141) beginning at Owner's north property line and progressing southward to a point ten feet north of the field side rail of the Main (north) Track.
9. Owner to schedule one 6-HOUR Track Window on the Siding (south) Track and one 6-HOUR Track Window on the Main (north) Track to cut and remove a section of track and install a 40-foot pre-assembled track panel with 3-foot staggered bolted joints. Track panel are to be removed and reused during Government contractor construction Track Windows.

10. Government contractor will coordinate and schedule with Owner's Roadmaster one 12-HOUR Track Window on both the Main Track and Siding Track to install SHORING SHEET PILING.
 - a. Owner will remove 40-foot jointed Track Panel from each track.
 - b. Government contractor to install SHORING SHEET PILING beginning at the northern limit and continuing across the tracks to the southern limit shown on the project plans. SHORING SHEET PILING will allow for a gap around each rail that measures 2" from each side of the rail to a depth of 15" below the bottom of rail. SHORING SHEET PILING will be cut-off at least 15 inches below top-of-tie and remain in-place at the completion of the Project. SHORING SHEET PILING will remain in-place at the completion of project. Government contractor may consider using an additional pile driver to complete the work during this one Track Window.
 - c. Owner will place ballast and install 40-foot Track Panel on the Main Track and Siding Track. Owner will require approximately 3 hours per track (6 hours total) to remove and re-install 40-foot track panels during this Track Window.
11. Government contractor will install PERMANENT CUT-OFF SHEET PILING (at sill wall location, see Sheet S-142) beginning at Owner's north property line and progressing southward to a point ten feet north of the field side rail of the Main (north) Track.
12. Government contractor will coordinate and schedule with Owner's Roadmaster one 12-HOUR Track Window on both the Main Track and Siding Track to install PERMANENT CUT-OFF SHEET PILING (at sill wall location, see Sheet S-143).
 - a. Owner will remove two 40-foot sections of rail (from jointed track panels) and two or three timber crossies from the Main and Siding Tracks. Government contractor will start driving PERMANENT CUT-OFF SHEET PILING after rails and timber crossies are removed from the Main Track.
 - b. Government contractor will drive PERMANENT CUT-OFF SHEET PILING from a point ten feet north of the Main Track to a point at least ten feet south of the Siding (south) Track. PERMANENT CUT-OFF SHEET PILING must be "chased-down" below the elevation of the bottom chord of the proposed Jump Span Bridges.
 - c. Owner will install two or three timber crossies and two 40-foot sections of rail (on the track panels) in the Main and Siding Tracks. Owner will require approximately 2 hours per track (4 hours total) to remove and re-install the 40-foot sections of rail and 2 to 3 crossies during this Track Window.
13. Government contractor will install PERMANENT CUT-OFF SHEET PILING (at sill wall location) from a point ten feet south of the Siding Track and progressing southward to Owner's south property line.
14. Government contractor will coordinate and schedule with Owner's Roadmaster up to thirty 6-HOUR Track Windows for the Pipe Piling and H-piling installations on either or both tracks (see Sheet S-144).
 - a. Owner contractor (not Owner) will remove 1 to 5 timber crossies at Pipe Pile and four H-piling installation locations at the start of each 6-HOUR Track Window.
 - b. Government contractor will install some of the twelve Steel Pipe Pilings and eighteen steel H-piling for the abutments of the proposed Jump Span Bridges and the permanent floodgate structure foundation (see Sheet S-144). all piling must be "chased-down" twelve inches below top-of-tie (top of railroad timber crossie).
 - c. Owner contractor will install 1 to 5 timber crossies to restore track at the end of each 6-HOUR Track Window. Owner will require approximately 2 hours per track to remove and re-install 1 to 5 timber crossies and surface track ballast during this Track Window.
15. Government contractor will coordinate and schedule with Owner's Roadmaster one 12-HOUR Track Window on the Siding Track to install the Jump Span Bridge (see Sheet S-145).
 - a. Owner will remove one 40-foot track panel from the Siding Track.
 - b. Government contractor will excavate materials, cut-off Steel Pipe Pilings, install two Pile Caps, install one Jump Span Bridge, and install subgrade and subballast to an elevation twenty-one

- inches below top-of-tie.
- c. Owner will place twelve inches of ballast rock, install one 40-foot track panel, and surface the Siding Track. Owner will require approximately 3 hours to remove and re-install 40-foot track panel during this Track Window.
 - d. Government contractor to attach track panel to Jump Span Bridge with Owner-approved j-bolt fasteners.
16. Government contractor will coordinate and schedule with Owner's Roadmaster one 12-HOUR Track Window on the Main Track to install the Jump Span Bridge (see Sheet S-145).
 - a. Owner will remove one 40-foot track panel from the Main Track.
 - b. Government contractor will excavate materials, cut-off Steel Pipe Pilings, install two Pile Caps, install one Jump Span Bridge, and install subgrade and subballast to an elevation twenty-one inches below top-of-tie.
 - c. Owner will place twelve inches of ballast rock, install one 40-foot track panel and surface the Main Track. Owner will require approximately 3 hours to remove and re-install 40-foot track panel during this Track Window.
 17. Government contractor will work under the two Jump Span Bridges to excavate, cut-off Sheet Piling (under sill wall location) to final elevation, install concrete footings, and concrete base slab (see Sheet S-146).
 18. Government contractor will coordinate and schedule with Owner's Roadmaster one 12-HOUR Track Window on both the Main Track and Siding Track to remove Jump Span Bridges and complete the installation of the sill wall (see Sheet S-147).
 - a. Owner to furnish 4 (triple-sized, 24" x 18") pandrolized tie plates to Government contractor for use in rail slots in top of sill (see Sheets S-103 and S-112).
 - b. Government contractor to BOLT the 4 pandrolized tie plates to the ¾" fabricated bent plate located in the bottom of the rail slot in the top of sill (see Sheet S-112). The Government contractor may consider anchoring the fastening bolts directly into the concrete sill wall (thru the bent plate).
 - c. Owner will unbolt the ends of the 40-foot sections of rail (from the track panels) over each Jump Span Bridge.
 - d. Government contractor to remove Jump Span Bridges, including the attached track panels.
 - e. Government contractor to install top-half of pre-cast sill wall, and install subgrade to an elevation 21 inches below top-of-tie.
 - f. Owner will place twelve inches of ballast rock, install 40-foot Track Panel (with 10-ft long timber crossties) on the Main Track and Siding Track with 1 timber cross-tie removed (to allow rail to rest on pandrolized tie plates in the rail slots in 2-ft wide sill wall (see Sheets S-111 Detail Section B and S-112 Detail Section B).
 - g. Owner to install 4 RAIL SHOCK PADS ("rubber" pad) between bottom of rail and pandrolized tie plate in the sill wall. Owner to clip (fasten) rail to the tie plates in the rail slots..
 - h. Government contractor to furnish four 2-ft long RUBBER INSERTS for Owner to install on each side of rail in the sill wall (see Sheet S-112 Detail Section A).
 - i. Owner to surface the ballast in the tracks. Owner will require approximately 3 hours per track (6 hours total) to remove and re-install 40-foot track panels during this Track Window.
 19. Owner will schedule one 6-HOUR Track Window on the Main Track to weld four joints.
 20. Owner will schedule one 6-HOUR Track Window on the Siding Track to weld four joints.
 21. Government contractor to furnish 4 DEFLECTOR ANGLES AND PLATES for Owner to install one on each timber crosstie located adjacent to the 2-ft wide concrete sill wall (see Sheet S-111).
 22. Government contractor to bring 220-volt Power Drop service to Owner's right of way near location of the Closure Structure. Government contractor to coordinate with Owner's Supervisor Signal

Construction to identify exact placement of Power Drop pole. Power drop to be used for next Step #

23. Owner will interconnect Closure Structure to the train control block signal system located at railroad milepost 20.26 (Eastbound Control Signal west end Salix Siding) and 18.29 (Westbound Control Signal east end Salix Siding). Owner must have access to Power Drop
24. Owner, Government, and Commission will test the operation of the Closure Structure.
25. Owner, Government, and Commission will perform a final inspection to accept the project.
26. Upon completion of the Project and acceptance by CPRA pursuant to the PPA, OCPR and/or its assignee will continue to use the maintenance access road at the location of the construction access road built by Government contractor, pursuant to the Permanent Servitude with Owner.

FLOOD CLOSURE STRUCTURE CONSTRUCTION AND MAINTENANCE AGREEMENT

EXHIBIT C (BNSF FORM 0102) CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway", where work is over or under on or adjacent to Railway property and/or right-of-way, hereinafter referred to as "Railway Property", during the **West Bank and Vicinity, Louisiana Project, St. Charles Parish, Louisiana WBV-75 Western Tie-In Railroad Crossing at BNSF Railway, hereinafter referred to as the "Project", at railroad milepost 19.43 in Salix, Louisiana.**
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement (if Contractor is a contractor of U.S. Army Corps of Engineers) or the Exhibit "C-2" Agreement (if Contractor is a contractor of Office of Coastal Protection and Restoration), as appropriate, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1" or Exhibit "C-2," as appropriate. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs Project work that affects railroad safety or operations in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which may cause imminent danger to Railway Property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 or Exhibit C-2, as appropriate, is canceled during the course of the Project; or (iv) the Contractor breaches the Agreement set forth at Exhibit C-1 or Exhibit C-2, as appropriate. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer, provided that such satisfaction will not be unreasonably withheld, or until the insurance specified in Exhibit C-1 or Exhibit C-2, as appropriate, has been delivered to and accepted by Railway. Upon work stoppage, Contractor shall immediately halt all work, shore up existing work as necessary, and clear all equipment, debris, and other project-related items from Railway Property. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individuals in writing:

Lary Yorke
U.S. Army Corps of Engineers
Westbank Area Office
5750 Bayou Estates Blvd.
Marrero, LA 70073

James McMenis, P.E., Project Manager
Office of Coastal Protection and Restoration

P. O. Box 44027
Baton Rouge, LA 70804-4027

- **1.01.05** The Contractor is responsible for determining and complying with all applicable Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement, subject to the terms and conditions of Article III, Section 12.d. of the Construction and Maintenance Agreement for the Project between BNSF Railway Company and Office of Coastal Protection and Restoration of the State of Louisiana.
- **1.01.06** The Contractor must notify Lary Yorke at **504-862-2754** (if Contractor is a contractor of U.S. Army Corps of Engineers) and Railway's Manager Public Projects, telephone number **817-352-2902** at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railroad's file **Salix, LA – LS 1281, RR MP 19.43 – USACE Flood Gate Project.**
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the centerline of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site **www.contractororientation.com**. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before they perform any work on the Project on Railway Property. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway

Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the reasonable actual cost of such repairs or replacement must be paid for by the Contractor.
- **1.03.02** The Contractor must notify the Railway's Division General Manager at **713-847-3500** and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 ½" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **U.S. Army Corps of Engineers, New Orleans District** or **Office of Coastal Protection and Restoration**, as appropriate, and must not be undertaken until approved in writing by the Railway, and until the **U.S. Army Corps of Engineers, New Orleans District** or **Office of Coastal Protection and Restoration**, as appropriate, has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **U.S. Army Corps of Engineers, New Orleans District** or **Office of Coastal Protection and Restoration**, as appropriate, for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, or as to a Contractor of **Office of Coastal Protection and Restoration**, the permanent crossing authorized by Railway in favor of **Office of Coastal Protection and Restoration**, after completion of construction of the Project, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" in the form of Exhibit H-1 hereto from the Railway prior to moving his equipment or materials across the Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition reasonably acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster **Aaron Whitney at 337-572-2502 (office #) or 337-303-4589 (cell #) or e-mail: aaron.whitney@bnsf.com** a minimum of ten (10) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position), for work that will take less than five (5) days; for work that will take more than five (5) days, the contractor must notify Railway's Roadmaster at least thirty (30) days prior to requesting a flagman. If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by the **CONTRACTOR**. The estimated cost for one (1) flagger is approximately \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 34 freight trains per 24-hour period at a timetable speed 55 MPH and no passenger trains.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** At the beginning of every work day and before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of the centerline of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the

Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.

- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA, WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be: 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users.

Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Roadmaster Aaron Whitney at 337-572-2502 and BNSF's Signal-Construction Supervisor Dwayne Tiffin at 817-740-7384.** All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time:
County: _____ 3. Temperature: _____ 4. Weather
(if non-Railway location)

5. Social Security #

6. Name (last, first, mi)

7. Address: Street: _____ City: _____ St.: _____ Zip:

8. Date of Birth: _____ and/or Age _____ Gender:
(if available)

9. (a) Injury: _____ (b) Body Part:
(i.e. (a) Laceration (b) Hand)

11. Description of Accident (To include location, action, result, etc.):

12. Treatment:
? First Aid Only
? Required Medical Treatment
? Other Medical Treatment

13. Dr. Name _____ 30. Date:

14. Dr. Address:
Street: _____ City: _____ St: _____ Zip:

15. Hospital Name:

16. Hospital Address:
Street: _____ City: _____ St: _____ Zip:

17. Diagnosis:

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX 337-572-2595
RAILWAY MANAGER PUBLIC PROJECTS FAX (817) 352-2912**

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

EXHIBIT C-1 (BNSF FORM 0103)

**Agreement
between
BNSF RAILWAY COMPANY
and the
CONTRACTOR (U.S. Army Corps of Engineers)**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: Salix, LA – LS 1281, RR MP 19.43 – USACE Flood Gate Project
Agency Project: West Bank and Vicinity, Louisiana Project, St. Charles Parish, Louisiana WBV-75
Western Tie-In Railroad Crossing at BNSF Railway

Gentlemen:

The undersigned (hereinafter called the "Contractor"), has entered into a contract (the "Contract") dated _____, 20__, with the **U.S. Army Corps of Engineers, New Orleans District** for the performance of certain work in connection with the following project: **West Bank and Vicinity, Louisiana Project, St. Charles Parish, Louisiana WBV-75 Western Tie-In Railroad Crossing at BNSF Railway (the "Project")**. Performance of such work will necessarily require Contractor to enter the right of way and property ("Railway Property") of BNSF RAILWAY COMPANY ("Railway") and the Union Pacific Railroad Company ("UP" and collectively with Railway, the "Railroad Parties"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **U.S. Army Corps of Engineers, New Orleans District** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 2 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor. For purposes of this Agreement, it is understood and agreed that the UP shall be considered a third party beneficiary to this Agreement and shall be entitled to enforce the rights and benefits conferred upon it hereunder

Accordingly, in consideration of the Railroad Parties granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with the Railroad Parties as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless the Railroad Parties for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including the Railroad Parties' and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed by Contractor or its subcontractors on or about the Railway Property. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF THE RAILROAD PARTIES, THEIR RESPECTIVE AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF A RAILROAD PARTY. THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS**

BROUGHT AGAINST A RAILROAD PARTY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of the Railroad Parties, that it will adjust and settle all claims made against the Railroad Parties and will, at the Railroad Parties' discretion, appear and defend any suits or actions of law or in equity brought against the Railroad Parties, on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which the Railroad Parties are liable or are alleged to be liable. The Railroad Parties will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against the Railroad Parties, the Railroad Parties may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at the Railroad Parties' discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless the Railroad Parties from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits. However, Contractor's responsibility to pay any damages, verdicts, judgments, orders, decrees, attorney's fees, costs, or expenses shall be reduced to the extent that the Railroad Party's untimeliness in notifying Contractor of said claims or suits has exacerbated the amount of the liability or caused the loss of a defense thereto.

The contractor must include coverage for the above described indemnity in the insurance policies required by this Agreement, and the contractor's obligation to defend and indemnify the Railroad Parties for liabilities arising from the negligence of the Railroad Parties shall be strictly limited by the amount and terms of coverage of the contractor's insurance.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify the Railroad Parties to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY THE RAILROAD PARTIES FOR THE RAILROAD PARTIES' ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the Project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement, if the Contractor will do any construction work on Railway Property or within 25 feet of the centerline of any railroad track of Railway, the following insurance coverage:

- A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited, to the following:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury

- Fire legal liability
- Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- It is agreed that any workers' compensation exclusion does not apply to Railway payments related to the Federal Employers Liability Act or a Railroad Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 25 feet of Railway property.
- Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

- B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
 - Any and all vehicles owned, used or hired
- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- D. Railroad Protective Liability insurance naming only the Railway as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - Endorsed to include the Limited Seepage and Pollution Endorsement.
 - Endorsed to include Evacuation Expense Coverage Endorsement.
 - No other endorsements restricting coverage may be added.
 - The original policy must be provided to the Railway prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, the Contractor may participate in Railway's Blanket Railroad Protective Liability Insurance Policy available to Contractor. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor's Workers Compensation insurer, through the terms of the policy or policy endorsement, waive its right of subrogation against Railroad for all claims and suits and contractor agrees to waive its right of recovery against Railroad for all claims and suits.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy will be primary and non-contributing with respect to any insurance carried by Railway. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and Railway must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming Railway as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of Railway. If granted by Railway, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railway liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor must furnish to Railway an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railway, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that the insurance requirements under this Agreement have been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railway as an additional insured, and requiring that the subcontractor release, indemnify, defend, and hold harmless Railway to the same extent and under the same terms, limitations, and conditions as contractor is required to release, indemnify, defend, and hold harmless Railway herein.

Failure to provide evidence as required by this section will entitle, but not require, Railway to stop work until the required insurance has been obtained by the appropriate contractor or subcontractor, and provided to and accepted by Railway. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor. Damages recoverable by Railway will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railway means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" "UNION PACIFIC RAILROAD COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, including, but not limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations arising from Contractor's work on Railway Property, but not for any delay arising from the timing of work being done on Railway Property within agreed work windows or Track Windows. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from such train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay, and will take all reasonable measures to avoid train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors arising from Contractor's or its subcontractors' work on Railway Property, but not for any delay arising from work within agreed work windows or Track Windows.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations, but shall present evidence to support the existence and extent of such delay. Damages for train delay are currently \$676.27 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Roadmaster (Aaron Whitney at 337-572-2502) 4 weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not unreasonably revise or change work windows and will do so only in response to a true business necessity. Railway will not be responsible for any additional costs or

expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

| | |
|------------------------------------|--|
| _____ | BNSF Railway Company |
| (Contractor) | |
| By: _____ | By: _____ |
| Printed Name: _____ | Name: _____ |
| Title: _____ | Manager Public Projects |
| Contact Person: _____ | Accepted and effective this ____ day of _____, 20__. |
| Address: _____ | |
| City: _____ State: ____ Zip: _____ | |
| Fax: _____ | |
| Phone: _____ | |
| E-mail: _____ | |

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

EXHIBIT C-2 (BNSF FORM 0103)

**Agreement
between
BNSF RAILWAY COMPANY
and the
CONTRACTOR (Office of Coastal Protection and Restoration)**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: Salix, LA – LS 1281, RR MP 19.43 – USACE Flood Gate Project
Agency Project: West Bank and Vicinity, Louisiana Project, St. Charles Parish, Louisiana WBV-75
Western Tie-In Railroad Crossing at BNSF Railway

Gentlemen:

The undersigned (hereinafter called the "Contractor"), has entered into a contract (the "Contract") dated _____, 20__, with the **Office of Coastal Protection and Restoration of the State of Louisiana** for the performance of certain work in connection with the following project: **West Bank and Vicinity, Louisiana Project, St. Charles Parish, Louisiana WBV-75 Western Tie-In Railroad Crossing at BNSF Railway** (the "Project"). Performance of such work will necessarily require Contractor to enter the right of way and property ("Railway Property") of BNSF RAILWAY COMPANY ("Railway") and the Union Pacific Railroad Company ("UP" and collectively with Railway, the "Railroad Parties"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **Office of Coastal Protection of the State of Louisiana ("OCPR")** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 2 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor. For purposes of this Agreement, it is understood and agreed that the UP shall be considered a third party beneficiary to this Agreement and shall be entitled to enforce the rights and benefits conferred upon it hereunder

Accordingly, in consideration of the Railroad Parties granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with the Railroad Parties as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless the Railroad Parties for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including the Railroad Parties' and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed by Contractor or its subcontractors on or about the Railway Property. **THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST A RAILROAD PARTY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**

Contractor further agrees, at its expense, in the name and on behalf of the Railroad Parties, that it will adjust and settle all claims made against the Railroad Parties and will, at the Railroad Parties' discretion, appear and defend any suits or actions of law or in equity brought against the Railroad Parties, on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which the Railroad Parties are liable or are alleged to be liable. The Railroad Parties will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against the Railroad Parties, the Railroad Parties may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at the Railroad Parties' discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless the Railroad Parties from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits. However, Contractor's responsibility to pay any damages, verdicts, judgments, orders, decrees, attorney's fees, costs, or expenses shall be reduced to the extent that Owner's untimeliness in notifying OCPD of said claims or suits has exacerbated the amount of the liability or caused the loss of a defense thereto.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify the Railroad Parties to the fullest extent permitted by applicable law.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the Contractor's work on the Project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement, if the Contractor will do any construction work on Railway Property or within 25 feet of the centerline of any railroad track of Railway, the following insurance coverage:

- A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited, to the following:
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- It is agreed that any workers' compensation exclusion does not apply to Railway payments related to the Federal Employers Liability Act or a Railroad Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.

- The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 25 feet of Railway property.
- Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

- B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
 - Any and all vehicles owned, used or hired
- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- D. Railroad Protective Liability insurance naming only the Railway as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - Endorsed to include the Limited Seepage and Pollution Endorsement.
 - Endorsed to include Evacuation Expense Coverage Endorsement.
 - No other endorsements restricting coverage may be added.
 - The original policy must be provided to the Railway prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, the Contractor may participate in Railway's Blanket Railroad Protective Liability Insurance Policy available to Contractor. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor's Workers Compensation insurer, through the terms of the policy or policy endorsement, waive its right of subrogation against Railroad for all claims and suits and contractor agrees to waive its right of recovery against Railroad for all claims and suits.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy will be primary and non-contributing with respect to any insurance carried by Railway. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and Railway must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming Railway as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of Railway. If granted by Railway, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railway liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor must furnish to Railway an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railway, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that the insurance requirements under this Agreement have been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railway as an additional insured, and requiring that the subcontractor release, indemnify, defend, and hold harmless Railway to the same extent and under the same terms, limitations, and conditions as contractor is required to release, indemnify, defend, and hold harmless Railway herein.

Failure to provide evidence as required by this section will entitle, but not require, Railway to stop work until the required insurance has been obtained by the appropriate contractor or subcontractor, and provided to and accepted by Railway. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor. Damages recoverable by Railway will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railway means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" "UNION PACIFIC RAILROAD COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, including, but not limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations arising from Contractor's work on Railway Property, but not for any delay arising from the timing of work being done on Railway Property within agreed work windows or Track Windows. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from such train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay, and will take all reasonable measures to avoid train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors arising from Contractor's or its subcontractors' work on Railway Property, but not for any delay arising from work within agreed work windows or Track Windows.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations, but shall present evidence to support the existence and extent of such delay. Damages for train delay are currently \$676.27 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Roadmaster (Aaron Whitney at 337-572-2502) 4 weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not unreasonably revise or change work windows and will do so only in response to a true business necessity. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Title: _____

Manager Public Projects

Contact Person: _____

Accepted and effective this ____ day of
_____, 20__.

Address: _____

City: _____ State: ____ Zip: ____

Fax: _____

Phone: _____

E-mail: _____

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT D
OWNER'S ESTIMATE OF MATERIAL AND FORE ACCOUNTS WORK**

BNSF RAILWAY COMPANY
 FHPM ESTIMATE FOR
 CONTRACTOR NAME

EXHIBIT D
Railroad Flagging
Cost Estimate

LOCATION: SALIX

DETAILS OF ESTIMATE

PLAN ITEM: 000180193

VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

FLAGGING - GULF DIV - LAFAYETTE SUB - LS 1281 - MP 19.43 - COE FLOOD GATE

DESCRIPTION OF PROJECT AS PROVIDED BY PROJECT ENGINEER:

BNSF TO PROVIDE RAILROAD FLAGGING FOR UP TO 245 DAY AT THE US ARMY CORPS OF ENGINEERS PROJECT DURING CONSTRUCTION OF NEW FLOOD GATES AT MP 19.43, LS 1281, LAFAYETTE SUB, GULF DIVISION, IN SALIX, LA.

BILLING FOR THIS PROJECT SHOULD BE DIRECTED TO:

100% BILLABLE TO THE SUCCESS CONTRACTOR FOR THE USACE.

