

**Resolution No. 23-16**

**RESOLUTION BY EMMET COUNTY SUPERVISORS IN THEIR CAPACITY AS TRUSTEES  
OF INDIVIDUAL DRAINAGE DISTRICTS  
ON THE CONSTRUCTION OF A  
HAZARDOUS LIQUID PIPELINE, PIPELINE, UNDERGROUND SERVICE LINE, OR  
OTHER SIMILAR  
INSTALLATION ON, OVER, ACROSS, OR BENEATH DRAINAGE DISTRICTS OR  
DRAINAGE DISTRICT INFRASTRUCTURE IN THE COUNTY**

**WHEREAS**, the Board of Supervisors, acting as Trustees of individual drainage districts, (hereinafter Board) is responsible for the maintenance and management of the drainage districts, levee districts, multi-county drainage districts, and multi-county levee districts established under Iowa Code chapter 468 and located within Emmet County; and

**WHEREAS**, Iowa Code section 468.2 provides: "That drainage of surface waters from agricultural lands and all other lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience and welfare;" and

**WHEREAS**, drainage and levee districts are funded by the significant investment of benefitted landowners to drain and protect the ground to increase yields; and

**WHEREAS**, it is the duty of the Board to protect the investments made by landowners in drainage districts, levee districts, and lands that would benefit from being drained; and

**WHEREAS**, Iowa Code section 468.186 specifically addresses a proposed pipeline, electric transmission line, communication line, underground service line, or other similar installations on, over, across, or beneath the right-of-way of any drainage or levee district; and

**WHEREAS**, Iowa Code section 468.186 mandates that an applicant, before beginning construction, obtain from the governing body of the drainage or levee district an easement to cross the district's right-of-way; and

**WHEREAS**, Iowa Code section 468.186 provides that the governing body of the drainage or levee district may, as a condition of granting such easement, attach thereto such additional conditions as the district's governing body deems necessary; and

**WHEREAS**, it is in the best interest of the public health, convenience and welfare for the Board to establish these additional conditions necessary for the Board to grant easements across drainage district, levee district, multi-county drainage district, and multi-county levee district right of way and to determine the applicability of such conditions to other lands contained within a drainage or levee district; and

**WHEREAS**, the Board has obtained input from the public, its counsel, and drainage engineers in order to make an informed determination of what conditions are necessary.

**NOW THEREFORE BE IT RESOLVED BY THE SUPERVISORS OF EMMET COUNTY IN THEIR CAPACITY AS TRUSTEES OF INDIVIDUAL DRAINAGE DISTRICTS:**

That in addition to the requirements in Iowa Code chapter 468, the Board deems it necessary to include other appropriate conditions in any easement for crossing drainage district rights-of-way. Therefore, the Board instructs the Drainage District attorney to include the following conditions, pursuant to Iowa Code section 468.186, in any easement entered into or proposed for Board approval which provides easement rights for The Construction of a Hazardous Liquid Pipeline, Pipeline, or other similar installation on, over, across, or beneath Drainage District Infrastructure in the County and which involve drainage district, levee district, multi-county drainage district, or multi-county levee district right-of-way.

**REQUIREMENTS FOR THE CONSTRUCTION OF A HAZARDOUS LIQUID PIPELINE,  
PIPELINE, UNDERGROUND SERVICE LINE, OR OTHER SIMILAR INSTALLATION ON,  
OVER, ACROSS, OR BENEATH DRAINAGE DISTRICTS OR DRAINAGE DISTRICT  
INFRASTRUCTURE IN THE COUNTY**

The Applicant shall file an Application for an Easement for The Construction of a Hazardous Liquid Pipeline, Pipeline, or other similar installation on, over, across, or beneath Drainage District Infrastructure in the County with each applicable district, listing each crossing or crossings associated with a single project of Drainage District Infrastructure and, upon agreement to such an Easement shall pay the crossing fee for each crossing. Then shall be governed by these Requirements in the Easement and shall comply with all conditions contained therein.

