

FOUND IRON MONUMENT  
 3/4" I.D. IRON PIPE SET  
 MEASURED BEARING N88°06'54"E  
 MEASURED DISTANCE 151.04'  
 MEASURED BEARINGS SHOWN ARE BASED ON THE CLAY COUNTY COORDINATE SYSTEM.  
 MEASURED DISTANCES SHOWN ARE GROUND DISTANCES IN TERMS OF U.S. SURVEY FEET.  
 COORDINATES SHOWN ARE BASED ON THE CLAY COUNTY COORDINATE SYSTEM.  
 PROPOSED BRRWD RW  
 PROPOSED PERMANENT EASEMENT  
 PROPOSED CREP EASEMENT



NOTES:  
 1. See Sheet 2 for descriptions of Parcels 12 and 13.

DATE	12/16/13
DRAWN BY	JAS
CHECKED BY	JAS
SCALE	AS SHOWN
DATE	12/16/13
DRAWN BY	JAS
CHECKED BY	JAS
SCALE	AS SHOWN
Houston Engineering Inc.	
Fargo	
P: 701.237.5065	
F: 701.237.5101	
WOLVERTON CREEK BUFFALO-RED RIVER WATERSHED DISTRICT BARNESVILLE, MINNESOTA	
CERTIFICATE OF SURVEY	
PROJECT NO. 1915-189	
SHEET 1 of 2	

I hereby certify that this survey, plan, or report was prepared by me or under my supervision, and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

James A. Johnson  
 License No. 44887  
 Date: 12/16/13

SW 1/4 OF THE NW 1/4

BRIDGE SPIKE  
 DOC. NO. 738843  
 N 110736.832  
 E 493343.989



CLAY COUNTY, MINNESOTA  
RECORDED ON:  
01/31/2020 AT 03:42PM  
AS DOCUMENT # 797905  
KIMBERLY S. SAVAGEAU  
COUNTY RECORDER  
RECORDING FEE: \$46.00

ELECTRONICALLY RECORDED

(Top 3 inches reserved for recording data)

PT 15.027.2001  
PT 15.027.2000

Easement Number 79-01

PERMANENT CONSERVATION EASEMENT  
AGREEMENT  
BUFFALO-RED RIVER WATERSHED DISTRICT  
WOLVERTON CREEK RESTORATION AND SEDIMENT REDUCTION PROJECT

THIS AGREEMENT, effective the 9<sup>th</sup> day of December, 2019, between the Buffalo-Red River Watershed District (BRRWD) and, Scott Shellito (a single individual) (Landowner) who together agree as follows:

1. **Recitals.** The parties make the following declarations:
  - a. That BRRWD has made preliminary plans and surveys for the restoration of the Wolverton Creek (also known as Comstock Coulee) in Holy Cross Township, Clay County, Minnesota and Wolverton, Roberts, and Mitchell Townships, Wilkin County, Minnesota;
  - b. That the BRRWD has entered into a Memorandum of Understanding (MOU) with the Minnesota Board of Water and Soil Resources (BWSR) to establish a framework supporting their cooperation for planning, implementing, and managing the Project.
  - c. That Landowner agrees that the proposed project's benefit to Landowner's property outweighs any potential risk to Landowner and Landowner's adjacent property due to the actual construction of the project. Landowner is a willing participant and is aware of the fact that the BRRWD intends to acquire an interest in said property. That there is no conflict of interest issues between Landowner and BRRWD. Landowner agrees to fill out Landowner's Disclosure Form; and
  - d. That Landowner desires to grant the BRRWD a permanent conservation easement on the Property as shown on the attached Exhibits.
  
2. **Definitions.** For the purposes of the Agreement:
  - a. "Agreement" shall mean this Permanent Conservation Easement.
  - b. "Landowner" shall mean Scott Shellito, whose mailing address is PO Box 35, Comstock, MN 56525.

That Landowner includes all the fee owners of the real property shown on the attached Easement Exhibit. The term "Landowner" includes all the Landowners if there is more than one. The Landowner is jointly and severally responsible for complying with the terms of this agreement. This easement and the duties and restrictions contained in it shall also run with the land.

