

Ord.
2008-0370

INTRODUCED BY: MARCUS M. LAMBERT, COUNCILMAN, DISTRICT VI

ORDINANCE NO. 08-9-6

An ordinance to approve and authorize the execution of a License with the Department of the Army, U. S. Corps of Engineers, for the Bonnet Carre' Spillway - Montz Park, No. DACW 29-3-08-217.

WHEREAS, the Parish has established a Public Park in Montz along LA Highway 628 near the intersection of the Mississippi River Levee and the West Guide Levee of the Bonnet Carre' Spillway; and,

WHEREAS, the majority of the Park is located on property acquired by the Parish from the U. S. Department of Interior, recorded in Conveyance Book 130, page 353; and,

WHEREAS, the U. S. Corps of Engineers determined that a portion of the Park is actually located on property which they own; and,

WHEREAS, the U. S. Corps of Engineers agreed to allow the Parish to use the property for recreational purposes in accordance with Ordinance No. 98-12-7, which Lease Agreement expires on November 30, 2008; and,

WHEREAS, the U. S. Corps of Engineers has prepared Department of the Army License No. DACW 29-3-08-217 to replace said Lease.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the Department of the Army License No. DACW 29-3-08-217 by and between The Secretary of the Army and the St. Charles Parish Department of Parks and Recreation is hereby approved.

SECTION II. That the Parish President, on behalf of the St. Charles Parish Department of Parks and Recreation, is hereby authorized to execute License No. DACW 29-3-08-217.

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

YEAS: SCHEXNAYDRE, AUTHEMENT, RAYMOND, TASTET, BENEDETTO, HOGAN, COCHRAN, LAMBERT, NUSS

NAYS: NONE

ABSENT: NONE

And the ordinance was declared adopted this 22nd day of September, 2008, to become effective five (5) days after publication in the Official Journal.

License - Bonnet Carre Spillway Montz Park

CHAIRMAN: *[Signature]*

SECRETARY: *Barbara Jairo-Jones*

DLVD/PARISH PRESIDENT: *September 23, 2008*

APPROVED: _____ DISAPPROVED: _____

PARISH PRESIDENT: *[Signature]*

RETD/SECRETARY: *September 23, 2008*

AT: *4:15 p.m.* RECD BY: *[Signature]*

DEPARTMENT OF THE ARMY LICENSE
BONNET CARRE SPILLWAY PROJECT
TRACT NO. 102, SECTION 12, TOWNSHIP 12 SOUTH, RANGE 7 EAST
ST. CHARLES PARISH, LOUISIANA

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, acting under his general administrative powers, hereby grants to **ST. CHARLES PARISH DEPARTMENT OF PARKS AND RECREATION, P.O. BOX 302, HAHNVILLE, LOUISIANA 70057**, hereinafter referred to as the grantee, a license for a public park and recreational purposes, in and upon lands of the United States, as identified in **Exhibit A**, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS LICENSE is granted subject to the following conditions:

1. TERM

This license is granted for a term of **five (5) years**, beginning **30 November 2008**, and ending **29 November 2013**, but revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this license shall be the construction, operation and maintenance of the premises for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

3. NOTICES

All notices and correspondence to be given pursuant to this license shall be addressed, if to the grantee, to **St. Charles Parish Department of Parks and Recreation, P.O. Box 302, Hahnville, Louisiana 70057**; and if to the United States, to the **District Engineer, Attention: Chief, Real Estate Division, U.S. Army Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160-0267**; or as from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include any duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, New Orleans District, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises;
- c. subject to other outgrants of the United States on the premises;
- d. personal to the grantee, and this license, or any interest herein, may not be transferred or assigned.

8. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States.

9. COST OF UTILITIES

The grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payments shall be made in the manner prescribed by the officer having such jurisdiction.

10. PROTECTION OF PROPERTY

The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefore by the grantee in an amount necessary to restore the property to a condition satisfactory to said officer.

11. INDEMNITY (deleted)

12. RESTORATION

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

13. NON-DISCRIMINATION

- a.** The grantee shall not discriminate against any person or persons because of race, color, age sex, handicap, national origin or religion.

- b.** The grantee by acceptance of this easement, is receiving a type of Federal assistance and therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by our pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as a Department of Defense Directive 5500.11 and 1020.1, and Army Regulatory 660-7. This assurance shall be binding on the grantee, its agents, successors, transferees, and assignees.

14. TERMINATION

This license may be terminated by the grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event said notice is not given at least ten (10) days prior to the rental due date, the grantee shall be required to pay the consideration for the period shown in the Condition on **CONSIDERATION**.

15. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

16. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. DISCLAIMER

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. § 403), and Section 404 of the Clean Waters Act (33 U.S.C. § 1344).

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this 21st day of October, 2008.