RFA REQUESTED BY: LANE SPENCE 4-7-11

AFE REQUESTED BY:

MAINTAIN PROPRIETARY CONFIDENTIALITY

THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS. PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS. THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

| DESCRIPTION | QUANTITY U/M | COST | TOTAL \$ |
|------------------------------|--------------|---------|----------|
| ***** LABOR ***** | | | |
| FLAGGING - OTHER R.O.W.- CAP | 2450.0 MH | 57,539 | |
| PAYROLL ASSOCIATED COSTS | | 34,816 | |
| EQUIPMENT EXPENSES | | 19,028 | |
| DA LABOR OVERHEADS | | 55,438 | |
| INSURANCE EXPENSES | | 9,056 | |
| TOTAL LABOR COST | | 175,877 | 175,877 |
| ***** MATERIAL ***** | | | |
| TOTAL MATERIAL COST | | 0 | 0 |
| ***** OTHER ***** | | | |
| TOTAL OTHER ITEMS COST | | 0 | 0 |
| PROJECT SUBTOTAL | | | 175,877 |
| CONTINGENCIES | | | 17,587 |
| BILL PREPARATION FEE | | | 1,935 |
| GROSS PROJECT COST | | | 195,399 |
| LESS COST PAID BY BNSF | | | 0 |
| TOTAL BILLABLE COST | | | 195,399 |

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FPM ESTIMATE FOR
CONTRACTOR NAME

EXHIBIT D
RR Project Inspector
Cost Estimate

LOCATION SALIX

DETAILS OF ESTIMATE

PLAN ITEM: 000180191

VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

CONTRACTOR - GULF DIV - LAFAYETTE SUB - LS 1281 - MP 19.43 - COE FLOOD GATE

DESCRIPTION OF PROJECT AS PROVIDED BY PROJECT ENGINEER:

BNSF TO HIRE AN ENGINEERING CONSULTANT TO PERFORM RAILROAD PROJECT INSPECTION SERVICES FOR UP TO 150 DAYS AT THE US ARMY CORPS OF ENGINEERS PROJECT DURING CONSTRUCTION OF NEW FLOOD GATES AT MP 19.43, LS 1281, LAFAYETTE SUB, GULF DIVISION, IN SALIX, LA.

BILLING FOR THIS PROJECT SHOULD BE DIRECTED TO:

100% BILLABLE TO THE SUCCESS CONTRACTOR FOR THE USACE.

RFA REQUESTED BY: LANE SPENCE 4-7-11

AFE REQUESTED BY:

MAINTAIN PROPRIETARY CONFIDENTIALITY

THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS. PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS. THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

| DESCRIPTION | QUANTITY U/M | COST | TOTAL \$ |
|----------------------------|--------------|---------|----------|
| ***** LABOR ***** | | | |
| TOTAL LABOR COST | | 0 | 0 |
| ***** MATERIAL ***** | | | |
| TOTAL MATERIAL COST | | 0 | 0 |
| ***** OTHER ***** | | | |
| RR PROJECT INSPECTOR | 150.0 DAY | 180,000 | |
| TOTAL OTHER ITEMS COST | | 180,000 | 180,000 |
| PROJECT SUBTOTAL | | | 180,000 |
| CONTINGENCIES | | | 18,000 |
| BILL PREPARATION FEE | | | 1,980 |
| GROSS PROJECT COST | | | 199,980 |
| LESS COST PAID BY BNSF | | | 0 |
| TOTAL BILLABLE COST | | | 199,980 |

| | | | |
|------------------------|---------|--------|---------|
| OFFLINE TRANSPORTATION | | 426 | |
| | | | |
| TOTAL MATERIAL COST | | 59,746 | 59,746 |
| ***** | | | |
| OTHER | | | |
| ***** | | | |
| LOADER RENTAL | 2.0 DAY | 6,000 | |
| SUBBALLAST | 80.0 CY | 960 | |
| | | | |
| TOTAL OTHER ITEMS COST | | 6,960 | 6,960 |
| | | | |
| PROJECT SUBTOTAL | | | 108,802 |
| CONTINGENCIES | | | 10,880 |
| BILL PREPARATION FEE | | | 1,197 |
| | | | |
| GROSS PROJECT COST | | | 120,879 |
| LESS COST PAID BY BNSF | | | 0 |
| | | | |
| TOTAL BILLABLE COST | | | 120,879 |

BNSF RAILWAY COMPANY
FIRM BID ESTIMATE FOR
CORP OF ENGINEERS

EXHIBIT D
Railroad Signal Work
Cost Estimate

LOCATION SALIX

DETAILS OF ESTIMATE

PLAN ITEM: 000182331

VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

2011 REC ARMY CORP OF ENGINEERS, SIGNAL WORK ASSOCIATED WITH FLOOD GATE L/S 1281, MP 19.43 TO MP 20.20 , GULF DIV., LAFAYETTE SUBDIV.
SEQ# 46793
THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY. THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS. DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

***** SIGNAL WORK ONLY *****
THIS CONCEPTUAL ESTIMATE WAS DONE WITHOUT FIELD SURVEY
THIS ESTIMATE IS 100% BILLABLE TO THE ARMY CORP OF ENGINEERS.
MAINTAIN PROPRIETARY CONFIDENTIALITY

| DESCRIPTION | QUANTITY U/M | COST | TOTAL \$ |
|------------------------------------|--------------|--------|----------|
| ***** | | | |
| LABOR | | | |
| ***** | | | |
| ELECTRICAL LABOR F/POWER TRANS SYS | 54.0 MH | 1,421 | |
| SIGNAL FIELD LABOR - CAP | 336.0 MH | 8,746 | |
| SIGNAL SHOP LABOR - CAP | 24.0 MH | 632 | |
| PAYROLL ASSOCIATED COSTS | | 7,288 | |
| EQUIPMENT EXPENSES | | 9,793 | |
| DA LABOR OVERHEADS | | 12,503 | |
| TOTAL LABOR COST | | 40,383 | 40,383 |
| ***** | | | |
| MATERIAL | | | |
| ***** | | | |
| 4% INFLATION RATE | 1.0 LS | 906 | |
| ELECTRICAL MATERIAL | 1.0 LS | 1,500 | |
| MP 19.43 LABOR 224 | 1.0 LS | 14,841 | |
| MP 20.20 LABOR 112 | 1.0 LS | 7,800 | |
| MATERIAL HANDLING | | 1,252 | |
| USE TAX | | 2,286 | |
| OFFLINE TRANSPORTATION | | 313 | |
| TOTAL MATERIAL COST | | 28,898 | 28,898 |
| ***** | | | |
| OTHER | | | |
| ***** | | | |
| AC POWER SERVICE | 1.0 LS | 60,000 | |
| CONTRACT BORE | 1.0 LS | 10,000 | |
| CONTRACT ENGINEERING | 1.0 LS | 18,000 | |
| MACHINE RENTAL | 1.0 LS | 1,248 | |
| TOTAL OTHER ITEMS COST | | 89,248 | 89,248 |
| PROJECT SUBTOTAL | | | 158,529 |
| CONTINGENCIES | | | 15,852 |
| BILL PREPARATION FEE | | | 0 |
| GROSS PROJECT COST | | | 174,381 |
| LESS COST PAID BY BNSF | | | 0 |
| TOTAL BILLABLE COST | | | 174,381 |

| | | | |
|------------------------|---------|--------|---------|
| TOTAL MATERIAL COST | | 95,706 | 95,706 |
| ***** | | | |
| OTHER | | | |
| ***** | | | |
| EQUIP RENTAL | 7.0 DAY | 9,100 | |
| LOADER RENTAL | 7.0 DAY | 14,000 | |
| TOTAL OTHER ITEMS COST | | 23,100 | 23,100 |
| PROJECT SUBTOTAL | | | 419,908 |
| CONTINGENCIES | | | 37,158 |
| BILL PREPARATION FEE | | | 4,571 |
| GROSS PROJECT COST | | | 461,637 |
| LESS COST PAID BY BNSF | | | 0 |
| TOTAL BILLABLE COST | | | 461,637 |

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT E
PERMANENT SERVITUDE**

EASEMENT AGREEMENT
FOR WEST BANK AND VICINITY, LOUISIANA PROJECT, ST. CHARLES PARISH,
LOUISIANA, WBV-75 WESTERN TIE-IN RAILROAD CROSSING AT BNSF RAILWAY
(C&M Agreement)

THIS EASEMENT AGREEMENT FOR WEST BANK AND VICINITY 75 HURRICANE PROTECTION PROJECT ("Easement Agreement") is made and entered into as of the 21ST day of JUNE 2011 ("Effective Date"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation, and **UNION PACIFIC RAILROAD COMPANY**, a DELAWARE corporation (collectively, "Grantor") and Office of Coastal Protection and Restoration, an agency of the State of Louisiana ("Grantee").

A. Grantor owns or controls certain real property situated at or near the vicinity of Salix, Parish of St. Charles, State of Louisiana, at Mile Post 19.43, as described on Exhibit "A" attached hereto and made a part hereof and depicted on Exhibit "A-1" attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of JUNE 21ST, 2011 concerning improvements on or near the Premises (the "C&M Agreement").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "Easement Purpose" shall be for the purposes set forth in the C&M Agreement, including construction, operation, and maintenance of a hurricane protection floodgate and appurtenances. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("Easement") over the Premises for the Easement Purpose and for no other purpose. The Easement granted is a perpetual right and easement in the Premises, assignable in accordance with the C&M Agreement, to construct, maintain, repair, operate, patrol and replace a flood protection levee/floodwall/floodgate, including all appurtenances thereto; reserving, however, to Grantor, its heirs and assigns, all such rights and privileges as described herein and subject to the existing easements as provided herein. As to the right to construct a flood protection/levee/floodwall/floodgate, this Easement is subject to the terms and conditions of the C&M Agreement and, as applicable, the Agreement for Temporary Private Crossing to be executed by Grantor and the contractor of the U.S. Army Corps of Engineers in the form of Exhibit H-1 to the C&M Agreement. The Easement granted includes the perpetual right to operate and maintain a private rail crossing, 32 feet wide, for the operation and maintenance of the Improvements and the adjoining floodwalls and levees, subject to the terms and conditions of the Agreement for Perpetual Private Crossing between the parties hereto. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "Laws"). Grantor may not make any alterations or improvements or perform any construction

maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "Lines") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

The foregoing notwithstanding, no right reserved hereby may be exercised so as to interfere materially with the effectiveness or operation of the Improvements in accordance with the C&M Agreement, without the prior express written approval of Grantee, such approval not to be unreasonably withheld.

Section 2 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. [

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance,

or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 **Taxes and Recording Fees.** Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 **Environmental.**

7.1 **Compliance with Environmental Laws.** Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 **Notice of Release.** Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws, with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any such release on or from the Premises arising from Grantee's use of the Premises or presence thereon. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 **Remediation of Release.** In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement arising from Grantee's use of the Premises or presence thereon, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee may remove and if so shall safely dispose of said contaminated soils. Determination of soils

contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and to the extent such conditions or activities arise from Grantee's use of the Premises shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Upon request by Grantor from time to time, Grantee agrees to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**.

Section 8 Default and Termination

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or permanently cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 Surrender of Premises

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee

shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done by or for Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 Tax Exchange. Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, and Grantee shall execute an acknowledgement of receipt of such notice.

Section 12 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 Recordation. It is understood and agreed that unless otherwise required by law to be effective as to third parties, this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the parish where the Premises are located.

Section 14 Miscellaneous.

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Louisiana without regard to conflicts of law provisions.

14.2 This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

14.7 The terms of the C&M Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

[Remainder of page intentionally left blank.]

Witness the execution of this Easement Agreement as of the date first set forth above.

WITNESSES:

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: David P. Schneider
Name: David P. Schneider
Title: General Director - Land Revenue Management

STATE OF TEXAS

§
§
§

COUNTY OF TARRANT

This instrument was acknowledged before me on the 2nd day of JUNE, 2011, by David P. Schneider (name) as General Director - LRM (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

Cathy Benton
Notary Public

(Seal)

My appointment expires Feb. 17, 2015



WITNESSES:

Patricia Poul
PATRICIA POUH
Adrienne Landry
Adrienne Landry

GRANTEE:

OFFICE OF COASTAL PROTECTION AND RESTORATION, an agency of the State of Louisiana
By: Steve Mathies
Name: Steve Mathies, Ph.D.
Title: Executive Director

STATE OF LOUISIANA

PARISH OF East Baton Rouge

This instrument was acknowledged before me on the 17th day of June, 2011, by Steve Mathies, Ph.D. as Executive Director of OFFICE OF COASTAL PROTECTION AND RESTORATION, an agency of the State of Louisiana.

Clifton O. Bingham, Jr.
Notary Public Clifton O. Bingham, Jr.
(Seal) LA Bar No. 03052

My appointment expires: with life.

