



## LOWER PLATTE SOUTH natural resources district

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TO: Board of Directors

FROM: Dan Schulz, Resources Coordinator *Dan*

DATE: May 13, 2021

SUBJECT: Recreation, Forestry and Wildlife Subcommittee Meeting Minutes

On Wednesday, May 12, 2021, the Recreation, Forestry and Wildlife Subcommittee met virtually at 5:45PM. Members present were, Chair-Anthony Schutz, Christine Lamberty, Lisa Lewis, Ray Stevens, and John Yoakum. Others participating were Deborah Eagan, Ariana Kennedy, David Potter, Dan Schulz, and Paul Zillig.

The one and only agenda item was consideration of the amended lease agreement with the Village of Valparaiso, Nebraska, allowing the Village to build a gazebo on the District's Oak Creek Trailhead. Staff did an overview of the amended lease prepared by District legal counsel which summarized the existing lease and subleases; who would construct and maintain the gazebo; and how the gazebo could be utilized by the Village and public (see amended lease agreement attached).

**It was moved by Stevens, seconded by Yoakum and unanimously approved to recommend that the Lower Platte South NRD Board of Directors enter into the amended lease agreement with the Village of Valparaiso permitting the Village of Valparaiso to construct a gazebo subject to the conditions in the amended lease agreement.**

Schutz adjourned the meeting at 6PM.

Cc RF&W file

## AMENDED LEASE AGREEMENT

This Amended Lease Agreement ("Agreement") is entered into by and between the **LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska, the (the "District") and **THE VILLAGE OF VALPARAISO, NEBRASKA**, a municipality of the State of Nebraska, (sometimes referred to as the ("Village")), individually sometimes referred to as Each Party and collectively as the Parties:

**WITNESSETH:**

### RECITALS

- A. The District is the owner of a former railroad right part which traverses the Village of Valparaiso known as the Oak Creek Trail Corridor also called the "Trail Corridor".
- B. On December 9, 1997, the District entered into a Lease Agreement with the Village permitting the Village to use of a portion of the Trail Corridor beginning from South Oak Street and continuing to Highway 79, for the purpose of open space, park, trail, trailhead, athletic fields, and informational signs, all as shown on Exhibit "A" attached hereto and incorporated herein by this reference.
- C. On January 13, 1998, the Village entered into a Sublease with the Oak Creek Valley Bank permitting the Bank to construct, operate and maintain an informational sign (50'x50'), identified as the Community Sign Sublease Area on Exhibit "A."
- D. On May 15, 2018, the Village and the Bank assigned the Sublease, with the concurrence of the District, to the Valley of Paradise American Legion Post 371, Inc., for the same use and purpose as the Sublease.
- E. The District and the Village desire to amend the Lease Agreement between them permitting the Village to construct a gazebo at the location shown on Exhibit A, subject to the conditions provided below ("Amended Lease").

**NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND THE MUTUAL PROMISES AND CONVENANTS CONTAINED HEREIN AND ONE DOLLAR (\$1.00) AND OTHER VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:**

1. **Oak Creek Trailhead Parkland Parcels.** Exhibit A shows the division of the Trail Corridor into two (2) parcels, the "West Parcel" from S Oak St to Pine Street and the "East Parcel" from Pine Street to Highway 79).
2. **Gazebo.** The District grants the Village permission to construct a Gazebo on the West Parcel no larger than 36'x36' in the location shown on Exhibit A. The Village shall own the Gazebo and all improvements therein. The Village may install electricity and other amenities and utilities to the Gazebo. Any substantial modification to the Gazebo,

except a walkway to and from the Gazebo, shall require the District's prior written approval.

3. **Trail Corridor.** The District reserves the use of a 50' wide strip in the southern part of the West and East Parcels for Oak Creek Trail users.
4. **Other Structures.** The Restroom and Parking Lot, owned by the District, and the Trailhead Sign and Community Sign Sublease Area all as shown on Exhibit A, shall remain in their present location.
5. **Maintenance of Oak Creek Trailhead Parkland.** The Village shall be responsible for the maintenance of the entire Parkland which includes the area in both the West and East Parcels and for the mowing and other trail maintenance of the Trail Corridor.
6. **Events held at the Gazebo.** The Village shall have the discretion to determine the type of events that may be held in the Gazebo and the Gazebo Lease Area as shown on Exhibit A, so long as such events all lawful. No alcohol may be served or brought onto District owned property. Such events shall be open to the public without charge. The Gazebo maybe reserved for private events without payment of a charge or fee; however, the Village may seek donations from organizers of these events. The Village shall obtain at its own costs and expense adequate liability insurance protection for these events.
7. **Rules and Regulations.** The Village shall establish its own reasonable rules and regulations governing the occupancy and conduct of persons using the Gazebo and the Gazebo Leased Area as shown on Exhibit A.
8. **Insurance.** The Village agrees to procure and maintain, at its own expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$1,000,000; Automobile Liability Insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage, Umbrella/Excess Limits coverage in the amount of \$2,000,000, all for protection against claims arising out of performance of obligations and services under this Agreement, which are caused by the negligent acts, errors or omissions for which Valparaiso is legally liable. The District shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance for all types of insurance referred to above will be furnished to the District prior to the commencement of work on the Agreement. Valparaiso shall waive subrogation on all insurance contracts.
9. **Indemnity.** The Village shall indemnify, defend, and hold the District harmless from all liabilities of any kind that arise as a result of the performance of this Agreement except that the Village shall have no obligation to indemnify, defend or hold the District harmless for any claim or liability of any kind that result from the negligent act or omission or the intentional misconduct of the District, its agents or employees.
10. **Dispute Resolution.** The Parties shall attempt to resolve any dispute, controversy, or claim arising under or relating to this Agreement, or to a material breach, including its interpretation, performance, or termination. The Parties shall without delay continue to perform their respective obligations under this Agreement which are not affected by the dispute. Any Party may invoke the dispute resolution process set forth in this paragraph

