

2000-0539

INTRODUCED BY: ALBERT D. LAQUE, PARISH PRESIDENT
(CHIEF ADMINISTRATIVE OFFICER)

ORDINANCE NO. 00-12-4

An ordinance to approve and authorize the execution of a Joint-Use Agreement with the Louisiana Department of Transportation and Development for the use of certain property located along LA 48 across from Charlestowne Subdivision in St. Rose.

WHEREAS, the Parish has undertaken the Mississippi River Bike and Pedestrian Path Project on the East Bank Mississippi River Levee, and,

WHEREAS, as a part of this project the Corps of Engineers has designed a Rest and Recreation Area on the portion of property located between the Mississippi River Levee and LA 48 across from Charlestowne Subdivision; and,

WHEREAS, the property on which the Rest and Recreation Area is to be located is owned by the Louisiana Department of Transportation and Development and the Department has agreed to allow the Parish to use said property.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the Joint – Use Agreement by and between the Department of Transportation and Development and St. Charles Parish is hereby approved.

SECTION II. That the Parish President is hereby authorized to execute said Agreement on behalf of St. Charles Parish.

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

YEAS: RAMCHANDRAN, FAUCHEUX, HILAIRE, FABRE, ABADIE, AUTHEMENT, BLACK, MARINO, MINNICH

NAYS: NONE

ABSENT: NONE

And the ordinance was declared adopted this 4th day of December, 2000, to become effective five (5) days after publication in the Official Journal

CHAIRMAN Ty Aut

Acting SECRETARY Nicole Mance

DLVD/PARISH PRESIDENT 12-5-00

APPROVED ✓ DISAPPROVED

PARISH PRESIDENT Albert D. Laque

Acting RETD/SECRETARY 12-5-00

AT 2:45 AM RECD BY NB

**JOINT-USE AGREEMENT
STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT**

This agreement is made and entered into on the 15th day of August, ~~2001~~,
by and between the Department of Transportation and Development, hereinafter referred to as
"DOTD" and the St. Charles Parish Council, hereinafter referred to as "the Council".

WITNESSETH:

That DOTD for and in consideration of the covenants, conditions, agreements and
stipulations of the Council expressed does hereby agree to allow the Council to use the land and
airspace of State Highway LA 48 within the limits of the State Project No. 282-02-0033 and Federal
Project No. HES-0373 (003), as shown on the attached drawings marked "Exhibit B" for a term of
(5) years which will be automatically renewed each 5 years unless terminated by one or other of the
parties.

The premises shall be used during the tenancy hereof exclusively for the purpose of allowing
the maintenance and operation of a rest and recreation area, and the Council agrees that no income
will be generated by the proposed use.

The premises to be used by the Council is more particularly described in "Exhibit A"

This agreement is granted subject to the following general conditions as applicable unless
clearly inappropriate

(1) The use of the premises shall conform in all respects to Title 23, Code of Federal
Regulations, Section 713, Subpart B, "Management of Airspace " It is clearly understood that the
use permitted under this Joint-Use Agreement shall be unconditionally subject and subordinate to the
right of DOTD to use the land for highway and other transportation purposes. Vehicular access to the
area described in this Agreement directly from the established grade line of an Interstate Highway is
specifically prohibited.

The airspace of this Agreement located below and within ten (10) feet of elevated structures, shall not extend above a point one (1) foot lower in elevation than the bottom of the structure, and shall include the bottom of steel and concrete girders, pile caps, etc., as applicable.

(2) Vehicles used or designed for the transportation of gasoline or petroleum products shall not be permitted on the premises; nor shall flammables (liquids, gases and solids), as well as explosives, bulk storage of gasoline, or petroleum products, be permitted on the premises.

(3) Structures authorized to occupy the airspace will be of fireproof construction, as defined by the provisions of the applicable building codes, and will not be used for the manufacture of inflammable material, or for the storage of materials, or other purposes deemed by DOTD or Federal Highway Administration to be a potential fire or other hazard to the highway. The operation and maintenance of the space will be subject to regulation by DOTD to protect against fire or other hazard impairing the use, safety and appearance of the highway. The Council shall, at its sole expense, keep and maintain the premises free of all grass, weeds, debris and inflammable materials of every description, and at all times the premises shall be kept in an orderly, clean, safe and sanitary condition. A high standard of cleanliness, consistent with the location of the area as an adjunct of the State of Louisiana Highway System will be required.

(4) No improvements shall be placed in, or upon the premises and no alterations shall be made on, in or upon said premises without the consent and approval of DOTD and Federal Highway Administration obtained, in writing, under penalty of cancellation of the Agreement.

