

## ACCESS EASEMENT

THIS EASEMENT is made this 14<sup>th</sup> day of June, 2023, by the **Maple River Water Resource District**, a North Dakota political subdivision, with a post office address of 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the "District"); and **Carole G. Meyers, trustee of the Ruth E. Buchholtz Testamentary Trust created the 22nd day of August, 2003**, with a post office address of [REDACTED] ("REBTT").

## RECITALS

A. The District owns, manages, operates, and maintains Lynchburg Channel and Buffalo Channel (collectively, the "Channels").

B. The District has determined certain modifications are necessary to the Channels to reduce erosion, to protect the Channels, and to ensure the Channels continue to provide drainage benefits in the watershed, a project the District refers to as LYNCHBURG-BUFFALO PROJECT No. 2016-01 (the "Project"); the District must acquire certain real property interests for purposes of constructing, managing, operating, and maintaining the Project.

C. REBTT owns certain real property along and adjacent to the Project, an area where the District must construct, manage, operate, and maintain the Project; REBTT is granting the District certain property rights to accommodate the Project.

D. As partial consideration for the requisite property rights to accommodate the Project, the District agrees to grant and convey to REBTT an access easement upon, over, across, and through the property described below, subject to the terms and conditions contained in this Easement.

In consideration of \$10.00, the mutual covenants contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

**AGREEMENT**

1. **The Easement Property.** The District grants and conveys to REBTT a non-exclusive, permanent easement, limited to the easement rights described in this Easement, upon, over, across, and through the following real property in Cass County, North Dakota:

That part of the West Half of Section 36, Township 139 North, Range 52 West of the Fifth Principal Meridian, Cass County, North Dakota, being a strip of land 25.00 feet wide, lying between lines drawn 55.00 feet and 80.00 feet westerly of, as measured at a right angle to and parallel with a line described as follows:

Commencing at an iron monument which designates the southeast corner of the Southwest Quarter of said Section 36; thence South 87 degrees 45 minutes 05 seconds West on an assumed bearing along the south line of said Southwest Quarter for a distance of 30.07 feet; thence North 20 degrees 17 minutes 05 seconds East for a distance of 463.45 feet; thence 193.14 feet northerly on a tangential curve concave to the west, having a radius of 700.00 feet and a central angle of 15 degrees 48 minutes 31 seconds; thence North 04 degrees 28 minutes 34 seconds East for a distance of 606.17 feet; thence 440.93 feet northwesterly on a tangential curve concave to the southwest, having a radius of 300.00 feet and a central angle of 84 degrees 12 minutes 41 seconds; thence North 79 degrees 44 minutes 07 seconds West for a distance of 150.19 feet; thence 336.92 feet northwesterly on a tangential curve concave to the northeast, having a radius of 700.00 feet and a central angle of 27 degrees 34 minutes 38 seconds; thence North 52 degrees 09 minutes 29 seconds West for a distance of 909.81 feet; thence 222.03 feet northwesterly on a tangential curve concave to the northeast, having a radius of 400.00 feet and a central angle of 31 degrees 48 minutes 13 seconds to the point of beginning of said line; thence 249.00 feet northerly on a tangential curve concave to the east, having a radius of 400.00 feet and a central angle of 35 degrees 40 minutes 00 seconds and said line there terminates. The sidelines of said strip are to be lengthened or shortened to terminate on a line bearing South 69 degrees 38 minutes 44 seconds West from the point of beginning and on a line bearing North 74 degrees 41 minutes 16 seconds West from the point of termination.

Containing 7,275 square feet, more or less, and is subject to all easements, reservations, restrictions, and rights-of-way of record, if any.

The property described above is the "West Access Easement Property."

AND

A 50.00-foot-wide strip of land in the Southeast Quarter of Section 25 and in the Northeast Quarter of Section 36, all in Township 139 North, Range 52 West of the Fifth Principal Meridian, Cass County, North Dakota, said 50.00 foot wide strip lying between lines drawn 60.00 feet and 110.00 feet southerly of, as measured at a right angle to and parallel with a line described as follows:

