



## LOWER PLATTE SOUTH natural resources district

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### Memorandum

**Date:** October 11, 2023

**To:** Executive Subcommittee members

**From:** Mike Sousek, General Manager

**RE:** Executive Subcommittee Meeting Minutes

The Executive Subcommittee met at 12:00 pm on Tuesday, October 10, 2023, at the NRD Office in Lincoln. Subcommittee members present included Chair Dave Landis, Bob Andersen, Lisa Lewis, Chelsea Johnson, Deb Eagan. Absent Subcommittee members included Director Green. NRD staff members in attendance included Dave Potter and Mike Sousek. One person from the public was present, Jacoby Bowhay.

First on the agenda was consideration of a new license agreement for property located within our easement area on Upper Salt Creek 1-A. Property owner Jacoby Bowhay was present to discuss the pole shed that was constructed in our easement area. After months of discussion on the topic, a solution was presented to keep the district whole with our flood storage easement and allow Mr. Bowhay to keep his structure in place. Mr. Bowhay will be installing flood vents around the walls of his building to allow water to flow in and out of the building during flooding events. These will be installed per FEMA guidelines as referenced in the license agreement. **It was recommended by Director Lewis, seconded by Director Eagan to have the board authorize the General Manager to sign a license agreement with Jacoby and Michelle Bowhay. See attached license agreement. Motion passed unanimously.**

Following on the agenda was a discussion about the purchase agreement that was presented to the board by Senator Tom Brewer. Senator Brewer was interested in purchasing property along the MoPac trail corridor that he considered surplus property of the district. After lengthy discussion with our legal counsel in the previous month and again with the committee this month, it was decided to take no action on this offer from Senator Brewer other than contacting him and thanking him for the consideration. An explanation will be provided that explains the processes the district needs to adhere to dealing with multiple aspects of such a transaction taking place. It will include the need for the district to declare property surplus, the opportunity for the public to know about such property and the ability for a sealed bid process for the public to participate in if they so desire.

Last on the agenda was a discussion about staffing. With recent resignations, an update was given by staff on how the district is moving forward with the absence of our accounting department. Thought and energy were given towards discussions of the past and the future. A brief time was spent on reports on why this happened but soon turned towards how we move forward. Staff will be utilizing help from within with other staff members agreeing to learn and take on new tasks, supplemented with outside help from the private sector. Advertising has already begun to replace our Administration and Finance Manager, which has a closing date of October 27<sup>th</sup>. Interviews will be conducted after that time and a replacement will be selected. Once the new person is on board, we will begin discussions about the need for a second part-time person. Human Resources were discussed, with suggestions given to staff to explore outside firms to help with district needs on that front. Further discussion is warranted and will be planned at a future date to deal with the human resources component.

With no further business, the subcommittee adjourned at 1:30 PM.

MJS

cc: Donna Reid & Dave Potter

## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** (“Agreement”) is made between the **LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska, having its office at 3125 Portia Street, Lincoln, Lancaster County, Nebraska, herein referred to as the “Licensor” and **JACOBY BOWHAY AND MICHELLE BOWHAY**, husband and wife, 16801 S. 68<sup>th</sup> Street, Hickman, NE 68430, herein referred to as the “Licensees,” collectively referred to as the “Parties.”

### **WITNESSETH:**

#### **RECITALS**

- A. Licensor possesses a flood control easement, pursuant to an easement document recorded on November 23, 1953, and an agreement recorded on October 26, 1994, herein referred to as the “Easement,” upon, over, and across the real property legally described and shown on Exhibit “A,” which is attached hereto and incorporated herein by this reference and hereinafter referred to as the “Protected Easement Area.”
- B. Licensees are the owners of the real estate over which Licensor’s easement interest runs, and Licensees have built a permanent structure that is located partially within the Protected Easement Area, to wit: a 40’ x 90’ farm utility building, hereinafter referred to as the “Structure.” An aerial photograph attached hereto as Exhibit “B” and incorporated herein by reference shows the placement of the Structure in relation to the protected easement area.
- C. The location of the Structure is contrary to terms of the Easement and Licensor’s rights and privileges under the Easement.
- D. Licensor is willing to grant a license to Licensees to allow the Structure to remain in its current location under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the above Recitals and the mutual promises and covenants contained herein, the Parties agree as follows:

- 1. **Grant of License.** Licensor hereby grants to the Licensees, a non-exclusive, nontransferable, non-assignable license to allow the Structure to remain in its current location, subject to the terms of this Agreement. This Agreement shall not be an interest in real property which runs with the land.