WITNESSES:

Ken Ocker

Cindy Meyer

GRANTOR:

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation

By: Tony K. Love
Name: TONY K. LOVE
Title: Assistant Vice President - Real Estate

STATE OF Nebraska
COUNTY OF Douglas

§
§
§

This instrument was acknowledged before me on the 21st day of June, 2011, by Tony K. Love (name) as Assistant Vice President - Real Estate (title) of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation.

Donna M. Coltrane
Notary Public

(Seal)

My appointment expires: _____

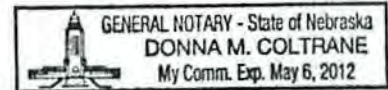


EXHIBIT "A"

PREMISES – LEGAL DESCRIPTIONS

PARCEL NO. 71-10

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 part of the Southern Pacific Railroad right of way, designated as Parcel 71-10 and described as follows:

Commence from the intersection of the southerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,667.52 Y=521,802.81 and go South 05°12'41" East along the line between Sections 28 and 29 a distance of 982.14 feet; thence go South 14°13'20" East a distance of 1162.73 feet; thence go South 14°04'33" East a distance of 1017.94 feet to the northerly right of way line of the Southern Pacific Railroad, the POINT OF BEGINNING. Thence go North 63°53'19" East along the northerly right of way line of the Southern Pacific Railroad a distance of 395.05 feet; thence go South 14°16'14" East a distance of 102.17 feet to the southerly right of way line of the Southern Pacific Railroad; thence go South 63°53'19" West along the southerly right of way line of the Southern Pacific Railroad a distance of 395.40 feet; thence go North 14°04'33" West a distance of 102.25 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 3, 2011 and containing 0.9073 acres.

PARCEL NO. 71-11

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 part of the Southern Pacific Railroad right of way, designated as Parcel 71-11 and described as follows:

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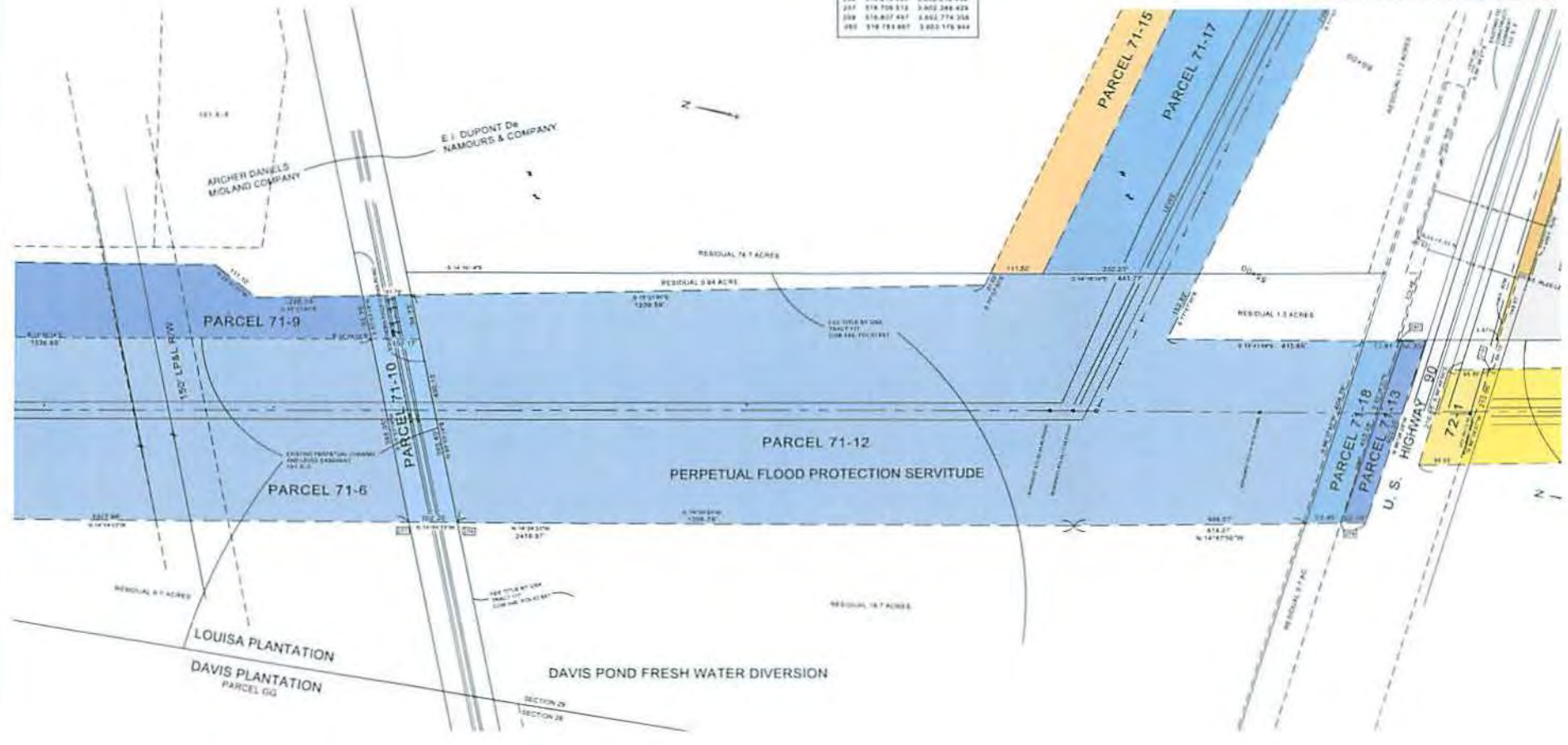
All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 3, 2011 and containing 0.2152 acres.

EXHIBIT "A-1"

PREMISES – SURVEY

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

| PERPET FLOOD PROTECTION SERVITUDE | | | | |
|-----------------------------------|---------|-----|----------|-------------|
| POINT | X | Y | Z | DESCRIPTION |
| 238 | 518.818 | 801 | 8402.312 | 428 |
| 247 | 518.708 | 813 | 8402.288 | 428 |
| 239 | 518.807 | 837 | 8402.774 | 358 |
| 250 | 518.783 | 807 | 8402.176 | 844 |



| PERPETUAL FLOOD PROTECTION SERVITUDE | | | | |
|--------------------------------------|----------------------------------|--------------------|---------------|------------------------------------|
| PARCEL | OWNER | ACQUISITION | AREA | RESIDUAL |
| 71-6 | NOT USED | | | |
| 71-10 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 235 | 0.9073 ACRES | SEE 71-2 |
| 71-11 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 235 | 0.2152 ACRES | SEE 71-2 |
| 71-12 | UNITED STATES OF AMERICA | COB 546, FOLIO 681 | 21.1054 ACRES | 0.94 ACRE & 1.3 ACRES & 18.7 ACRES |
| 71-13 | E.I. DUPONT DE NAMOURS & COMPANY | COB DD, FOLIO 485 | 0.4807 ACRES | HIGHWAY 90 |
| 71-16 | E.I. DUPONT DE NAMOURS & COMPANY | COB DD, FOLIO 485 | 0.8469 ACRES | SEE 71-8 |



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REVISED JUNE 7 2014

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

**DUFFRE SURVEYING
 & ENGINEERING INC.**

APRIL 14 2014 7-4229-1

EXHIBIT "B"

MEMORANDUM OF EASEMENT

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT is hereby executed this 21st day of JUNE, 2011, by and between BNSF RAILWAY COMPANY, a Delaware corporation, and UNION PACIFIC RAILROAD COMPANY, a DELAWARE corporation (collectively, "Grantor"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and OFFICE OF COASTAL PROTECTION AND RESTORATION, an agency of the State of Louisiana ("Grantee"), whose address for purposes of this instrument is 450 Laurel Street, Suite 1200, Baton Rouge, LA 70804-4027, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in St. Charles Parish, Louisiana as described on Exhibit "A" attached hereto and incorporated herein by reference and depicted on Exhibit "A-1" attached hereto and incorporated herein by reference (the "Premises");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated 21st JUNE, 2011 (the "Easement Agreement") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "Easement"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement and this Memorandum of Easement, the Easement Agreement shall control.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement as of the date and year first above written.

WITNESSES:

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: David P. Schneider

Name: David P. Schneider

Title: General Director - Land Revenue Management

STATE OF TEXAS

§

COUNTY OF TARRANT

§

§

This instrument was acknowledged before me on the 21st day of JUNE, 2011, by DAVID P. SCHNEIDER (name) as GENERAL DIRECTOR - LRM (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

Cathy T. Benton
Notary Public

(Seal)

My appointment expires Feb 17, 2015



WITNESSES:

Patricia Pouch
PATRICIA POUCH
Adrienne Landry
Adrienne Landry

GRANTEE:

OFFICE OF COASTAL PROTECTION AND RESTORATION, an agency of the State of Louisiana

By: Steve Mathies
Name: Steve Mathies, Ph.D.
Title: Executive Director

STATE OF LOUISIANA §
 §
PARISH OF East Baton Rouge §

This instrument was acknowledged before me on the 17th day of June, 2011, by _____ by Steve Mathies, Ph.D. as Executive Director, of OFFICE OF COASTAL PROTECTION AND RESTORATION, an agency of the State of Louisiana.

Clifton O. Bingham, Jr.
Notary Public Clifton O. Bingham, Jr.
(Seal) LA Bar No. 03052

My appointment expires: with life.

WITNESSES:

Ken Ocker

Cindy Meyer

GRANTOR:

UNION PACIFIC RAILROAD COMPANY, a
Delaware corporation

By: Tony K Love
Name: TONY K. LOVE
Title: Assistant Vice President - Real Estate

STATE OF Nebraska §
 §
COUNTY OF Douglas §

This instrument was acknowledged before me on the 21st day of June, 2011, by Tony K. Love (name) as Assistant Vice President - Real Estate (title) of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation.

Donna M. Coltrane
Notary Public

(Seal)

My appointment expires: _____

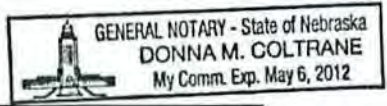


EXHIBIT "A"

PREMISES – LEGAL DESCRIPTIONS

PARCEL NO. 71-10

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Commence from the intersection of the southerly right of way line of the Union Pacific Railroad and the line between Sections 28 and 29 said point having coordinates of X=3,601,667.52 Y=521,802.81 and go South 05°12'41" East along the line between Sections 28 and 29 a distance of 982.14 feet; thence go South 14°13'20" East a distance of 1162.73 feet; thence go South 14°04'33" East a distance of 1017.94 feet to the northerly right of way line of the Southern Pacific Railroad, the POINT OF BEGINNING. Thence go North 63°53'19" East along the northerly right of way line of the Southern Pacific Railroad a distance of 395.05 feet; thence go South 14°16'14" East a distance of 102.17 feet to the southerly right of way line of the Southern Pacific Railroad; thence go South 63°53'19" West along the southerly right of way line of the Southern Pacific Railroad a distance of 395.40 feet; thence go North 14°04'33" West a distance of 102.25 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 3, 2011 and containing 0.9073 acres.