Commencing at an iron monument which designates the northwest corner of said Northeast Quarter of Section 36; thence South 02 degrees 33 minutes 03 seconds East on an assumed bearing along the west line of said Northeast Quarter for a distance of 805.46 feet to the point of beginning of said line; thence North 43 degrees 59 minutes 08 seconds East for a distance of 324.93 feet; thence 121.98 feet northeasterly on a tangential curve concave to the southeast, having a radius of 500.00 feet and a central angle of 13 degrees 58 minutes 41 seconds; thence North 57 degrees 57 minutes 49 seconds East for a distance of 1487.46 feet; thence 559.80 feet easterly on a tangential curve concave to the south, having a radius of 400.00 feet and a central angle of 80 degrees 11 minutes 09 seconds to a point of reverse curvature; thence 349.65 feet southeasterly on a reverse curve concave to the northeast, having a radius of 400.00 feet and a central angle of 50 degrees 04 minutes 59 seconds, thence North 88 degrees 03 minutes 59 seconds East for a distance of 193.34 feet to the east line of the Northeast Quarter of said Section 36 and said line there terminates. Said point of termination lies South 02 degrees 36 minutes 36 seconds East a distance of 11.76 feet from the northeast corner of said Northeast Quarter. The sidelines of said 50.00-foot-wide strip are to be lengthened or shortened to terminate on the east and west lines of the Northeast Quarter of said Section 36.

Containing 3.50 acres, more or less, and is subject to all easements, reservations, restrictions, and rights-of-way of record, if any.

The property described above is the "East Access Easement Property."

AND

The part of the east half of the southeast quarter of Section 36, township 139N Range 52 West of the 5<sup>th</sup> principal meridian identified as the "channel crossing" on the map attached hereto as Exhibit "A" and to be identified more fully by survey to be completed by the District.

The property described above is the "Channel Crossing Easement Property."

The West Access Easement Property, the East Access Easement Property, and the Channel Crossing Easement Property are, collectively, the "Easement Property."

2. **The Benefitted Property.** The purpose of this Easement is to provide REBTT access, ingress, and egress rights upon, over, across, and through the Easement Property to access the following real property in Cass County, North Dakota:

The East Half of the West Half (E½W½) in Section 36, Township 139 North, Range 52 West of the Fifth Principal Meridian, Cass County, North Dakota

LESS

That part of the East Half of the Southwest Quarter in Section 36, Township 139 North, Range 52 West of the Fifth Principal Meridian, Cass County, North Dakota, being a strip of land 160.00 feet wide, 80.00 feet on each side of a centerline described as follows:

Commencing at an iron monument which designates the southeast corner of said Southwest Quarter; thence South 87 degrees 45 minutes 05 seconds West on an assumed bearing along the south line of said Southwest Quarter for a distance of 30.07 feet to the point of beginning of said centerline; thence North 20 degrees 17 minutes 05 seconds East for a distance of 77.48 feet to a point on the east line of said Southwest Quarter, said point hereinafter referred to as Point "A" and said centerline there terminates. The sidelines of said strip are to be lengthened or shortened to terminate on the south and east lines of said Southwest Quarter.

AND

That part of the East Half of the Southwest Quarter and that part of the East Half of the Northwest Quarter, all in said Section 36, being a strip of land 160.00 feet wide, 80.00 feet on each side of a centerline described as follows:

Commencing at the aforementioned Point "A"; thence North 20 degrees 17 minutes 05 seconds East for a distance of 385.97 feet; thence 193.14 feet northerly on a tangential curve concave to the west, having a radius of 700.00 feet and a central angle of 15 degrees 48 minutes 31 seconds; thence North 04 degrees 28 minutes 34 seconds East for a distance of 606.17 feet; thence 440.93 feet northwesterly on a tangential curve concave to the southwest, having a radius of 300.00 feet and a central angle of 84 degrees 12 minutes 41 seconds; thence North 79 degrees 44 minutes 07 seconds West for a distance of 43.43 feet to the east line of said Southwest Quarter, the point of beginning of said centerline; thence continuing North 79 degrees 44 minutes 07 seconds West for a distance of 106.76 feet; thence