- c. "BRRWD" shall mean Buffalo-Red River Watershed District, a political subdivision of the State of Minnesota, operating under Chapter 103D of Minnesota Statutes, whose mailing address is 1303 4<sup>th</sup> Avenue NE, PO Box 341, Barnesville, MN 56514, and its successors and assigns.
- d. "Property" shall mean the real estate owned by Landowner, more specifically shown on the Easement Exhibit attached to this Agreement.
- e. "Easement Area" shall mean a portion of the Property upon which the Permanent Conservation easement shall be granted for the buffering, construction, and maintenance of Pj. 79, Wolverton Creek Restoration and Sediment Reduction Project.
- f. "Operator" of the land shall be considered the individual farming the property.
- g. "Lender" shall mean \_\_\_\_\_, whose mailing address is \_\_\_\_\_, and which is the holder of a mortgage, dated \_\_\_\_\_, and recorded on \_\_\_\_\_, as Document Number \_\_\_\_\_ in the County Recorder's Office.

3. **Consideration.** In consideration of the sum of \$ Eight hundred fifty-five and 09/100 (see Exhibit No. 2) paid by the BRRWD to Landowner and other good and valuable consideration, the receipt of which is hereby acknowledged, Landowner and Lender hereby grant, bargain, sell, transfer, and convey unto the BRRWD, its successors and assigns, a permanent easement and rights with respect to the lands of the Landowner shown on the attached Exhibits and referenced as provided in this Agreement:

4. **Easement Descriptions.**

- a. **Permanent Conservation Easements.** For the purpose of managing and maintaining the project, a permanent conservation easement over the area of the various project features, including the restored stream channel, erosion control features (side inlet, grade control), and habitat management areas will be acquired. Some of this land will be acquired by using the Conservation Reserve Enhancement Program (CREP) and some will be acquired through a Buffalo-Red River Watershed District conservation easement. The permanent conservation easement corridor that cannot be acquired using the CREP program will be acquired through the BRRWD conservation easement. The Landowner for this easement intends to apply for CREP for those acres for which can be enrolled. The BRRWD will be responsible for maintaining and managing the permanent CREP and BRRWD easements in perpetuity. The Landowner agrees to assign payment of any management funds from the CREP contract to the BRRWD if contract management is required. The

Landowner consents to the BRRWD rights of access to all of the project conservation easements (both acquired through CREP and through a BRRWD conservation easement) for project management and maintenance. Payment for the BRRWD permanent conservation easement portion of the permanent conservation easement corridor is based on RIM Rates published at the time of the drafting of this agreement. Payment for the permanent easement will be based on sum of payments for crop and non-crop acres calculated as shown on the attached Exhibit 2.

- b. **Additional Grants.** Landowner and Lender hereby grant and convey to BRRWD the right of ingress and egress to the Property and Easement Area, during all periods of construction and installation and maintenance of the Project. Landowner and Lender hereby grant and convey to BRRWD the right to clean and keep cleared all structures, trees, shrubbery, or other object or obstruction in the Permanent Easement Area that in the BRRWD's opinion interferes with said Easement. Provided however, that the BRRWD shall be liable to the Landowner for any damages in any other areas not referenced in this Agreement.
5. **No Further Compensation: Limitation of Liability.** The payment to Landowner, as provided in Paragraph 3, is intended as compensation in full for the permanent conservation easement granted under this Agreement, and for Landowner's waiver of any claims against BRRWD, its Managers, employees, engineers, attorneys, and agents, by Landowner that may arise as a result of the construction and operation of the Project. The liability of BRRWD, its Managers, employees, engineers, attorneys, and agents, to Landowner shall be limited to payment of the compensation specified in Paragraph 3. Landowner understands and agrees that BRRWD's liability is limited to payment of the amount specified in Paragraph 3, and once that payment has been made, BRRWD and its Managers, employees, engineers, attorneys, and agents shall have no further liability to Landowner.
6. **Additional Terms and Conditions.** The following additional terms and conditions apply to this Agreement:

  - a. **Legal Title.** Landowner covenants that it is the fee simple owner of the Property including the Easement Area, subject to the interest of Lender. Landowner and Lender will warrant and defend title to the Property and Easement Area against all claims. Landowner and Lender covenant that each has the right to convey the easements and rights in the manner and form provided in this Agreement.
  - b. **No Alternations.** Landowner hereby covenants that no excavation, structure, or obstruction will be constructed or permitted on the permanent Easement Area and that no change will be made by grading or change in elevation or otherwise that would adversely affect the BRRWD's use and enjoyment of the permanent Easement Area, except as noted in Paragraph 4.
  - c. **Improvements.** All facilities and improvements placed by BRRWD or its permittees on the Easement Area shall remain the property of BRRWD or its permittees, removable at the option of BRRWD.