2. **Modification of the Structure.** Licensees shall make the following modifications to the Structure at their sole expense: Installation of permanent flood opening devices, which, in the event of a flood, will equalize the hydrostatic forces on the exterior walls of the Structure and allow the interior of the Structure to become inundated with water. The design, placement, size, and number of permanent flood opening devices to be installed in the Structure will be consistent with the terms of the Federal Emergency Management Agency's National Flood Insurance Program Technical Bulletin 1, March 2020 ([https://www.fema.gov/sites/default/files/2020-07/fema\\_tb1\\_openings\\_foundation\\_walls\\_walls\\_of\\_enclosures\\_031320.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_tb1_openings_foundation_walls_walls_of_enclosures_031320.pdf)), and whichever other requirements Licensor deems appropriate. Said modifications shall be made pursuant to the specifications set forth by Licensor and shall be subject to review and periodic inspection by the Licensor.

3. **Use of Protected Easement Area.** Licensees are granted a license according to the terms and obligations set forth herein, but without the requirement of payment of any additional fee. Nothing contained in this Agreement shall be construed as a grant of the use of the Protected Easement Area to any other party or to the public. Nothing contained in this Agreement shall be construed to permit any other use of the Protected Easement Area that is violative of the Easement. Licensees shall refrain from constructing other structures, whether temporary or permanent, within the Protected Easement Area and shall refrain from taking any action that is inconsistent with the Licensor's rights and privileges under the Easement.

4. **Termination of License.** This Agreement may be terminated by the Licensor at its sole discretion upon giving Licensees written notice, delivered by first class mail to 16801 S. 68<sup>th</sup> Street, Hickman, NE 68430, at least thirty (30) days prior to the termination date of this Agreement. On or before the termination date of the Agreement, Licensees shall remove the Structure and any other items located on the Protected Easement Area which Licensor deems are violative of the Easement. If Licensor, within its sole discretion, determines that an emergency warrants the immediate removal or modification of the Structure or any other items Licensor deems to be violative of the Easement, then Licensees shall remove or modify the Structure and other items deemed by Licensor to be violative of the Easement as soon as reasonably possible after prior written notice of such emergency is given to Licensee. If Licensees fail to remove the Structure and other items in what the Licensor considers in its sole determination to be a reasonable time, then Licensor may remove the Structure and such items at

Licensees' cost and expense. In the event Licensees violate this Agreement or otherwise violate the Easement, and Licensor deems it necessary to commence litigation to protect its rights and privileges under the Easement, including but not limited to pursuing injunctive relief, Licensees waive the requirement that any bond be posted by Licensor and Licensees shall be liable for all costs incurred by Licensor to pursue such litigation, including but not limited to attorney's fees.

5. **Limitation of Liability.** The Licensees agree to the following provisions regarding liability.

- a. The Licensees acknowledge and agree that neither Licensor, its directors, officers, employees, or agents, will be liable for any loss or damage arising out of or resulting from Licensees' use of the Structure or the Protected Easement Area under this Agreement. Licensees hereby release and discharge Licensor to the fullest extent possible under law from any such liability, loss, damage, or claim.
- b. To the fullest extent permitted by law, Licensor will not be liable to Licensees or any third party for any loss or damage, however caused (including through negligence), which may be directly or indirectly suffered in connection with any use of the Structure or the Protected Easement Area.
- c. Licensor shall not be held liable by Licensees in any manner for any loss, damage or injury suffered by the Licensees or by any other person related to any use of the Structure, the Protected Easement Area, or any part thereof.
- d. Notwithstanding anything contained in this Agreement, in no event shall Licensor be liable for any claims, damages or loss which may arise from modification or operation of the Structure.

6. **Utilities Prohibition.** Licensees shall not install or connect any utilities of any kind to the Structure.

7. **Indemnity.** Licensees shall indemnify, defend, and hold harmless the Licensor, its directors, officers, employees, and agents from and against all suits, claims, liabilities, expenses and damages (including third-party claims) that Licensor may suffer or incur for any reason resulting in any way from:

- a. The use of the Protected Easement Area or the Structure by Licensees, their family, guests, non-family, or non-guests without Licensees' consent;



**LICENSEES:**

\_\_\_\_\_  
Jacoby Bowhay

\_\_\_\_\_  
Michelle Bowhay

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

Now on this \_\_\_\_ day of \_\_\_\_\_, 2023, before me a duly appointed and qualified Notary Public, personally appeared, Jacoby Bowhay, known to me to be the same and identical person who signed the above and foregoing License Agreement and acknowledged the execution of the same to be his voluntary act and deed.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

Now on this \_\_\_\_ day of \_\_\_\_\_, 2023, before me a duly appointed and qualified Notary Public, personally appeared, Michelle Bowhay, known to me to be the same and identical person who signed the above and foregoing License Agreement and acknowledged the execution of the same to be her voluntary act and deed.

\_\_\_\_\_  
Notary Public