(5) The Council shall be liable and responsible for all costs or expenses incurred in the construction, operation and maintenance of the facilities permitted hereunder including, but not limited to, assessments, taxes and utilities.

(6) On-premise signs, displays, or devices may be authorized by DOTD, but shall be restricted to those indicating ownership and type of activity being conducted in the facility to occupy the airspace and shall be subject to reasonable restrictions with respect to number, size, location and design by regulation of DOTD, subject to the Federal Highway Administration approval.

(7) The Council shall secure all necessary permits required in connection with operations on the premises and shall comply with all Federal, State and Local statutes; ordinances, or regulations which may affect, in any respect, the Council's use of the premises.

(8) The Council, at the Council's own cost and expense, shall maintain said premises, including all driveways, fences and guardrail, heretofore or hereafter erected, subject to the approval thereof by DOTD. The Council shall take all steps necessary to effectively protect the fences and guardrail, and the piers and columns of the bridge from damage incident to the Council's use of such premises, all without expense to DOTD. The Council shall be liable to and shall reimburse DOTD for any damage to DOTD owned fences, guardrail, piers, or columns in any way resulting from or attributable to the use and occupancy of said premises by the Council or any person entering upon the same with the consent of the Council, expressed or implied. Any future proposed plans for driveways, fence openings, wheel rails, surfacing and lighting shall be filed with and approved by DOTD prior to the commencement of any work hereunder by the Council, all at the Council's expense.

(9) The Council shall occupy and use said premises at its own risk and expense, and shall hold DOTD, its officers, agents and employees, harmless from any and all claims (including any which may arise from the dropping of paint and/or other objects from the structure) for damage to property, or injury to, or death of, any person entering upon same with the Council's consent, expressed or implied.

(10) The Council certifies that it has funds set aside in adequate amounts for the purpose of paying judgements rendered against it. In the alternative, it agrees to carry liability insurance in the amounts of \$100,000 to indemnify against the claim of one person and \$200,000 against the claims of two or more persons resulting from any one accident, and property damage insurance in the amount of \$50,000 which coverage shall be extended to include the airspace facilities authorized in this Agreement; to provide for the payment of any damages occurring to the highway facility and to the public for personal injury, loss of life and property damage resulting from the Council's use of the premises, and shall hold DOTD harmless. The insurance company and the Council shall notify DOTD, in writing, at least fifteen (15) days prior to cancellation of the insurance and shall notify DOTD within 15 days of any other changes affecting the insurance coverage.

(11) Title and control of the area of right-of-way involved will remain with DOTD. DOTD specifically reserves the right of entry by any authorized officer, engineer, employee, contractor or agent of DOTD for the purpose of inspecting said premises, or doing of any and all acts necessary or

proper on said premises in connection with protection, maintenance, painting, and operation of structures and appurtenances; provided further that DOTD reserves the right, at its discretion, to immediate entry upon the premises and to take immediate possession of the same only in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said structures, and during said period the Council shall be relieved from the performance of all conditions or covenants specified herein.

(12) DOTD hereby covenants and agrees with the Council that the Council, shall at all times during its tenancy peaceably and quietly have, hold and enjoy the premises, without suit, trouble, or hindrance from DOTD: provided, however, and it is further agreed, that if the Council shall not perform and fulfill each and every one of the conditions and covenants herein contained to be performed by the Council; or if the Council discontinues use of the premises for more than a continuous 60-day period, or if the Council attempts to sell or assign these premises without written consent of DOTD; said act or acts of omission or commission may, at the option of DOTD, constitute a forfeiture of all rights under, the voiding of, and the ending of the term of this Agreement, and the further occupancy of said premises after such forfeiture by the Council shall be deemed held and taken as a forcible detainer thereof by the Council; and said DOTD may, without notice, re-enter and take possession thereof, and with or without force and with or without legal process, evict and dispossess the Council from said premises; and if any suit be brought by DOTD against the Council for breach of any condition or covenant herein contained by the Council or any summary action be brought by said DOTD for forfeiture of this Agreement or to recover possession of said premises, the Council agrees to pay reasonable attorney's fees and costs for commencing and prosecuting said action in an amount which shall be ascertained and fixed by the Court.