- d. **Restoration.** The BRRWD shall establish and maintain vegetative cover and structural practices in accordance with the Conservation Plan on file at the local Soil and Water Conservation District or the BRRWD. Landowner shall not produce agricultural crops on the easement area, except as provided in the Conservation Plan approved by the BRRWD for wildlife management purposes. Landowner shall not remove or harvest any vegetation or trees on the easement area, except as provided in the approved Conservation Plan. Landowner shall not graze livestock on the easement area unless specifically approved by the BRRWD as part of a prescribed grazing plan.
  - e. **Conservation Reserve Program (CRP) Easements.** Landowner agrees to work with Farm Service Agency to request a permissive use for the project on CRP lands.
  - f. **Direct Assignment of Future Payments.** Landowner agrees to work with Farm Service Agency and BWSR to facilitate direct payment of future CRP mid-contract or similar CREP management payments to the BRRWD. BRRWD shall be responsible for future management during the duration of the CRP contract.
  - g. **Inconsistent Grants.** Landowner shall not hereafter grant to any other party any rights or interests in and to the Easement Area for a use inconsistent, nor shall Landowner do anything that would materially interfere with the easement rights herein granted.
  - h. **Real Estate Taxes and Special Assessments.** Landowner shall continue to pay all real estate taxes and special assessments on the Property when due.
  - i. **Violation.** In the event the Landowner changes the topography of the permanent Easement Area without the consent of BRRWD or otherwise violates the terms of this Agreement, Landowner shall be liable to BRRWD for any costs, including attorney's fees and engineering fees, incurred by BRRWD in obtaining the restoration of the Permanent Easement Area to its previous condition.
7. **Subordination of Lender Interest.** Lender hereby consents and agrees that its lien and interest in the Property shall be subordinated to this Agreement and the easements granted to BRRWD in this Agreement. Lender agrees to execute such future documents as may be required to evidence such subordination, as may be reasonably requested by BRRWD, its successors or assigns.
8. **Administration and Construction.** This Agreement shall be administered and construed in accordance with the following provisions:
- a. **Notices.** Any and all notices, or any other communication provided for in this Agreement shall be given in writing and shall be deemed to have been duly given or served if delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, and addressed to a party to this Agreement at the address set forth in this Agreement.

- b. **Successors and Assigns.** The rights and obligations herein provided, including the construction and permanent easement, shall run with the land and bind the parties, their heirs, representatives and assigns.
  - c. **Whole Agreement.** This Agreement constitutes the complete and entire understanding of the parties concerning the easements pertaining to the Wolverton Creek Restoration and Sediment Reduction Project and supersedes all representations or statements, verbal or written, among the parties.
  - d. **Modification.** No change or modification of this Agreement shall be valid unless the same be in writing and signed by all of the parties to this Agreement.
  - e. **Drafting of Agreement.** This Agreement shall not be construed or interpreted for or against any party hereto because that party drafted or caused the party's legal representative to draft any of its provisions.
  - f. **Governing Law.** The provisions of this Agreement shall be governed by the laws of the State of Minnesota. Any court proceedings or litigation arising out of or pertaining to this Agreement shall be venued in state district court in Wilkin County, Minnesota.
9. **Like-Kind Exchange.** BRRWD agrees to cooperate with Landowner to structure this transaction to enable Landowner to transfer the Property as a tax-free like-kind exchange under Section 1031 of the Internal Revenue Code of 1986 when applicable. BRRWD agrees to take all reasonable steps requested by Landowner so that Landowner can obtain tax-free like-kind exchange treatment on the transfer of Property. Specifically, Landowner may assign its rights under this Agreement to a qualified intermediary, and BRRWD hereby consents to such assignment.

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(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

SIGNATURE OF LANDOWNER

IN WITNESS THEREOF, the parties have caused this Agreement to be executed effective the day and year set forth above.

Scott Shellito  
Scott Shellito

STATE OF MINNESOTA )  
  )ss  
COUNTY OF Clay )

On this 8<sup>th</sup> day of July, 2019, before me personally appeared Scott Shellito, known to me to be the person(s) who is(are) described in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Kathleen Fenger  
Notary Public



**PERMANENT CONSERVATION EASEMENT  
AGREEMENT  
BUFFALO-RED RIVER WATERSHED DISTRICT  
WOLVERTON CREEK RESTORATION AND SEDIMENT REDUCTION PROJECT**

ACCEPTANCE

The Buffalo-Red River Watershed District accepts the foregoing Easement.