336.92 feet northwesterly on a tangential curve concave to the northeast, having a radius of 700.00 feet and a central angle of 27 degrees 34 minutes 38 seconds; thence North 52 degrees 09 minutes 29 seconds West for a distance of 909.81 feet; thence 807.75 feet northerly on a tangential curve concave to the east, having a radius of 400.00 feet and a central angle of 115 degrees 42 minutes 07 seconds; thence North 63 degrees 32 minutes 38 seconds East for a distance of 366.98 feet; thence 326.75 feet northeasterly on a tangential curve concave to the northwest, having a radius of 300.00 feet and a central angle of 62 degrees 24 minutes 20 seconds; thence North 01 degree 08 minutes 18 seconds East for a distance of 330.38 feet; thence 673.04 feet northerly on a tangential curve concave to the east, having a radius of 900.00 feet and a central angle of 42 degrees 50 minutes 50 seconds; thence North 43 degrees 59 minutes 08 seconds East for a distance of 254.42 feet to the east line of the Northwest Quarter of said Section 36 and said centerline there terminates, said point of termination lies South 02 degrees 33 minutes 03 seconds East a distance of 805.46 feet from an iron monument which designates the northeast corner of said Northwest Quarter. The sidelines of said strip are to be lengthened or shortened to terminate on the East line of said Southwest Quarter and on the east line of said Northwest Quarter.

The above-described excepted tract contains 15.48 acres, more or less, and is subject to all easements, reservations, restrictions, and rights-of-way of record, if any.

The property described above is the "Benefitted Property."

3. **Easement Rights.** Under this Easement, the District grants to REBTT access upon, over, across, and through the Easement Property for purposes of ingress and egress to and from the Benefitted Property, for agricultural and recreational purposes only. In addition, REBTT's ingress and egress rights under this Easement include access rights for purposes of operation, inspection, maintenance, alteration, repair, replacement, reconstruction, improvement, and removal of the Access Road and the Crossing, as defined below:

- A. **West Access Easement Property.** The parties agree and understand REBTT's easement rights regarding the West Access Easement Property are on the top of the channel berm. The District has no obligation to construct any improved road or other improvements on the West Access Easement Property, and REBTT will not construct any road or other improvements on the West Access Easement Property without first receiving written approval from the District.

- B. East Access Easement Property Improvements.** The District will install and construct a dirt access road on the East Access Easement Property (the "Access Road") at the District's sole expense. Following initial construction of the Access Road by the District, REBTT will be solely responsible for all future operation, inspection, maintenance, alteration, repair, replacement, reconstruction, improvement, and removal of the Access Road, at REBTT's sole cost and risk.
- C. Channel Crossing Easement Property Improvements.** The District will install and construct a concrete low water crossing on the Channel Crossing Easement Property (the "Crossing") at the District's sole expense. Following initial construction of the Crossing by the District, REBTT will be solely responsible for all future operation, inspection, maintenance, alteration, repair, replacement, reconstruction, improvement, and removal of the Crossing, at REBTT's sole cost and risk.

REBTT may not use the Easement Property for any other purpose, and REBTT's uses of the Easement Property will not disturb, injure, or in any manner interfere with the Project, the Channels, the District's other property, or the District's uses of the Easement Property. The District will not be responsible for routine mowing, haying, or other routine maintenance of any portion of the Easement Property.

4. **Third Parties.** REBTT is solely responsible for the operation, inspection, maintenance, alteration, repair, replacement, reconstruction, improvement, and removal of the Access Road and the Crossing, and otherwise complying with this Easement. However, to the extent REBTT allows or permits any third parties to access any of the Easement Property; procures any third parties for any operation, inspection, maintenance, alteration, repair, replacement, reconstruction, improvement, or removal of the Access Road or the Crossing; or otherwise retains any third party to perform any of REBTT's obligations under this Easement, REBTT is solely responsible for the acts and omissions of all of those third parties, including any invitees, licensees, contractors, consultants, subcontractors, subconsultants, and suppliers. REBTT must ensure all contractors, consultants, subcontractors, subconsultants, and suppliers are properly licensed and registered under North Dakota law, and must require all contractors, consultants, subcontractors, subconsultants. REBTT is fully responsible for coordinating the work of any third parties, and REBTT is solely responsible for paying or compensating all third parties. REBTT will secure and provide executed lien waivers from any and all contractors, consultants, subcontractors, subconsultants, and suppliers regarding operation, inspection, maintenance, alteration, repair, replacement, reconstruction, improvement, or removal of the Access Road, the Crossing, or any other fixtures or improvements on the Easement Property, if required by the District.

subcontractors, subconsultants, suppliers, licensees, and invitees, including any failure to perform under this Easement.