PARCEL NO. 71-11

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 part of the Southern Pacific Railroad right of way, designated as Parcel 71-11 and described as follows:

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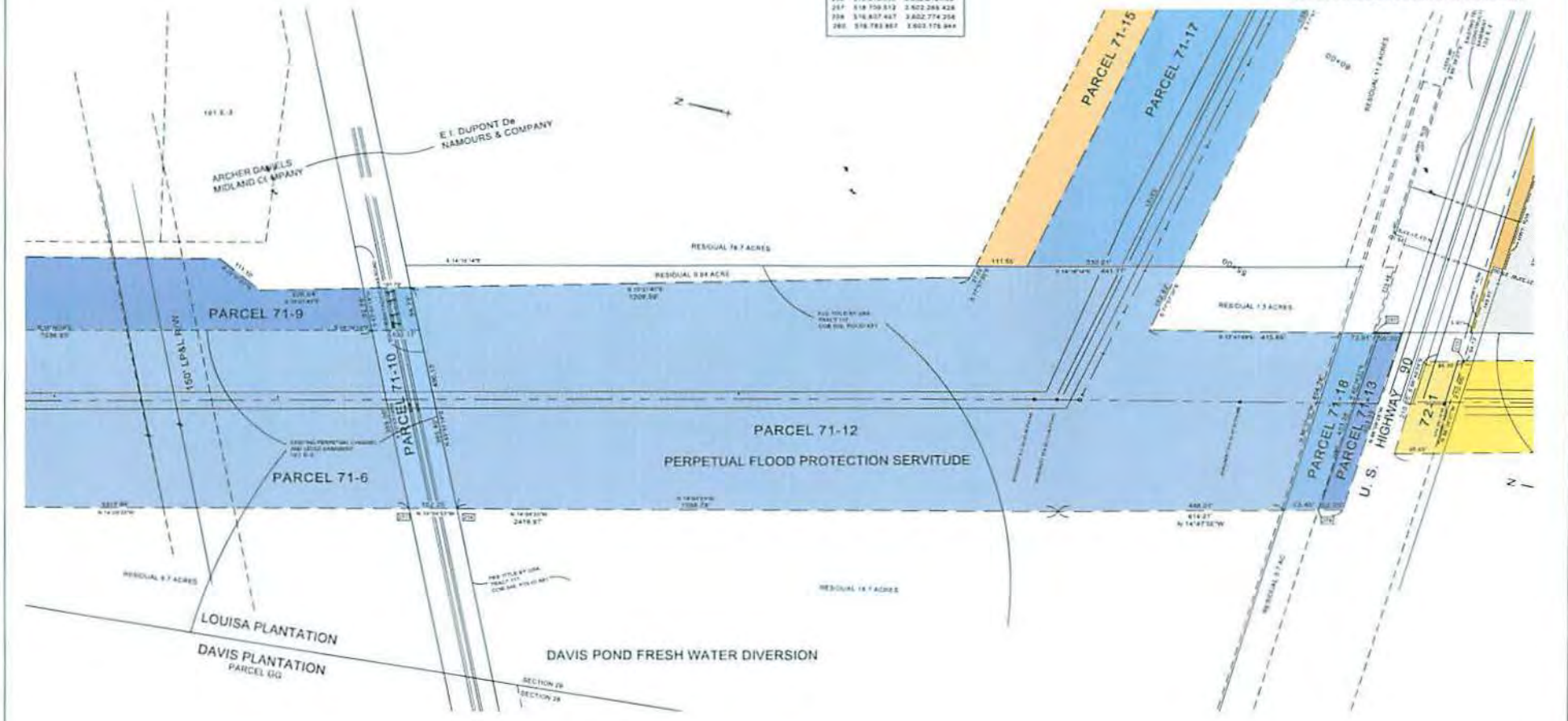
All as shown on the WBV-70 through WBV-77 Lake Cataouatche Levee Western Tie-In right of way plans by Dufrene Surveying & Engineering Inc. dated April 14, 2011, revised June 3, 2011 and containing 0.2152 acres.

EXHIBIT "A-1"

PREMISES – SURVEY

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

| PERPETUAL FLOOD PROTECTION SERVITUDE | | | |
|--------------------------------------|-------------|---------------|---|
| POINT | X | Y | Z |
| 204 | 519.615.200 | 5.802.213.459 | |
| 205 | 519.700.812 | 5.802.208.428 | |
| 206 | 518.837.487 | 5.802.774.258 | |
| 207 | 518.783.867 | 5.803.175.844 | |



| PARCEL | OWNER | ACQUISITION | AREA | RESIDUAL |
|--------|---------------------------------|--------------------|---------------|------------------------------------|
| 71-6 | NOT USED | | | |
| 71-10 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 235 | 0.9073 ACRES | SEE 71-2 |
| 71-11 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 235 | 0.2152 ACRES | SEE 71-2 |
| 71-12 | UNITED STATES OF AMERICA | COB 846, FOLIO 681 | 21.1054 ACRES | 0.94 ACRE & 1.3 ACRES & 18.7 ACRES |
| 71-13 | E I DUPONT DE NAMOURS & COMPANY | COB DD, FOLIO 485 | 0.4807 ACRES | HIGHWAY 90 |
| 71-18 | E I DUPONT DE NAMOURS & COMPANY | COB DD, FOLIO 485 | 0.6469 ACRES | SEE 71-8 |



Information on construction and design for this project is contained in the contract documents and drawings. The contractor shall be responsible for obtaining all necessary permits and for compliance with all applicable laws, rules, regulations, codes, and ordinances. The contractor shall be responsible for the accuracy of all data and information provided to the engineer. The contractor shall be responsible for the accuracy of all data and information provided to the engineer.

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**

**DUFRENE SURVEYING
 & ENGINEERING INC.**

APRIL 14, 2011

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT E-1
PROPERTY DESCRIPTION FOR PERMANENT SERVITUDE**

PARCEL NO. 71-10

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**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT F
OWNER'S APPROVAL LETTER OF PLANS AND SPECIFICATIONS**



TIMOTHY J. HUYA
Manager Public Projects
(States of LA, MS, and TX)

BNSF Railway Company

5800 North Main Street
Fort Worth, Texas 76179

817-352-2902
817-352-2912 Fax

Tim.Huya@BNSF.com

EXHIBIT F

June 17, 2011

James McMenis, P.E.
Project Manager
Office of Coastal Protection and Restoration
P.O. Box 44027
Baton Rouge, LA 70804-4027

Re: Final Approval of Plans and Specifications marked as "Exhibit B" – including the February 2011 sheets and the June 15, 2011 revised sheets C-105, C-107, G-003, S-111, S-112, S-113A, and S-140 and attached to the FLOOD CLOSURE STRUCTURE CONSTRUCTION AND MAINTENANCE AGREEMENT (hereinafter called, the "Plans and Specifications")

Dear James McMenis:

This letter serves as BNSF RAILWAY COMPANY'S ("BNSF") final written approval of the Plans and Specifications covering the construction of the West Bank and Vicinity, Louisiana Project, St. Charles Parish, Louisiana WBV-75 Western Tie-In Railroad Crossing at BNSF Railway milepost 19.43. This final written approval is given to the Office of Coastal Protection and Restoration ("Agency") pursuant to Article III, Section 1 of that certain Flood Closure Structure Construction and Maintenance Agreement between BNSF and OCPR, dated June 2011. If the Plans and Specifications are revised by OCPR subsequent to the date set forth above, this letter shall no longer serve as final written approval of the Plans and Specifications and OCPR must resubmit said Plans and Specifications to BNSF for final written approval.

Regards,


Timothy J. Huya
Manager Public Projects

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT G
BNSF BRIDGE REQUIREMENTS**

Exhibit G

BNSF Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Except for the design of temporary falsework and shoring, BNSF review of the Structure plans will be limited to the vertical and horizontal clearances, sight distance for existing train signals, foundation dimensions and drainage characteristics as they relate to existing and future tracks. BNSF will not review structural design calculations for the permanent Structure unless a member or members are influenced by railroad live loads.

Temporary falsework and shoring plans and calculations must be reviewed and approved by BNSF prior to beginning construction. The Agency shall perform an independent review of the design calculations for temporary falsework and shoring prior to submitting them to BNSF for approval. Temporary construction clearances must be no less than 15 feet measured horizontally from the centerline of the nearest track and 21 feet-6inches measured vertically from the top of rail of the most elevated track to the bottom of lowest temporary falsework member. State regulatory agencies may have more restrictive requirements for temporary railroad clearances.

For the permanent Structure, the Agency will submit plans showing the least horizontal distance from the centerline of existing and future tracks to the face of the nearest member of the proposed Structure. The location of the least horizontal distance must be accurately described such that BNSF can determine where it will occur in both the horizontal and vertical plane. If the permanent member is within 25 feet of the nearest track (or future track), collision walls shall be incorporated into the permanent Structure design according to American Railway Engineering and Maintenance Association Manual of Recommended Practice - Chapter 8 - Article 2.1.5.

For the permanent Structure, the Agency will submit plans showing the least vertical clearance from top of the most elevated rail of existing and future tracks to the lowest point of the proposed Structure. A profile of the existing top of rail elevation shall be plotted on the bridge plans. The profile shall extend for 500 feet in each direction of the proposed overpass and a separate profile shall be plotted for each track. If the existing top of rail profile(s) is not uniform such that a sag exists in the vicinity of the proposed Structure, the permanent Structure vertical clearance shall be increased sufficiently to accommodate a raise in the track profile to remove the sag. Prior to beginning construction of the permanent Structure, the top of rail elevations should be checked and verified that they have not changed from the assumed elevations utilized for the design of the bridge.

Prior to issuing any invitation to bid on construction of the Structure, the Agency should conduct a pre-bid meeting where prospective Contractors have the opportunity to communicate with BNSF personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and specifications for the Structure must be submitted to BNSF for review and approval prior to letting of bids for the Project.

BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Contractor entering BNSF's right-of-way or property, the Agency should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF may require an independent engineering inspector to be present during certain critical activities of the Project, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. The Agency shall reimburse BNSF for all costs of supplemental inspection services.

Within 90 days of the conclusion of the Project and final acceptance by BNSF, the Agency will provide BNSF with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from

the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station *.dgn electronic format (preferred) or AutoCAD *.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. Actual measured "as constructed" clearances shall be shown as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities.

BRIDGE MAINTENANCE:

The Agency will be responsible for maintenance and repair of the Structure including the earth retention components, embankment slopes, erosion control, surface drainage, fencing, deck drains, landscaping, paint, walkways, handrails, lighting, and other improvements associated with the Project.

Fencing and other pedestrian access controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the Agency. Trespasser control shall be the responsibility of the Agency. Graffiti removal will be the responsibility of the Agency.

BRIDGE INSPECTION:

The Agency will conduct annual routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Agency will provide an immediate inspection by qualified personnel and notify BNSF of damage that may affect safe passage of trains. If necessary the Agency will embargo weights or provide lane closures or other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

BRIDGE ALTERATIONS:

Except as provided otherwise by this Agreement, there will be no alterations made to the Structure that will alter the railroad vertical or horizontal clearances provided by the original design. Pipelines will be not be added or attached to the Structure without first submitting plans and calculations to BNSF for review and approval.

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT H-1
AGREEMENT FOR TEMPORARY PRIVATE CROSSING**

**AGREEMENT FOR TEMPORARY PRIVATE CROSSING
(U.S. Army Corps of Engineers contractor)**

THIS AGREEMENT ("Agreement"), made this _____ day of _____, 2011, ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation (hereinafter called "Licensor") and _____ (hereinafter called the "Licensee").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, estates of third parties, including, without limitation, any leases, licenses, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct, maintain, and use in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process ("the Drawings and Specifications") an at-grade crossing, 32 feet wide ("Crossing"), across the rail corridor of Licensor at or near Licensor's station of _____, Parish of St. Charles, State of Louisiana, Line Segment 1281, Mile Post 19.43, at the location and in the manner shown upon the plat of survey, last dated June 3, 2011, marked "Exhibit A," attached hereto made a part hereof ("Premises") for the purposes of accessing property adjacent to Licensor's rail corridor for levee, floodwall, and floodgate construction purposes, in accordance with the Construction and Maintenance Agreement between the Licensor and Office of Coastal Protection and Restoration of the State of Louisiana dated _____, 2011 ("the Construction and Maintenance Agreement" or "C&M Agreement"). For convenience, said Crossing, including crossing surface and all appurtenances thereto between the ends of railroad ties, cattle guards, farm gates or barriers, drainage facilities, traffic signs or devices, identification signs approved by Licensor, whistling posts, or other appurtenances, if any, are hereinafter collectively referred to as the "Crossing."
2. Under this agreement, licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. It is expressly stipulated that the Crossing is to be a strictly private one, to be solely used for the purpose set forth in Section 1 above and is not intended for and shall not be for public use. The Licensee, without expense to Licensor, will take any and all necessary action to preserve the private character of the Crossing and prevent its use as a public road. In the event Licensor determines that:
 - (a) the Crossing is being used for a purpose or in a manner not set forth in Section 1; or
 - (b) the Licensee has in any way breached the terms or conditions of this Agreement,

Licensor shall have the right to stop all use of the Crossing by Licensee until the use is terminated or the breach is remedied to the satisfaction of Licensor's Division Engineer, provided that such satisfaction will not be unreasonably withheld.

4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises or the Crossing, Licensor shall not be liable to refund Licensee any compensation paid in relation hereto or for any damage Licensee sustains in connection therewith.

5. Any contractors or subcontractors performing work on the Premises or the Crossing, or entering the Premises on behalf of Licensee, shall be deemed agents of Licensee for purposes of this Agreement.

TERM

6. This Agreement shall commence on the Effective Date and shall continue until the earlier of (i) completion of the Closure Structure and all other portions of the Project to be constructed on Owner's Property, or (ii) fifteen (15) months following the Effective Date of the Construction and Maintenance Agreement.