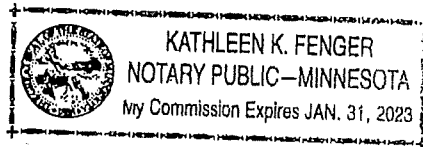
BUFFALO-RED RIVER WATERSHED DISTRICT

By Bruce E. Albright  
Its Administrator

STATE OF MINNESOTA    )  
  )ss  
COUNTY OF CLAY        )

On this 9<sup>th</sup> day of December, 2019, before me personally appeared Bruce E. Albright, known to me to be the Administrator of Buffalo-Red River Watershed District, a political subdivision of the State of Minnesota, which is described in and which executed the within and foregoing instrument, and acknowledged that he executed the same as the free act and deed of Buffalo-Red River Watershed District.

Kathleen Fenger  
Notary Public





**PERMANENT CONSERVATION EASEMENT  
AGREEMENT  
BUFFALO-RED RIVER WATERSHED DISTRICT  
WOLVERTON CREEK RESTORATION AND SEDIMENT REDUCTION PROJECT**

Signature Page for Lender (if applicable)

STATE OF \_\_\_\_\_ )  
  )ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, which is described in and who executed the within and foregoing instrument, and acknowledged that (s)he executed the same as the free act and deed of said corporation.

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

THIS DOCUMENT WAS DRAFTED BY:

Bruce E. Albright, Administrator  
Buffalo-Red River Watershed District  
1303 4<sup>th</sup> Avenue NE  
Barnesville, MN 56514-0341  
Telephone: (218) 354-7710

Project No. 79  
 Buffalo-Red River Watershed District  
 Wolverton Creek Restoration  
 Exhibit No. 2

June 10, 2019

Legal Description:  
 BEG 870.61' E of NW Cor,  
 E 434.63', S 334.45', W 434.63'  
 & N 334.45' to BEG  
 27-137-48

Owner(s) Address:  
 Scott Shellito  
 PO Box 35  
 Comstock, MN 56525

Parcel #	Construction Easement				Permanent Easement				Total				
	CROP	RATE	NON-CROP	RATE	BRRWD CROP	RATE	NON-CROP	RATE		CREP CROP	RATE	NON-CROP	RATE
15-027-2001	0	A	0.339	N.A.	0	B	0.339	C	0	D	0	E	\$855.09

VALUE KEY  
 A=\$250/ac./yr.  
 B=\$4,351.14  
 C=\$2,522.40  
 D=To be determined by SWCD  
 E= To be determined by SWCD

Description - Parcel 13 (Permanent Easement)

That part of the Northwest Quarter of Section 27, Township 137 North, Range 48 West of the Fifth Principal Meridian, Clay County, Minnesota, described as follows:

Commencing at the northwest corner of said Section 27; thence North 89°56'05" East, along the northerly line of said Northwest Quarter, for a distance of 1305.24 feet to the northeast corner of a tract of land described in Document No. 742526, on file at the Clay County Recorder's Office, and the true point of beginning; thence South 00°03'55" East, along the easterly line of said tract of land, for a distance of 334.45 feet to the southeast corner of said tract of land; thence South 89°56'05" West, along the southerly line of said tract of land, for a distance of 258.96 feet; thence South 04°51'15" West for a distance of 138.45 feet; thence South 12°34'02" East for a distance of 409.03 feet; thence South 17°42'53" East for a distance of 506.80 feet; thence South 09°08'01" East for a distance of 391.35 feet; thence South 00°29'34" East for a distance of 471.52 feet; thence South 06°27'13" East for a distance of 434.73 feet to a point of intersection with the southerly line of said Northwest Quarter; thence North 89°47'08" East, along the southerly line of said Northwest Quarter, for a distance of 310.09 feet; thence North 02°43'28" West for a distance of 701.68 feet; thence North 09°28'47" West for a distance of 1298.96 feet; thence North 14°56'31" East for a distance of 684.82 feet to a point of intersection with the northerly line of said Northwest Quarter; thence South 89°56'05" West, along the northerly line of said Northwest Quarter, for a distance of 327.33 feet to the true point of beginning.

Said tract contains 20.347 acres, more or less.

nc.	Fargo	Drawn by DSB	Date 12-16-19	WOLVERTON CREEK BUFFALO-RED RIVER WATERSHED DISTRICT BARNESVILLE, MINNESOTA	CERTIFICATE OF SURVEY  PROJECT NO. 1915-189	SHEET  2 of 2
	P: 701.237.5065 F: 701.237.5101	Checked by JAS	Scale AS SHOWN			