8. **Remedies.** If REBTT fails to perform any of REBTT's obligations under this Easement within a reasonable time following request or demand from the District, the District may perform REBTT's obligations and may request reimbursement from REBTT. REBTT will provide full reimbursement to the District of all costs and expenses within a reasonable amount of time following written notice from the District of costs incurred, not exceeding 60 days; if REBTT fails to reimburse the District within 60 days, interest will accrue in the amount of 1.5% per month on all outstanding principal until paid in full, and the District may recover its costs incurred, and interest, by assessing the costs against any property owned by REBTT in North Dakota, including any attorneys' fees incurred in attempting to collect the amounts due, or by other legal means of collection. The District's remedies provided in this Easement are cumulative and not exclusive and are in addition to any and all other remedies available to the District under North Dakota law. REBTT will reimburse the District for all of the District's costs and expenses, including reasonable attorneys' fees, incurred in enforcing, collecting, or attempting to collect under this Easement, or incurred in litigating the terms or validity of this Easement.

9. **Compliance with Laws.** REBTT, at REBTT's sole expense, is solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations, and obtaining all necessary licenses, permits, registrations, and/or approvals, from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, regarding REBTT's access over and across the Easement Property, including any requisite approvals regarding REBTT's access to, from, or upon any city, township, or county road as a result of this Easement.

10. **Liability.** REBTT explicitly accepts any and all risk regarding any entry upon or use of the Easement Property by REBTT or any of REBTT's or any of REBTT's agents, representatives, tenants, contractors, consultants, subcontractors, subconsultants, suppliers, licensees, and invitees. The District will not be liable or responsible for any damages or injuries caused to or by REBTT or any of REBTT's agents, representatives, tenants, contractors, consultants, subcontractors, subconsultants, suppliers, licensees, or invitees resulting from, or in any way arising out of, any of those parties' entry upon or use of the Easement Property or in any way regarding the Access Road or the Crossing.

11. **Forbearance.** The failure or delay of the District to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

12. **Governing Law.** This Easement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Easement will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

13. **Interpretation.** This Easement will be construed as if prepared by both parties.

14. **Severability.** If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Easement is invalid, illegal, or unenforceable.

15. **Easement Runs With the Easement Property.** This Easement, and all covenants, terms, conditions, provisions, and undertakings created under this Easement, are perpetual and will run with the Easement Property and the Benefitted Property, and will be binding upon the parties' successors and assigns.

16. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Easement, or in any amendment, will be binding upon the parties' successors, and permitted assigns.

17. **Modifications.** Any modifications or amendments of this Easement must be in writing and signed by the District and REBTT and must be recorded in the Cass County Recorder's Office.

18. **Representation.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Easement, and agree they have not been influenced by any representations or statements made by any other parties.

19. **Headings.** Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages.)

*Maple River Water Resource District  
Lynchburg-Buffalo  
Access Easement - Ruth E. Buchholtz Testamentary Trust*

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IN WITNESS WHEREOF, the parties executed this Easement on the date written above.

MAPLE RIVER WATER  
RESOURCE DISTRICT

By: \_\_\_\_\_  
Rodger Olson, Chair

ATTEST:

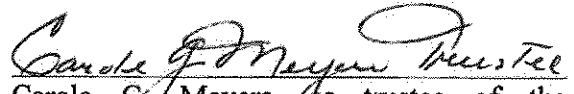
\_\_\_\_\_  
Carol Harbeke Lewis  
Secretary-Treasurer

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF CASS             )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared Rodger Olson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Maple River Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Maple River Water Resource District.

\_\_\_\_\_  
Notary Public, Cass County, ND  
My Commission Expires:

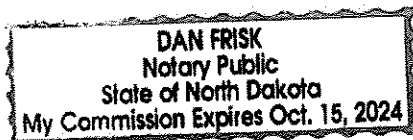
(SEAL)


  
Carole G. Meyers, as trustee of the  
Ruth E. Buchholtz Testamentary Trust  
created the 22nd day of August, 2003

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF CASS             )

On this 14<sup>th</sup> day of June, 2023, before me, personally appeared Carole G. Meyers, known to me to be the Trustee of the Ruth E. Buchholtz Testamentary Trust created the 22nd day of August, 2003, described in and who executed the within instrument and acknowledged to me that she executed the same as Trustee of the Ruth E. Buchholtz Testamentary Trust created the 22nd day of August, 2003.

(SEAL)



  
Notary Public, Cass County, ND  
My Commission Expires: Oct 15, 2024

The legal description contained in this document was prepared by:

Steven W. Holm  
North Dakota License No. LS-6571  
Moore Engineering, Inc.  
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West Fargo, ND 58078