COMPENSATION

7. Licensee agrees to pay to Licensor cost of construction of the Crossing, in accordance with the terms of the Construction and Maintenance Agreement, in the estimated amount of \$120,879.00. If actual construction costs exceed this estimate, the excess costs shall be paid by Licensee in accordance with the terms of the Construction and Maintenance Agreement.

COMPLIANCE WITH LAWS

8.
 - (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the Crossing and the use of the Premises.
 - (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety training program at the Licensor's Internet Website "contractororientation.com". This training must be completed no more than one year in advance of Licensee's entry on the Premises.
 - (c) Licensee is responsible for notifying Licensor in writing of any need for upgrading the vehicular traffic control devices or signs at or near the Crossing, since the Licensee is most knowledgeable concerning the volume and nature of the vehicular traffic. In addition, Licensee shall notify Licensor if any significant change in volume or nature of traffic at the Crossing.

RIGHT OF LICENSOR TO USE

9. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
 - (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
 - (c) to use the Premises in any manner as the Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 1 above.

The foregoing notwithstanding, no right reserved hereby may be exercised so as to interfere materially with the construction of the Closure Structure in accordance with the C&M Agreement, or any obligation undertaken by Grantor pursuant to the C&M Agreement, without the prior express written approval of Grantee, such approval not to be unreasonably withheld.

LICENSEE'S OPERATIONS UNDER THIS AGREEMENT

10. Licensee, at its own expense, shall keep the rail flange ways of said Crossing clear of all snow, dirt, or any other obstructions whatsoever, which may accumulate by virtue of vehicles, equipment, or machinery crossing thereover or otherwise operated by Licensee or its agents.
11. It is specifically understood that cables, pipelines, and other electric and/or fiber optic transmission lines may be on, about, along, or under the Premises and Licensee agrees that under no circumstances will Licensee dig in or disturb the surface of the Premises without the express written consent of Licensor.
12. Licensee shall construct and maintain, at its own expense, a roadway (to end of railroad ties) and related roadway drainage in a manner acceptable to Licensor, and safe for use by any vehicles or equipment. Prior to such construction or maintenance, five (5) days advance notice must be given to Licensor's Roadmaster Aaron Whitney at 337-572-2502.
13. Licensee agrees to keep any Crossing gates or barriers (constructed as per the Plans attached to the Construction and Maintenance Agreement as Exhibit B), closed and securely fastened, except when being opened to allow access upon said rail corridor.
14. While this Agreement is personal to Licensee, it is recognized that there is a possibility of the Crossing being used by unauthorized persons. Licensee agrees that it will take all reasonable actions necessary to prevent the unauthorized use of the Crossing and that, for purposes of this agreement, any unauthorized users of the Crossing shall be deemed trespassers.
15. Licensee shall, at its sole cost and expense, perform all activities on and about the Crossing in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Crossing at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Crossing to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Crossing. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

LIABILITY

16. Licensee hereby waives, releases, indemnifies, defends and holds harmless Licensor for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including the Licensor' and Licensee's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from:
 - (i) this agreement, including, without limitation, its environmental provisions,
 - (ii) any rights or interests granted pursuant to this agreement,
 - (iii) licensee's occupation and use of the premises, or
 - (iv) any act or omission of licensee or licensee's officers, agents, invitees, employees, or

contractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over.

THE LIABILITY ASSUMED BY LICENSEE WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF LICENSOR, ITS RESPECTIVE AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF LICENSOR. THE INDEMNIFICATION OBLIGATION ASSUMED BY LICENSEE INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST LICENSOR UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Licensor further agrees, at its expense, in the name and on behalf of Licensor, that it will adjust and settle all claims made against Licensor and will, at Licensor's discretion, appear and defend any suits or actions of law or in equity brought against Licensor, on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Licensee under this Agreement for which Licensor is liable or are alleged to be liable. Licensor will give notice to Licensee, in writing, of the receipt or dependency of such claims and thereupon Licensee must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Licensor, Licensor may forward summons and complaint or other process in connection therewith to Licensee, and Licensee, at Licensor's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Licensor from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits. However, Licensee's responsibility to pay any damages, verdicts, judgments, orders, decrees, attorney's fees, costs, or expenses shall be reduced to the extent that Licensor's untimeliness in notifying Licensee of said claims or suits has exacerbated the amount of the liability or caused the loss of a defense thereto.

Licensee must include coverage for the above described indemnity in the insurance policies required by this Agreement, and Licensee's obligation to defend and indemnify Licensor for liabilities arising from the negligence of Licensor shall be strictly limited by the amount and terms of coverage of the Licensee's required insurance.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Licensee to indemnify the Railroad Parties to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR LICENSEE TO INDEMNIFY LICENSOR FOR THE LICENSOR'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

PERSONAL PROPERTY WAIVER

17. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF.**

INSURANCE

18. Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited, to the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- It is agreed that any workers' compensation exclusion does not apply to Railway payments related to the Federal Employers Liability Act or a Railroad Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 25 feet of Railway property.
- Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the Railway as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.

- The original policy must be provided to the Railway prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, the Contractor may participate in Railway's Blanket Railroad Protective Liability Insurance Policy available to Contractor. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor's Workers Compensation insurer, through the terms of the policy or policy endorsement, waive its right of subrogation against Railroad for all claims and suits and contractor agrees to waive its right of recovery against Railroad for all claims and suits.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy will be primary and non-contributing with respect to any insurance carried by Railway. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and Railway must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming Railway as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of Railway. If granted by Railway, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railway liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor must furnish to Railway an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railway, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that the insurance requirements under this Agreement have been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railway as an additional insured, and requiring that the subcontractor release, indemnify, defend, and hold harmless Railway to the same extent and under the same terms, limitations, and conditions as contractor is required to release, indemnify, defend, and hold harmless Railway herein.

Failure to provide evidence as required by this section will entitle, but not require, Railway to stop work until the required insurance has been obtained by the appropriate contractor or subcontractor, and provided to and accepted by Railway. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor. Damages recoverable by Railway will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railway means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" "UNION PACIFIC RAILROAD COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$_____.

- I elect to participate in Licensor's Blanket Policy;
- I elect not to participate in Licensor's Blanket Policy.

ENVIRONMENTAL

19. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws, with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any such release on or from the Premises arising from Grantee's use of the Premises or presence thereon. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Agreement arising from Grantee's use of the Premises or presence thereon, Licensor may

require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and to the extent such conditions or activities arise from Grantee's use of the Premises shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this Agreement. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DEFAULT

20. If default shall be made in any of the covenants or agreements of Licensee contained in this document, Licensor may, at its option, preclude Licensee from using the Crossing until the default is remedied. Any waiver by Licensor of any default or defaults shall not constitute a waiver of its rights under this Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this Agreement. The remedy set forth in this Section 19 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

TERMINATION

21. This Agreement shall immediately terminate on the expiration of the Term hereof as set forth above. This License may be terminated by Licensee upon execution of Licensor's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.
22. If Licensee fails to surrender to Licensor the Premises, upon any termination of this Agreement, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

ASSIGNMENT

23. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this Agreement or any interest herein, without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion.

NOTICES

24. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Staubach Global Services - RR, Inc.
 3017 Lou Menk Drive, Suite 100
 Fort Worth, TX 76131
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: _____

SURVIVAL

25. Neither termination nor expiration will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

RECORDATION

26. It is understood and agreed that this Agreement shall not be placed on public record.

APPLICABLE LAW

27. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the substantive laws of the State of Louisiana without regard to conflicts of law provisions.

SEVERABILITY

28. To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

MISCELLANEOUS

29. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

30. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

Staubach Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

BNSF RAILWAY COMPANY

Staubach Global Services – RR, Inc., its Attorney in Fact
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131

By: _____
Title: Robert Harder – Associate Director National Accounts

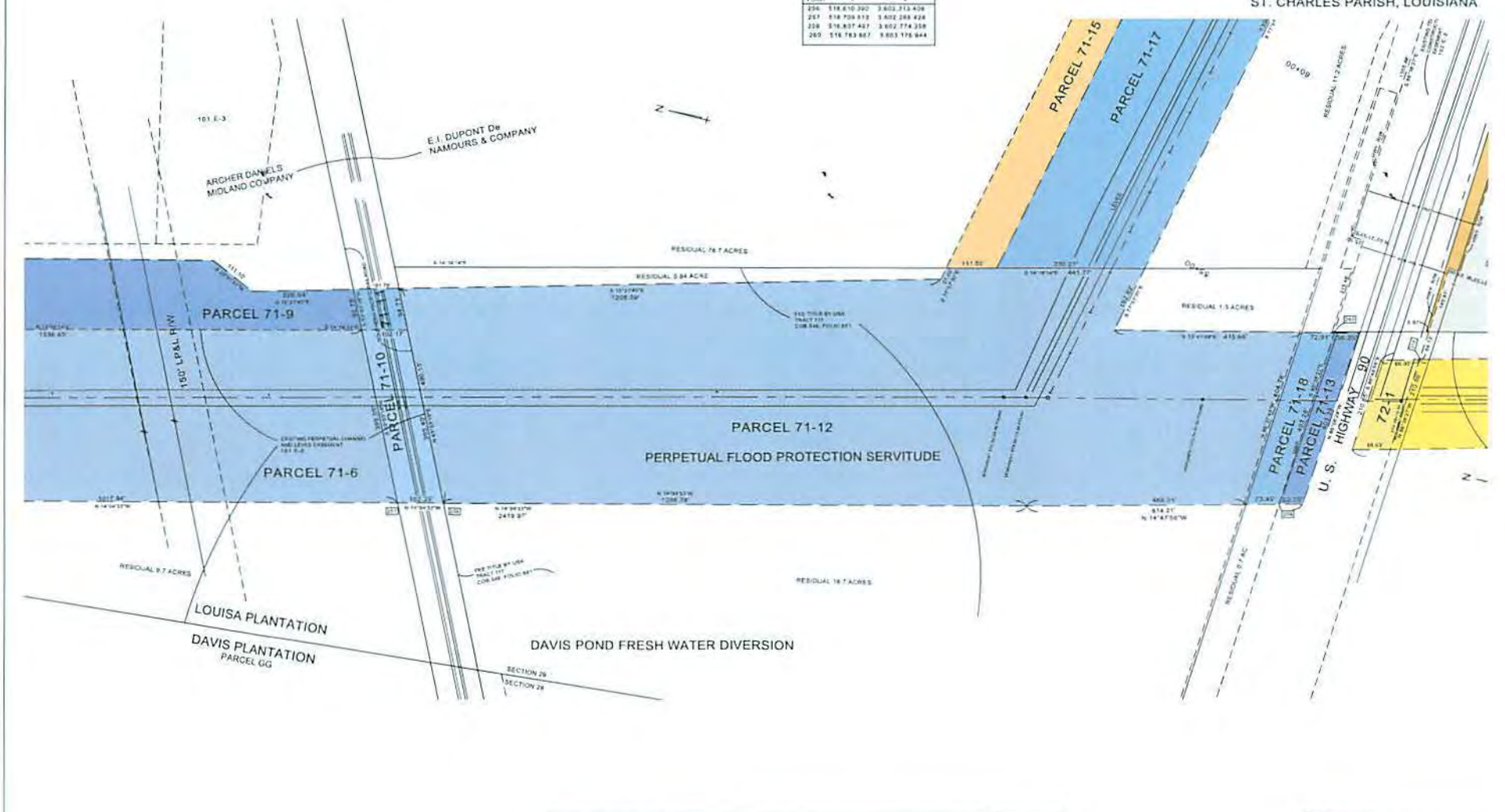
By: _____
Title: _____

EXHIBIT "A"

PREMISES – SURVEY

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

| PERPETUAL FLOOD PROTECTION SERVITUDE | | | |
|--------------------------------------|-------------|---------------|---|
| POINT | X | Y | Z |
| 256 | 516.470 200 | 3.902 713 438 | |
| 257 | 516.709 812 | 3.902 288 428 | |
| 258 | 516.837 427 | 3.902 774 359 | |
| 259 | 516.783 827 | 3.903 176 844 | |



| PERPETUAL FLOOD PROTECTION SERVITUDE | | | | |
|--------------------------------------|-----------------------------------|--------------------|---------------|------------------------------------|
| PARCEL | OWNER | ACQUISITION | AREA | RESIDUAL |
| 71-8 | NOT USED | | | |
| 71-10 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 225 | 0.9073 ACRES | SEE 71-2 |
| 71-11 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 235 | 0.2152 ACRES | SEE 71-2 |
| 71-12 | UNITED STATES OF AMERICA | COB 548, FOLIO 981 | 21.1054 ACRES | 0.94 ACRE & 1.3 ACRES & 18.7 ACRES |
| 71-13 | E. I. DUPONT DE NEMOURS & COMPANY | COB DD, FOLIO 483 | 0.4827 ACRES | HIGHWAY 80 |
| 71-19 | E. I. DUPONT DE NEMOURS & COMPANY | COB DD, FOLIO 485 | 0.6489 ACRES | SEE 71-8 |



THIS PLAN IS A SURVEY OF THE LAND AND DOES NOT CONSTITUTE A GUARANTEE OF TITLE OR A WARRANTY OF ANY KIND. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE LAND AND HAS FOUND NO EVIDENCE OF ANY ENCUMBRANCES OR OTHER INTERESTS THAT WOULD AFFECT THE ACCURACY OF THIS PLAN. THE SURVEYOR HAS ALSO CONDUCTED A VISUAL INSPECTION OF THE RECORDS OF THE PUBLIC RECORDS OF ST. CHARLES PARISH, LOUISIANA, AND HAS FOUND NO RECORDS THAT WOULD AFFECT THE ACCURACY OF THIS PLAN.

