

Ord.

2015-0374

INTRODUCED BY: V.J. ST. PIERRE, JR., PARISH PRESIDENT
(DEPARTMENT OF PUBLIC WORKS)

ORDINANCE NO. 15-11-5

An ordinance authorizing St. Charles Parish to enter into an 'Assignment of Flood Closure Structure Operation and Maintenance, WBV-75' with the Coastal Protection and Restoration Authority for the 'West Bank and Vicinity, New Orleans, Louisiana Hurricane Project, WBV-75, Western Tie-In BNSF Railroad Crossing, St. Charles Parish, Louisiana'.

WHEREAS, on June 21, 2011, the Office of Coastal Protection and Restoration executed a certain Flood Closure Structure Construction and Maintenance Agreement with BNSF Railway Company in order to construct, operate and maintain a hurricane protection floodgate and appurtenances for the 'West Bank and Vicinity, New Orleans, Louisiana Hurricane Project, WBV-75, Western Tie-In BNSF Railroad Crossing, St. Charles Parish, Louisiana' (Project); and,

WHEREAS, on June 21, 2011, the Office of Coastal Protection and Restoration entered into an Easement Agreement for the West Bank & Vicinity, Louisiana Project, St. Charles Parish, Louisiana (C&M Agreement), which allowed the installation of railroad floodgates across the BNSF Railway's property, being constructed in accordance with the Flood Closure Structure Construction and Maintenance Agreement; and,

WHEREAS, in accordance with the La. R.S. 38:101(C), upon completion of the construction of hurricane protection projects, the operation and maintenance of the hurricane protection system is to be transferred to the local governments; and,

WHEREAS, pursuant to Article V, Section 13(b) of the Flood Closure Structure Construction and Maintenance Agreement, the term and conditions of the flood gates operations and maintenance shall be assumed by St. Charles Parish upon completion; and,

WHEREAS, the Project is now complete, and the Coastal Protection and Restoration Authority of Louisiana wishes to enter into an 'Assignment of Flood Closure Structure Operation and Maintenance, WBV-75' (Assignment) per letter dated August 24, 2015; and,

WHEREAS, the Assignment would transfer from the Coastal Protection and Restoration Authority all of its rights under the Flood Closure Structure Construction and Maintenance Agreement and the Easement Agreement to St. Charles Parish.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. there is hereby a public need for St. Charles Parish to enter into the 'Assignment of Flood Closure Structure Operation and Maintenance, WBV-75' to operate and maintain said flood structures.

SECTION II. That St. Charles Parish does hereby assume all of the Coastal Protection and Restoration Authority's duties and obligations under the Flood Closure Structure Construction and Maintenance Agreement and the Easement Agreement for the 'West Bank and Vicinity, New Orleans, Louisiana Hurricane Project, WBV-75, Western Tie-In BNSF Railroad Crossing, St. Charles Parish, Louisiana'.

SECTION II. That the Parish President is hereby authorized to execute any and all documents necessary to complete said 'Assignment of Flood Closure Structure Operation and Maintenance, WBV-75'.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: SCHEXNAYDRE, WILSON, TASTET, BENEDETTO, HOGAN, FLETCHER, FISHER-PERRIER
NAYS: COCHRAN
ABSENT: LEWIS

And the ordinance was declared adopted this 2nd day of November, 2015, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: _____
SECRETARY: _____
DLVD/PARISH PRESIDENT: 11-3-15
APPROVED: _____ DISAPPROVED: _____
PARISH PRESIDENT: W. St. Pierre
RETD/SECRETARY: 11-3-15
AT: 5:44 pm RECD BY: Jae

RECORDED IN THE ST. CHARLES PARISH
CLERK OF COURT OFFICE
ON December 10, 2015
AS ENTRY NO. 411205
IN MORTGAGE/CONVEYANCE BOOK
NO. 825 FOLIO 822

State of Louisiana

Parish of St. Charles

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

This ASSIGNMENT is made on this 20th day of November, 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 20th day of November, 2015 in Baton Rouge, 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:

[Signature]
Print Name: Elizabeth P. Shoeneft

[Signature]
Print Name: Sam Martin

Assignor:

[Signature]
Kyle Graham, Executive Director
Coastal Protection and
Restoration Authority

[Signature]
Notary Public
Name: Richelle N. Moore
Notary Identification No.: 30641
My commission expires: at death

Accepted by the St. Charles Parish, Louisiana.

Accepted on this 4th day of November, 2015 in Hahnville, 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:

[Signature]
Print Name: Aneadra Coleman

[Signature]
Print Name: Tiffany Clark

Assignee:

[Signature]
[Name and Title]
St. Charles Parish Government

Sworn to and ascribed before me this 4th day of Nov., 2015, in Hahnville, St. Charles Parish, Louisiana.

[Signature]
Notary Public
Name: Louella
Notary Identification No.: 58825
My commission expires: at death

**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)**

**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)