by giving the other Party written notice of its intent to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Each Party shall designate, within five (5) working days of the notice a representative who shall attempt to resolve the dispute. If the designated representative cannot resolve the dispute within 30 days of the notice, the Parties may resort to any remedy available under law.

11. **Independent Contractor.** It is the expressed intent of the Parties that this Agreement shall not create an employer-employee or agency relationship, and the Village, and any of its employees or other persons acting on its behalf in the performance of this Agreement, shall be deemed to be independent contractor(s) during the entire term of the Agreement or any renewals thereof.
12. **Assumption of Liability.** Each Party agrees that it will be responsible for its own acts and the results thereof and those of its agents and/or employees while they are performing duties and obligations of Each Party under this Agreement. Each Party also agrees that it shall not be responsible for the acts of the other Party. Each Party therefore agrees that it will assume all risk and liability to itself, its agents and employees while performing duties and obligations within the scope of their employment for such Party, for injury to persons or property resulting in any manner from the conduct of its own operations and the operations of its own agents, employees, while acting on such Party's behalf while in the scope of their employment, and for any loss, cost, damage caused thereby during the performance of duties and obligations under this Agreement.
13. **Anti-Discrimination.** Each party agrees that if a contractor or subcontractor is hired by either or both of them that they will add a provision in any contract requiring the contractor or their subcontractors not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to his hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, age, sex, sexual orientation, genetic information, disability, national origin, familiar status, veteran status, or other factors which lawfully cannot be the basis for employment decisions.
14. **Original Lease.** The provisions of the Original Lease, Sublease, and Assignment of Sublease identified in the Recitals as B, C, and D shall remain in full force and effect except as amended and revised herein by the provisions of this Amended Lease.
15. **Interim Trail Use.** The Parties acknowledge that the District holds title to the Oak Creek Trail Corridor under the provisions of 16 U.S.C § 1247 (d) subject to restoration of rail service under the provisions of said section. If the Oak Creek Trail Corridor is restored for rail traffic under the provisions of 16 U.S.C. § 1247 (8)(d), then in that event this Lease and Amended Lease Agreements shall terminate upon 60 days prior written notice and the Village and the Legion shall be required to remove the Gazebo, signs, and any other improvements located on the Oak Creek Trail Corridor as its it traverses the Village.

**IN WITNESS WHEREOF, THE PARTIES WARRANT THAT THEIR DULY  
AUTHORIZED REPRESENT HAVE THE AUTHORITY TO EXECUTE THIS AMENDED  
LEASE ON THEIR BEHALF ON THE DAY AND YEAR NEXT TO THEIR NAME.**

**LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT,**

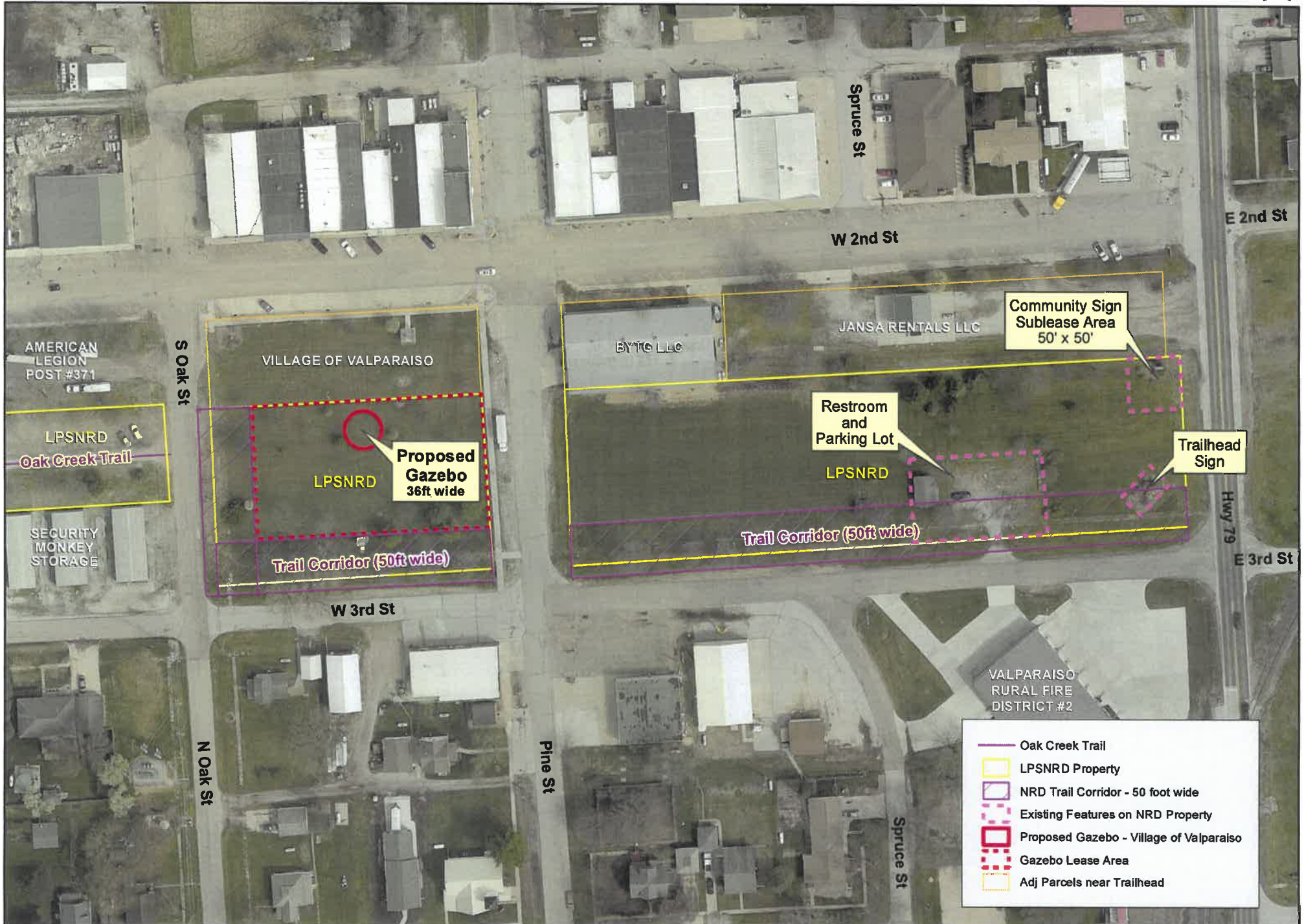
BY: \_\_\_\_\_ (date) \_\_\_\_\_  
Paul D. Zillig, General Manager

**VILLAGE OF VALPARAISO, NEBRASKA**

By: \_\_\_\_\_ (date) \_\_\_\_\_  
Its authorized Representative

# Oak Creek Trailhead Park Land, Valparaiso - Proposed Gazebo

Exhibit A



- Oak Creek Trail
- LPSNRD Property
- NRD Trail Corridor - 50 foot wide
- Existing Features on NRD Property
- Proposed Gazebo - Village of Valparaiso
- Gazebo Lease Area
- Adj Parcels near Trailhead

Map Updated: May 2021 - LPSNRD, sdr

0 50 100 200 300 Feet



**Paul Zillig**

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**From:** E-mail Team <waterop@windstream.net>  
**Sent:** Friday, December 11, 2020 10:51 AM  
**To:** Paul Zillig  
**Cc:** dhomes1220@aol.com  
**Subject:** RE: Oak Creek Trailhead - Valparaiso

Dear NRD board of directors,

The board with Village of Valparaiso asked me to provide the wants and plans for the gazebo's use in Valparaiso on NRD property. The village board stated that it would provide a structure that would be used for our annual town celebration with an area for music bands, seating for the elderly, handicapped as well, with lighting, areas to eat, bench seating for plays, award presentations, possibly an memorial area to honor our veterans of all type of public service to our community and country. It will also be an avenue as a memorial for past citizens who's family members want to leave something monetarily to are town in remembrance of there loved ones who passed away. The lease be determined through a joint effort of both the village and the NRD. Please send us some ideas and thoughts on this matter. We as the village will provide all liability insurance and O and M for the future.

Thank you. Greg Bouc / Dan Homes - Village board member

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Greg:

One question specific question that came up at the Subcommittee meeting concerned Valparaiso's reasoning for the requested location? Why not on the Village land along main/2nd Street?

Paul

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We feel that it needs to be more centralized . The underground sprinkler system would be compromised . The conduit was dug in years ago for this location and tree planting was conducted years ago to surround the gazebo with pine trees that would buffer the wind in the cool months and cool the area in the summer. The centralization would allow for equal walk paths from all directions. The speaker system would carry to all sections of the park as well .Putting the the gazebo hear would definitely be less invasive to all underground piping and electrical. There is a lot of buried concrete in the 60' area the village owns from the old elevator and digging footings would almost be impossible as we learned when we built the pergola on village property. If there are any other concerns, feel free to ask.

Thank you Greg Bouc