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**

**DUFRENE SURVEYING
 & ENGINEERING INC**

APRIL 14, 2011

**FLOOD CLOSURE STRUCTURE
CONSTRUCTION AND MAINTENANCE AGREEMENT**

**EXHIBIT H-2
AGREEMENT FOR PERPETUAL PRIVATE CROSSING**

**AGREEMENT FOR PERPETUAL PRIVATE CROSSING
(Office of Coastal Protection and Restoration)**

THIS AGREEMENT ("Agreement"), made this _____ day of _____, 2011, ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation (hereinafter called "Licensor") and **OFFICE OF COASTAL PROTECTION AND RESTORATION** (hereinafter called the "Licensee").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, estates of third parties, including, without limitation, any leases, licenses, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct, maintain, and use in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process ("the Drawings and Specifications") an at-grade crossing, 32 feet wide ("Crossing"), across the rail corridor of Licensor at or near Licensor's station of _____, Parish of St. Charles, State of Louisiana, Line Segment 1281, Mile Post 19.43, at the location and in the manner shown upon the plat of survey, last dated June 3, 2011, marked "Exhibit A," attached hereto made a part hereof ("Premises") for the purposes of accessing property adjacent to Licensor's rail corridor for levee, floodwall, and floodgate construction, operation, and maintenance purposes, in accordance with the Construction and Maintenance Agreement between the parties hereto dated _____, 2011 ("the Construction and Maintenance Agreement" or "C&M Agreement"). For convenience, said Crossing, including crossing surface and all appurtenances thereto between the ends of railroad ties, cattle guards, farm gates or barriers, drainage facilities, traffic signs or devices, identification signs approved by Licensor, whistling posts, or other appurtenances, if any, are hereinafter collectively referred to as the "Crossing."
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. It is expressly stipulated that the Crossing is to be a strictly private one, to be solely used for the purpose set forth in Section 1 above and is not intended for and shall not be for public use. The Licensee, without expense to Licensor, will take any and all necessary action to preserve the private character of the Crossing and prevent its use as a public road.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises or the Crossing, Licensor shall not be liable to refund Licensee any compensation paid in relation hereto or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Premises or the Crossing, or entering the Premises on behalf of Licensee, shall be deemed agents of Licensee for purposes of this Agreement.

TERM

6. This Agreement shall commence on the Effective Date and shall continue perpetually unless Grantee abandons or permanently ceases to use the Premises for the Easement Purposes, as set forth in the Easement Agreement between the parties hereto.

COMPENSATION

7. Licensee agrees to pay to Licensor from time to time within thirty (30) days after bills are rendered therefor the entire cost of maintaining the Crossing, including, but not limited to the expense incurred by Licensor resulting from the necessity to remove and replace the Crossing in connection with resurfacing or maintaining Licensor's right of way and tracks including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Licensor, when deemed necessary by the Licensor's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Licensor and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Licensor labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
8. Licensee agrees to pay to Licensor the entire cost of constructing, installing, performing, maintaining, repairing, renewing, and replacing any cattle guards, farm gates or barriers, track drainage facilities, traffic signs or devices, whistle posts, stop signs or other appurtenances shown on Exhibit B to the C&M Agreement, or any such appurtenances or warning signs and devices that may subsequently be required to be upgraded by Licensor, by law, by change of volume and nature of vehicular traffic, or by any public authority having jurisdiction. The Licensee is also responsible for notifying Licensor in writing of any need for upgrading the vehicular traffic control devices or signs at or near the Crossing, since the Licensee is most knowledgeable concerning the volume and nature of the vehicular traffic. In addition, Licensee shall notify Licensor if any significant change in volume or nature of traffic at the Crossing.

COMPLIANCE WITH LAWS

9. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the Crossing and the use of the Premises.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations, a copy of which shall be provided upon request. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety training program at the Licensor's Internet Website "contractororientation.com". This training must be completed no more than one year in advance of Licensee's entry on the Premises.

RIGHT OF LICENSOR TO USE

10. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
 - (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
 - (c) to use the Premises in any manner as the Licensor in its sole discretion deems

appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 1 above.

The foregoing notwithstanding, no right reserved hereby may be exercised so as to interfere materially with the effectiveness or operation of the Improvements in accordance with the C&M Agreement, without the prior express written approval of Grantee, such approval not to be unreasonably withheld.

LICENSEE'S OPERATIONS

11. Licensee, at its own expense, shall keep the rail flange ways of said Crossing clear of all snow, dirt, or any other obstructions whatsoever, which may accumulate by virtue of vehicles, equipment, or machinery crossing thereover or otherwise operated by Licensee or its agents, and shall remove and keep removed any vegetation along the rail corridor on each side of the crossing so that the motorists' line of sight to approaching trains is not impaired or obstructed by vegetation.
12. It is specifically understood that cables, pipelines, and other electric and/or fiber optic transmission lines may be on, about, along, or under the Premises and Licensee agrees that under no circumstances will Licensee dig in or disturb the surface of the Premises without the express written consent of Licensor.
13. Licensee shall construct and maintain, at its own expense, a roadway (to end of railroad ties) and related roadway drainage in a manner acceptable to Licensor, and safe for use by any vehicles or equipment. Prior to such construction or maintenance, five (5) days advance notice must be given to Licensor's Roadmaster Aaron Whitney at 337-572-2502.
14. Licensee agrees to keep any Crossing gates or barriers (constructed as per the Plans attached to the Construction and Maintenance Agreement as Exhibit B), closed and securely fastened, except when being opened to allow access upon said rail corridor.
15. While this Agreement is personal to Licensee, it is recognized that there is a possibility of the Crossing being used by unauthorized persons. Licensee agrees that it will take all reasonable actions necessary to prevent the unauthorized use of the Crossing and that, for purposes of this agreement, any unauthorized users of the Crossing shall be deemed trespassers.
16. Licensee shall, at its sole cost and expense, perform all activities on and about the Crossing in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Crossing at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Crossing to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Crossing. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.
17. Upon termination of this Agreement, Licensor may remove the Crossing and restore the rail corridor to the condition as of the Effective Date of this Agreement at Licensee's sole cost and expense and without incurring any liability to the Licensee. Licensee shall within twenty (20) days after bill is rendered therefor, reimburse Licensor for all costs and expenses, which Licensor may incur in connection therewith.

LIABILITY

18. a. As a major inducement and in consideration of the servitude and permission herein granted, and without limitation of any other provision herein, Licensee agrees, to the extent permitted under state law, to indemnify, defend, and hold harmless Licensor from any Liability which is due to or arises from:
- (i) the obligations of Licensee pursuant to this agreement, including, without limitation, its environmental provisions,
 - (ii) the use of any rights or interests granted pursuant to this agreement,
 - (iii) Licensee's occupation and use of the premises, caused by or contributed by Licensee or Licensee's officers, agents, invitees, employees, or contractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over, or
 - (iv) any act or omission of licensee or licensee's officers, agents, invitees, employees, or contractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over.
- b. For purposes of this section, the term "**Liability**" shall include:
- (i) costs and loss associated with the necessity of repairing or replacing any property of Licensor or others damaged or destroyed in connection with the performance of any work under this Agreement by or on behalf of Licensee; and
 - (ii) all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including the officers and employees of Licensor, Licensee and its contractors, and for loss and damage to property belonging to any person (including, without limitation, environmental damage).
- c. Nothing herein shall be construed as indemnifying or holding Licensor harmless against a Liability to the extent proximately caused by: (i) Licensor's own negligence or that of its agents, employees, contractors, successors, assigns and transferees; or (ii) a hurricane, storm surge, or other natural disaster. In addition, Licensee shall have no obligation to indemnify or hold harmless Licensor for any train delay or other operational interruptions caused by the closure of the Closure Structure, provided that the Closure Structure is operated in compliance with the Standards for Closure Structure Operation attached to the C&M Agreement as Exhibit I.
- d. **THE INDEMNIFICATION OBLIGATION ASSUMED BY LICENSEE SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST LICENSOR UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT OR STATE BASED WORKERS' COMPENSATION LAWS AND REGULATIONS ARISING FROM THE MATTERS LISTED IN SUBPARAGRAPH (a) ABOVE; INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE, WHENEVER SO CLAIMED.**
- e. In addition, to the extent permitted under state law, the Licensee agrees to release Licensor from any claims arising from the matters listed in Subparagraph (a) above which Licensee or any of its employees, contractors, agents or invitees could otherwise assert against Licensor. However, nothing herein shall be construed as releasing Licensor from any claims to the extent proximately caused by its own negligence or that

of its agents, employees, contractors, successors, assigns and transferees.

- f. Licensee agrees, at its expense, in the name and on behalf of Licensor, to defend, adjust and/or settle all claims made against Licensor, and, at Licensor's discretion, to appear and defend any suits or actions, whether at law or in equity, brought against Licensor on any claim or cause of action arising or growing out of or in any manner connected with any indemnity to Licensor by Licensee under this Agreement. Licensor shall promptly give notice to Licensee, in writing, of the receipt or pendency of suits or claims and thereupon Licensee shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Licensor, Licensor may forward summons and complaint or other process in connection therewith to Licensee, and Licensee, at Licensor's discretion, agrees to defend, adjust, and/or settle such suits and protect, indemnify, and save harmless Licensor from and against all damages, verdicts, judgments, orders, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits. However, Licensee's responsibility to pay any damages, verdicts, judgments, orders, decrees, attorney's fees, costs, or expenses shall be reduced to the extent Licensor's untimeliness in notifying Licensee of said claims or suits has exacerbated the amount of the liability or caused the loss of a defense thereto.
- g. In addition to any other provision of this Agreement, in the event that all or any portion of this Section shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Section shall be interpreted as requiring Licensee to indemnify Licensor to the fullest extent permitted by applicable law.
- h. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

PERSONAL PROPERTY WAIVER

19. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF.**

INSURANCE

20. Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:
- A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited, to the following:
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- It is agreed that any workers' compensation exclusion does not apply to Licensor

payments related to the Federal Employers Liability Act or a Railroad Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.

- The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 25 feet of Licensor property.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

- B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
 - Any and all vehicles owned, used or hired
- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- D. Railroad Protective Liability insurance naming only the Licensor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - Endorsed to include the Limited Seepage and Pollution Endorsement.
 - Endorsed to include Evacuation Expense Coverage Endorsement.
 - No other endorsements restricting coverage may be added.
 - The original policy must be provided to the Licensor prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, the Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

Other Requirements:

Licensee's Workers Compensation insurer, through the terms of the policy or policy endorsement, waive its right of subrogation against Railroad for all claims and suits and Licensee agrees to waive its right of recovery against Railroad for all claims and suits.

Licensee's insurance policies through policy endorsement, must include wording which states that the policy will be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and Licensor must be named as an additional insured with respect to work performed under this agreement. Severability of

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interest and naming Licensor as additional insured must be indicated on the certificate of insurance.

Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Licensee must furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Licensor, a certified duplicate original of any required policy must be furnished. Licensee should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Licensee represents that the insurance requirements under this Agreement have been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

If any portion of the operation is to be contracted by Licensee, Licensee must require that the contractor provide and maintain the insurance coverages set forth herein, naming Licensor as an additional insured, and requiring that the contractor release, indemnify, defend, and hold harmless Licensor to the same extent and under the same terms, limitations, and conditions set forth on Exhibit C-2 to the C&M Agreement.