Janet R. Cuppe
LINDA C. LABURE
Chief, Real Estate Division
U.S. Army Corps of Engineers
New Orleans District

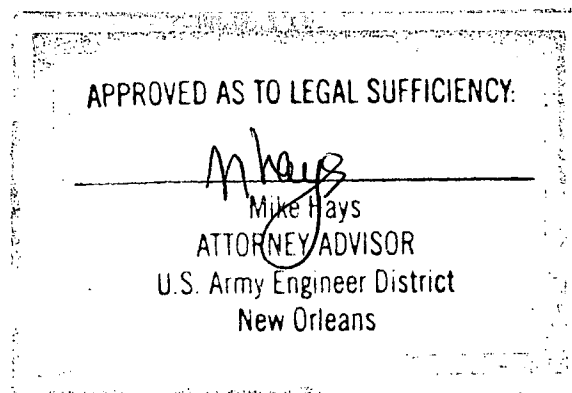
WITNESSES:

Signed: Sheila B Mills

Printed name: Sheila B. Mills

Signed: Bridgette Farre Terrell

Printed name: Bridgette Farre Terrell



ACKNOWLEDGEMENT OF WITNESS FOR LICENSE NO. DACW29-3-08-217

BEFORE ME, the undersigned authority, this day personally came and appeared the undersigned person, duly sworn, who did depose and state that he/she executed the foregoing easement agreement as subscribing witness thereto, and that the easement agreement was signed and executed by JANET R. CRUPPI, and that he/she knows JANET R. CRUPPI to be the identical person who executed the same and saw JANET R. CRUPPI sign her name in her capacity as Acting Chief, Real Estate Division, CEMVN, on behalf of the United States, as the voluntary act and deed of the United States, and for the purposes and considerations therein expressed, in his presence and in the presence of the other subscribing witness.

Signed: Sheila B. Mills (Appearer)
Printed Name: Sheila B. Mills

SWORN TO AND SUBSCRIBED BEFORE ME this 22nd day of October 2008.

Signed: Mike Hays (Notary)
Printed name: MIKE HAYS
Attorney - Notary Public
My Commission Is For Life
Notary Number: 40008

THIS LICENSE is also executed by the grantee this 23rd day of September, 2008.

ST. CHARLES PARISH
DEPARTMENT OF PARKS AND RECREATION

By:

Signed: [Signature]

Printed Name: W. ST. PIERRE

Title: PRESIDENT

WITNESSES:

Signed: Valerie Berthelot

Printed name: Valerie Berthelot

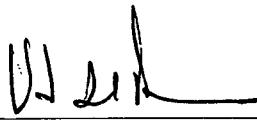
Signed: Sandra B. Miguez

Printed name: Sandra B. Miguez

CERTIFICATE OF AUTHORITY

I, V.J. St. Pierre, Jr., do hereby certify that I am the principle legal officer of the **ST. CHARLES PARISH DEPARTMENT OF PARKS AND RECREATION (PARISH)**, that the **Parish** is a legally constituted public body with full authority and legal capability to adhere and comply with the terms and conditions for License No. DACW29-3-08-217, and subsequent amendments thereto, for the park and recreational purposes, in connection with the Bonnet Carre Spillway Project, and that the persons who executed License No. DACW29-3-08-217 on behalf of the **Parish** has acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification on this 23rd day of September, 2008.

Signed: 

Printed name: V.J. ST. PIERRE

Title: President

ACKNOWLEDGMENT

STATE OF Louisiana

COUNTY/PARISH OF St. Charles

On this 6th day of October, 2008, before me appeared V.J. St. Pierre, Jr., to me personally known, who, being by me duly sworn, did say that he is the Parish President of the **ST. CHARLES PARISH DEPARTMENT OF PARKS AND RECREATION (PARISH)**, and that the license was signed in behalf of the **Parish**, by authority duly and legally granted and bestowed upon him, and that the **Parish** acknowledged the license to be the free act and deed of the **Parish** and the **Parish** has no seal.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Signed:  _____

Printed Name: Leon C. Vial, III
Notary Public
State of Louisiana
Parish of St. Charles

My Commission Expires: at death

Bar Association Number: 13061

ACKNOWLEDGEMENT OF WITNESS FOR LICENSE NO. DACW29-3-08-217

BEFORE ME, the undersigned authority, this day personally came and appeared the undersigned person, duly sworn, who did depose and state that he/she executed the foregoing license agreement as subscribing witness thereto, and that the license agreement was signed and executed by **LINDA C. LABURE**, and that he/she knows **LINDA C. LABURE** to be the identical person who executed the same and saw **LINDA C. LABURE** sign her name in her capacity as Chief, Real Estate Division, CEMVN, on behalf of the United States, as the voluntary act and deed of the United States, and for the purposes and considerations therein expressed, in his presence and in the presence of the other subscribing witness.

Signed: _____ (Appearer)

Printed Name: _____

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____ 2008.

Signed: _____ (Notary)

Printed name: _____

Louisiana Bar Association Number: _____