**1) Definitions**

- a) Applicant – the entity requesting an Easement for The Construction of a Hazardous Liquid Pipeline, Pipeline, or other similar installation on, over, across, or beneath Drainage District Infrastructure in the County. The Applicant filing the Application must be the owner of the Project. Applicant includes any and all assignees and successors in interest.
- b) Applicant Parties - Applicant and its contractors, and subcontractors, suppliers or designees and each of their representatives and permitted assigns.
- c) Application – An Application for an Easement for The Construction of a Hazardous Liquid Pipeline, Pipeline, or other similar installation on, over, across, or beneath Drainage District Infrastructure in the County, which is the manner of requesting an Easement from the Board.
- d) Board - The Board of Supervisors of Emmet County, Iowa, acting as trustees of individual drainage districts, levee districts, multi-county drainage districts, and multi-county levee districts, and as elected officials to protect the investment of Emmet County land owners.
- e) County – Emmet County, Iowa
- f) Crossing Fee - This fee shall only be deemed to reimburse a Drainage District for the easement granted at a crossing, publication costs, inspection costs, auditor’s cost, necessary copying, and legal services related to the crossing. Said fee shall be paid in conjunction with the issuance of the easement and/or consent to cross the Drainage District Infrastructure. In addition to the Crossing Fee, Applicant shall reimburse the Drainage District for any additional expenses, damages, and

costs incurred by the Drainage District including but not limited to: publication costs, engineering costs, inspection costs, auditor's cost, necessary copying, and legal services related to the crossing.

- g) Drainage District – any drainage district, levee district, multi-county drainage district, and multi-county levee district created under Iowa Code chapter 468 that are identified in the Application.
- h) Drainage District Infrastructure - Improvements and infrastructure owned, controlled, or associated with drainage districts, levee districts, multi-county drainage districts, and multi-county levee districts including but not limited to underground tiles, open ditches, pumping stations, levees, and related facilities.
- i) Drainage Engineer – A licensed engineer designated by the Board. The Drainage Engineer may name a designee. The Board will appoint a licensed Engineer as the Board's designated Drainage Engineer for all matters contained herein. The designated Drainage Engineer may be changed at any time by the Board. The Applicant will be notified of any such change. The Engineer may be reached by contacting the County Auditor to get the contact information. The appointed Engineer is the contact where the term Drainage Engineer is used in this document the term also includes a designee or representative of the Drainage Engineer.
- j) Easement – That agreement between the Board and the Applicant granting rights to construct a single Hazardous Liquid Pipeline, Pipeline, or other similar installation on, over, across, or beneath Drainage District Infrastructure in the County specified drainage districts and which incorporates the terms herein.
- k) Emergency – An unplanned situation that presents a danger to life, safety or welfare of persons or the environment in or near the Easement area and which requires immediate attention for protection or remediation of such persons or environment.
- l) Hazardous Liquid – The same meaning as defined in Iowa Code § 479B.2 and, unless otherwise defined there, means crude oil, refined petroleum products, liquified petroleum gases, anhydrous ammonia, liquid fertilizers, liquified carbon dioxide, alcohols, and coal slurries.
- m) Hazardous Liquid Pipeline – A Pipeline intended to transport Hazardous Liquids, and also includes Class 3, Class 6, Class 8, or Class 9 hazardous materials, as defined by 49 C.F.R. § 173.120, et seq., with any portion proposed to be located within the County.
- n) Parties – The Board, Drainage District, landowners and Applicant.
- o) Pipeline –the same meaning as defined in Iowa Code § 479B.2 and, unless otherwise defined there, means an interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids.
- p) Pipeline Company – the same meaning as defined in Iowa Code § 479B.2 and, unless otherwise defined there, means any Person engaged in or organized for the purpose of owning, operating, or controlling Pipelines for the transportation or transmission of any Hazardous Liquid or underground storage facilities for the underground storage of any Hazardous Liquid.

- q) Pipeline Facility – Any structure incidental or related to the Hazardous Liquid Pipeline and any space, resource, or equipment necessary for the transport, conveyance, or pumping of a Hazardous Liquid through a Hazardous Liquid Pipeline located in the County, including all related substations.
- r) Project – The development, construction and operation of a Hazardous Liquid Pipeline, Pipeline, or Pipeline Facility.
- s) Project Construction Area – The area of project construction including the right of way granted the Applicant and work limits identified in the Easement.
- t) Requirements – Requirements for the construction of a Hazardous Liquid Pipeline, Pipeline, or Pipeline Facility on, over, across, or beneath Drainage District Infrastructure in the County.