Failure to provide evidence as required by this section will entitle, but not require, Licensor to stop work until the required insurance has been obtained by the appropriate Licensee or contractor, and provided to and accepted by Licensor. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee will not be deemed to release or diminish the liability of Contractor. Damages recoverable by Licensor will not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY," "UNION PACIFIC RAILROAD COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

ENVIRONMENTAL

21. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws, with respect to Licensee's use of the Premises or presence thereon. Licensee shall use the best efforts to promptly respond to any such release on or from the Premises arising from Grantee's use of the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Agreement arising from Grantee's use of the Premises or presence thereon, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and to the extent such conditions or activities arise from Grantee's use of the Premises shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this Agreement. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DEFAULT

22. If default shall be made in any of the covenants or agreements of Licensee contained in this document, Licensor may, at its option, preclude Licensee from using the Crossing until the default is remedied. Any waiver by Licensor of any default or defaults shall not constitute a waiver of its rights under this Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this Agreement. The remedy set forth in this Section 19 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

TERMINATION

23. This License may be terminated by Licensee upon execution of Licensor's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.
24. If Licensee fails to surrender to Licensor the Premises, upon any termination of this Agreement, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of

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indemnity or otherwise, resulting from any events happening prior to the date of termination.

ASSIGNMENT

- 25. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this Agreement or any interest herein, without the prior written consent and approval of Licensor, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, Licensee may assign this Agreement and its interests herein to the United States Army Corps of Engineers, Coastal Protection and Restoration Authority, and/or St. Charles Parish, in accordance with the Construction and Maintenance Agreement.

NOTICES

- 26. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Staubach Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: Office of Coastal Protection and Restoration
Attn: James McMennis, P.E., Project Manager
Office of Coastal Protection and Restoration
P. O. Box 44027
Baton Rouge, LA 70804-4027

SURVIVAL

- 27. Termination will not release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

RECORDATION

- 28. It is understood and agreed that this Agreement shall not be placed on public record.

APPLICABLE LAW

- 29. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the substantive laws of the State of Louisiana without regard to conflicts of law provisions.

SEVERABILITY

30. To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

MISCELLANEOUS

31. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
32. In the event Licensee conveys, transfers, leases or otherwise grants a right of access and/or use of any interest in all or a portion of Licensee's property which is accessed by the Crossing, Licensee shall notify Licensor in writing of the same within thirty (30) days prior to the date of such conveyance, transfer, lease or grant of access and/or use, and Licensee shall cause any receiver or subsequent holder(s) of such an interest or right ("Holder") to: (1) file an application with Licensor's outside contractor, Staubach Global Services, for use of the Crossing, which application may be granted or denied in Licensor's sole discretion, except that the application shall be granted for any granted for any conveyance or transfer to St. Charles Parish; and (2) for any transferee other than St. Charles Parish, upon Licensor's approval of Holder's application, Licensee shall cause Holder to execute Licensor's standard License Agreement then in effect for the use of the Crossing. Licensee may not assign or otherwise transfer, or permit the use of this Agreement or the Crossing by Holder without Licensor's prior written approval for the same and any attempt to do so shall be null and void.

Staubach Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

BNSF RAILWAY COMPANY

Staubach Global Services – RR, Inc., its Attorney in Fact
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131

By: _____
Title: Robert Harder – Associate Director National Accounts

**OFFICE OF COASTAL PROTECTION
AND RESTORATION**

450 Laurel Street, Suite 1200
Baton Rouge, LA 70804-4027

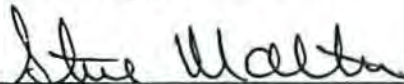
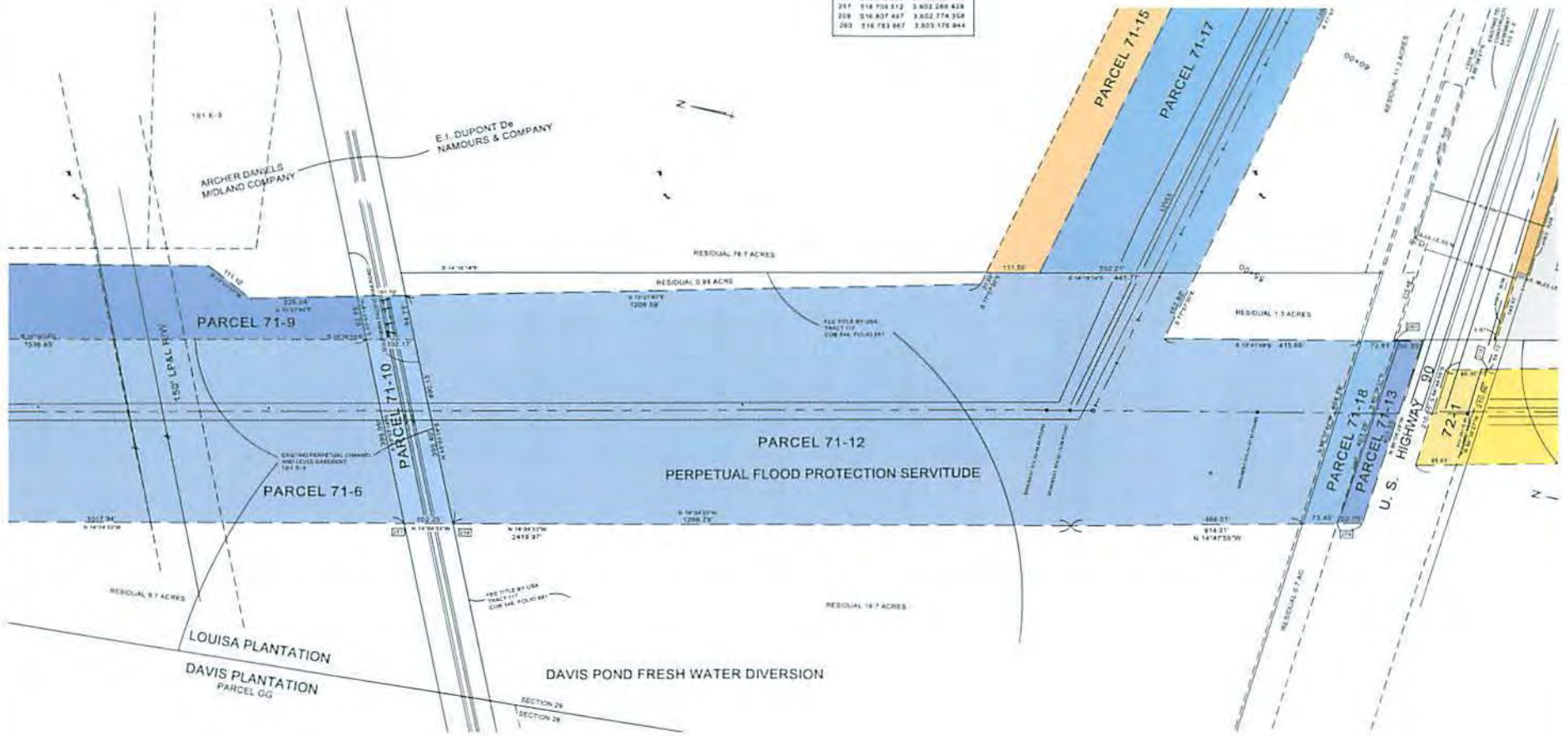
By:  _____
Title: Steve Mathies, Ph.D., Executive Director

EXHIBIT "A"

PREMISES – SURVEY

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

| PERPETUAL FLOOD PROTECTION SERVITUDE | | | | |
|--------------------------------------|-------------|---------------|---|--|
| POINT | X | Y | Z | |
| 204 | 518,810.300 | 3,802,373.408 | | |
| 211 | 518,728.512 | 3,802,284.428 | | |
| 208 | 518,807.497 | 3,802,374.358 | | |
| 203 | 518,783.987 | 3,803,176.944 | | |



| PERPETUAL FLOOD PROTECTION SERVITUDE | | | | |
|--------------------------------------|----------------------------------|--------------------|---------------|------------------------------------|
| PARCEL | OWNER | ACQUISITION | AREA | RESIDUAL |
| 71-8 | NOT USED | | | |
| 71-10 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 235 | 0.9073 ACRES | SEE 71-2 |
| 71-11 | ARCHER DANIELS MIDLAND COMPANY | COB 348, FOLIO 235 | 0.2152 ACRES | SEE 71-2 |
| 71-12 | UNITED STATES OF AMERICA | COB 546, FOLIO 681 | 21,1054 ACRES | 0.94 ACRE & 1.3 ACRES & 18.7 ACRES |
| 71-13 | E.I. DUPONT DE NEMOURS & COMPANY | COB DD, FOLIO 485 | 0.4807 ACRES | HIGHWAY 90 |
| 71-18 | E.I. DUPONT DE NEMOURS & COMPANY | COB DD, FOLIO 485 | 0.8469 ACRES | SEE 71-8 |

REVISED JUNE 2 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

DUFRENE SURVEYING
 & ENGINEERING INC.

APRIL 14, 2011
 SHEET 2 OF 11
 T 4229 L



ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE SPECIFIED.
 THE PERPETUAL FLOOD PROTECTION SERVITUDE IS A PUBLIC RIGHT OF WAY.
 THE SERVITUDE IS TO BE ACQUIRED BY EASEMENT OR CONDEMNATION.
 THE SERVITUDE IS TO BE ACQUIRED BY EASEMENT OR CONDEMNATION.
 THE SERVITUDE IS TO BE ACQUIRED BY EASEMENT OR CONDEMNATION.

FLOOD CLOSURE STRUCTURE CONSTRUCTION AND MAINTENANCE AGREEMENT

EXHIBIT I STANDARDS FOR CLOSURE STRUCTURE OPERATION

CLOSURE:

Generally.

The Closure Structure will be closed by OCPR when the National Weather Service (the "NWS") has issued a hurricane warning for the Greater New Orleans ("GNO") area and wind speeds in New Orleans reach 39 MPH (34 knots) as determined by the NWS at www.weather.gov. However, closure will not occur earlier than H-24, nor later than H-12, both as defined below. The OCPR or its designee will coordinate its efforts with Owner as detailed in the standards set forth below. All notifications to Owner shall be by telephone to each of the following contacts:

| | |
|---|----------------|
| BNSF Railway Joint Corridor Manager Desk: | (281) 350-7231 |
| BNSF Railway Service Interruption Desk: | (817) 234-2350 |
| BNSF Manager Structures: | (817) 807-8600 |

Timeline for Closure of Closure Structure

- H-72 "H-72", or landfall minus 72 hours, occurs when the NWS issues an advisory for a Saffir-Simpson category 1 or above hurricane ("Hurricane Event") that depicts the potential 1-3 day landfall track area on the shores of Louisiana between Morgan City and Slidell. H-72 indicates that a Hurricane Event has the potential of affecting the GNO area within 72 hours. At H-72, OCPR will notify Owner of Closure Structure closure preparations, and will begin to monitor predicted wind speeds in New Orleans, Louisiana.
- H-48 "H-48", or landfall minus 48 hours, occurs when the NWS issues a hurricane watch for the GNO area. At H-48, OCPR will notify Owner and update the status of Closure Structure preparations and operations with regard to wind speed.
- H-24 "H-24", or landfall minus 24 hours, occurs when the NWS issues a hurricane warning for the GNO area. At H-24, the closure of the Closure Structure is imminent and may be ordered by OCPR at any time between H-24 and H-12 (landfall minus 12 hours). Closure of the Closure Structure will be ordered shortly after the NWS predicts that wind speeds in New Orleans will reach 39 MPH (34 knots), after H-24. OCPR will notify Owner when it appears that H-24 is likely to occur shortly. OCPR will provide at least three hour's notice to Owner prior to ordering closure, and will notify Owner when the instruction to close the gate is issued. 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.

REOPENING:

The Closure Structure shall be reopened by OCPR immediately upon the satisfaction of the following criteria (the "Reopening Conditions"):

- (i) The eye of the storm has passed the GNO area;
- (ii) According to the NWS, wind speeds at the Closure Structure are below 39 MPH (34 knots); and

(iii) The water level at the Closure Structure is below the gate sill.

If the Closure Structure is not reopened immediately upon satisfaction of the Reopening Conditions, the Owner may provide notice to OCPR and take immediate action to reopen the Closure Structure and resume operations. Such notification shall be by telephone to the following contacts:

| | |
|-----------------------------|--|
| OCPR Incident Commander | (225) 342-3969 (O) or (985) 709-1099 (C) |
| OCPR Operations Coordinator | (225) 342-4525 (O) or (504) 432-7741 (C) |