(13) In the event of the termination of this Agreement by the expiration thereof, or for any other reason, the Council will peaceably and quietly leave, surrender, and yield up to DOTD all and singular DOTD-owned premises with said appurtenances and fixtures in good order, condition and repair, reasonable use and wear thereof, and damage by earthquake, fire, and public calamity, by the elements, by act of God, or by circumstances over which the Council has no control, excepted. Any signs or other appurtenances placed on DOTD-owned premises pursuant to any provision hereof are the personal property of the Council and shall be removed by the Council upon the termination of

the Agreement and said premises shall be restored to its previous condition with the exception of surfacing, wheel rails, and column guards, all at the expense of the Council; provided, that if any signs or other appurtenances are not so removed after thirty (30) days written notice from DOTD to the Council, DOTD may proceed to remove the same, and to restore the said premises, and the Council shall pay DOTD upon demand, the reasonable cost and expense of such removal and restoration; or DOTD may, in its absolute discretion, elect to declare the same the property of DOTD whereupon all right, title and interest of the Council shall terminate.

(14) Notwithstanding anything herein contained to the contrary, this Agreement may be terminated, and the provisions of this Agreement may be altered, changed or amended by mutual consent of the parties hereto, all subject to the prior approval of the Federal Highway Administration.

(15) The Council agrees to adequately maintain and police these facilities at all times to the satisfaction of DOTD and the Federal Highway Administration.

(16) The Council agrees to hold harmless DOTD and its duly appointed agents and employees against any action for personal injury or property damage sustained by reason of the exercise of this Agreement, whether or not the same may have been caused by the negligence of DOTD, its agents or employees, provided, however, that the provisions of this last clause (whether or not the same may have been caused by the negligence of DOTD, its agents or employees) shall not apply to any personal injury or property damage caused by the sole negligence of DOTD, its agents or employees, unless such sole negligence shall consist entirely and only of negligence in the granting of the Agreement.

(17) The Council shall not lease or subcontract operations on the premises except with the prior written approval of DOTD and the Federal Highway Administration.

(18) The terms and provisions of this Agreement shall extend to, be binding upon and inure to the benefit of any approved successor or assignee of the Council

(19) The use of the premises shall be in compliance with Title 49, Code of Federal Regulations, Part 21 "Non-discrimination in Federally-assisted Programs."

(20) Notwithstanding anything herein contained to the contrary, this Agreement may be terminated at any time by the Council upon ninety (90) days prior notice, in writing, and by DOTD upon ninety (90) days prior notice, in writing, but in no event prior to one (1) year after execution,

unless under provisions as provided above. In the event of cancellation by DOTD, said notice shall be served upon the Council at Post Office Box 302, Hahnville, LA 70057.

In the event of cancellation by the Council said notice shall be served on DOTD at Post Office Box 94245, Capitol Station, Baton Rouge, Louisiana 70804-9245. In the event of breach of any of the above nondiscrimination covenants, DOTD shall have the right to terminate the lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if this agreement had never been made or issued.

IN WITNESS WHEREOF, this Agreement has been executed in two (2) copies by the parties hereto of the date herein first above written.

ATTEST:

Timothy J. Viol
Karen B. Lecheval

ST. CHARLES PARISH COUNCIL

BY: Albert D. Laque
Albert D. Laque
Typed or Printed Name

DATE: Jan. 2, 2001

ATTEST:

Karen D. Johnson
Chellette F. Boudant

DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

BY: Thomas A. Harrell
THOMAS A. HARRELL, P.E.
HEADQUARTERS JOINT USE AGENT
DATE: 01-03-2001

APPROVED BY: Wm A. Hussman 8/14/01
FEDERAL HIGHWAY ADMINISTRATION DATE

Exhibit "A"

Those certain tracts or parcels of land along LA 48 in St. Rose at Charlestowne Subdivision identified as the unused portions of Parcel 7-11, 7-12, 7-13, 8-1 and 8-2 and the abandoned area of LA 48 at Charlestowne as shown on Sheet No. 7 and Sheet No. 8 on the property map for State Project No. 282-02-33, St. Rose – Destrehan Highway, Route LA 48, St. Charles Parish, Louisiana, prepared by A. Duane McRae & Associates, Inc. Professional Land Surveyor, and Lance J. LaBorde, Professional Land Surveyor dated August 24, 1987, which property is more particular described as follows

Beginning at a point on the North Westerly property line of Midway Land Company, Inc. and the now abandoned LA 48, thence proceed Easterly along the Northern Property line of Midway Land Company, Inc. a distance of 436.03' to the eastern edge of a said property, where it abuts the property of Ronald Borne, thence proceed Easterly along the Northern property line of Ronald Borne a distance of 264.67' to the Eastern edge of said property where it abuts the property of Midway Land Co, Inc.; thence Easterly along the northern property line of said property 151.38', thence North Easterly 237.1' to its intersection with the southern line of the current LA 48, thence Westerly along the Southern line of the current LA 48 a distance of 1,500' to the point of beginning