## **2) General Obligations of Applicant**

- a) Within thirty 30 days from the Applicant filing an Application, the Board will provide the Applicant with access to all maps and other files related to the Drainage Districts. The Applicant acknowledges that the County's maps of the Drainage Districts may not be accurate or complete, and the Board shall bear no responsibility for their accuracy; nor shall Applicant raise any such inaccuracy or incompleteness as a basis not to comply with the repair/restoration provisions herein.
- b) The Applicant shall then, no later than ninety (90) days prior to the start of the construction on the Project, furnish the Board with plats showing the location, including GPS coordinates, profiles and elevations of the proposed construction and all proposed crossings of the Drainage District Infrastructure. If in view of such plats it is determined by the Board that such locations are in conflict with present or proposed Drainage District Infrastructure or the affirmative duty of the district to drain the land, and, for a justifiable and legitimate engineering reason, that a more desirable location is possible and the shift would not be in conflict with any state or federal requirements or siting restrictions, requirements or approvals, and/or the landowner(s) does not object to the relocation, the Applicant shall review such possible alignment changes with the Drainage Engineer. The Applicant and the Drainage Engineer shall work together in good faith to agree upon any alignment changes to be made pursuant to this Paragraph, taking into account the costs, benefits, feasibility, governing engineering principles, and the need to accommodate any present or proposed Drainage District Infrastructure and the affirmative duty of the District to drain the land. In the event the Applicant and the Drainage Engineer cannot agree upon the alignment changes to be made pursuant to this Paragraph, the Applicant and the Drainage Engineer shall mutually agree upon an independent, third party who is a licensed engineer in Iowa with experience in drainage to determine what alignment changes should be made pursuant to this Paragraph, taking into account the costs, benefits, feasibility, governing engineering principles, government approvals, and the need to accommodate any present or proposed Drainage District Infrastructure and the affirmative duty of the District to drain the land. The decision of such independent third-party licensed engineer shall be binding upon the parties. The Applicant shall pay all fees and costs of the independent third-party engineer. Applicant acknowledges that under Iowa law it

cannot interfere with the drainage of the land and will make design changes to accommodate drainage if a more desirable location is not feasible.

- c) The Applicant shall work in coordination with the Drainage Engineer in order to physically locate and expose as needed the Drainage District Infrastructure at the points of proposed crossings, in order to gather survey location and elevation information necessary to comply with the regulations herein. The Drainage Engineer shall be notified at least (72) seventy-two hours in advance of any exploratory excavation. The Drainage Engineer will determine whether soil moisture conditions are suitable for field investigations, including preference for conducting investigations outside the cropping season. Any damage caused during field investigations will be determined by the Drainage Engineer and reimbursed to the landowner/tenant by the Applicant. Applicant will be liable for all cost and expenses of collection incurred by the County, including but not limited to attorney's fees. Any damages to the Drainage District Infrastructure shall be repaired by the Applicant to the satisfaction of the Drainage Engineer
- d) **NO CONSTRUCTION IS TO COMMENCE ON ANY PORTION OF THE PROJECT WITHIN THE DRAINAGE DISTRICT RIGHT OF WAY WITHOUT APPROVAL BY RESOLUTION OF THE BOARD STATING THAT ALL NECESSARY EASEMENTS AND AGREEMENTS ARE IN ORDER FOR THE PROJECT AND THAT PROJECT CONSTRUCTION CAN COMMENCE.**
- e) The Applicant shall give the Board two (2) weeks prior notice of their intention to commence construction on the Project in the County. Said notice shall be made in writing to the Drainage Engineer and the County Auditor. Notice cannot be given until an Easement for the Project has been approved by the Board and passage of a resolution by the Board stating that all necessary easements and agreements are in order for the Project and that Project construction can commence.
- f) Two weeks after notice as provided in according to section 2(d) above and in compliance with these Requirements, the Applicant shall be allowed to construct the Project at the Applicant's own expense and the Applicant shall pay all costs of any reconstruction, relocation, modification, or reinstallation of the Drainage District Infrastructure which may be necessary as a result of construction of the Pipeline Facility for which the easement was granted.
- g) If any portions of the Drainage District or Drainage District Infrastructure in or adjacent to the project construction area are damaged by the Applicant Parties as a result of the Project construction, the Applicant, at their sole expense, shall promptly repair such damage as directed by the Board, provided that such direction is consistent with the terms of the Easement and applicable statutes and regulations. In the event the Applicant and the Drainage Engineer cannot agree as to the cause of and repair for any such damage, the Applicant and the Drainage Engineer shall mutually agree upon an independent, third party who is a licensed engineer in Iowa with experience in drainage to determine the cause of and repair for such damage. The determination of such independent third-party licensed engineer shall be binding upon the parties. The Applicant shall pay all fees and costs of the independent third-party engineer.
- h) Subsequent to construction of the Project, all additional costs of Drainage District Infrastructure construction, maintenance, improvement or reconstruction caused by the presence of the Project

shall be paid by the Applicant. To receive compensation under this paragraph, the Board shall either present an invoice specifying the additional costs caused by the presence Project which is accompanied by a written verification of the additional costs by the Drainage Engineer or reach an agreement with the Applicant on the project design and share of the cost to be paid by the Applicant during the planning of the Drainage District Infrastructure project.

- i) After construction of the Project has been completed in accordance with all conditions under which the easement is granted and provided all repairs were done properly. After a period of 10 years has passed the Drainage District shall maintain its facility at its own expense. The Applicant, or the Applicant's successors in interest, shall maintain the Project at the Applicant's or successor's own expense. If the Drainage District subsequently undertakes any maintenance, improvement, or reconstruction of its facility which requires the modification, relocation, or reconstruction of the Project, the expense of such modification, relocation, or reconstruction shall be borne by Applicant or the Applicant's successors in interest.
- j) The Applicant shall at any time subsequent to the commencement of construction, and at Applicant's sole expense, reconstruct or replace its Pipeline Facility as may be necessary to conform to new grade or alignments resulting from maintenance, improvement or construction operations of the Drainage District. The Applicant agrees to do this within one hundred twenty (120) days of receipt of written request from the Board, or such longer time period as the Board may specify, without cost to the Drainage District. Such reconstruction or realignment of the Project shall be made in accordance with and approved by the Board. If the Applicant fails to comply with the time period specified above or such longer period as the Board may specify, the Applicant agrees that the Board may seek injunctive or other appropriate relief against it, requiring specific performance of such reconstruction or realignment. Applicant agrees that it shall be liable to the Board for any and all expenses of seeking such relief, including reasonable attorneys' fees, in the event the Board is required to seek such relief pursuant to this Paragraph.
- k) Applicant shall be responsible to remedy any damage caused by the Applicant Parties to the Drainage District, Drainage District Infrastructure, and adjacent landowners arising from the operation, maintenance, or repair of the Project.
- l) Subsequent to construction of the Project, except in cases of an Emergency, Applicant shall provide Board with a minimum of forty-eight (48) hours advanced notice of any work to be performed by the Applicant Parties within the right of way of the Drainage District. The Board shall have the right to have a Drainage Engineer present during any such work. If proper notice is given pursuant to this Paragraph, such work shall not be delayed by the failure of a Drainage Engineer to be present during such work. Applicant shall be responsible for all costs incurred by the Board and the Drainage District, including expenses of the Drainage Engineer related to the Applicant's work within the right of way.
- m) As-Built Plans. As-built plans for all Pipeline Facilities shall be furnished to the Board within one hundred eighty (180) days of completion of construction that crosses Drainage District or Drainage District Infrastructure. Said plans shall include a plan, a profile and a location using the civil monument or GPS locations. All plans shall include exact GPS coordinates of all crossings of Drainage District Infrastructure. The Applicant agrees that the Board may seek injunctive or other

appropriate relief against it, requiring specific performance of this Paragraph. Applicant agrees that it shall be liable to the Board for any and all expenses of seeking such relief, including reasonable attorneys' fees, in the event the Board is required to seek such relief pursuant to this Paragraph.

- n) At all times, the Applicant shall allow the Board, its designee, and its contractors unrestricted access to the Drainage District Infrastructure for any and all needs of the Drainage District as identified by the Board or Drainage Engineer. The Board agrees that it will comply with One Call notification programs, including Iowa Code chapter 480 before performing any work on the Drainage District Infrastructure that may reasonably come into contact with, or otherwise impact the Project. Applicant may send a watchman at their own expense to observe the work. Work shall not be delayed if a properly notified watchman is not present.
- o) If the Applicant fails on its own to properly repair any portion of the Drainage District, Drainage District Infrastructure that is damaged as a result of the Project as required hereunder, the Board may demand in writing that the Applicant repair same within thirty (30) days, or such longer period as the Board and Applicant may agree. If the Applicant fails to make such repairs within the 30-day period, or such longer period as the Board and Applicant may agree to, the Board may make such repairs and invoice the Applicant for the reasonable cost of such repairs. If the Board causes such work to be done, Applicant shall pay for the cost of the repairs and damages caused within thirty (30) days of receipt of the invoice. If Applicant fails to pay within thirty (30) days, the Applicant shall be liable for all costs of the repairs which shall be collected by the County on behalf of the district in any court having jurisdiction. The Applicant shall be liable to County for reasonable attorney's fees incurred by the County in pursuing payment.

### **3) Construction and Repair Standards**

- a) Examination. The Board shall appoint a Drainage Engineer to inspect and approve all construction and repair activities by the Applicant that impact the Drainage District or Drainage District Infrastructure. The Applicant Parties shall keep the Drainage Engineer informed of the work schedule on Drainage District right of way and any changes to such schedule. A Drainage Engineer shall be present on the site at all times at each phase and separate activity including the opening of the trench, the restoration of underground improvements, and backfilling. If, however, proper notice is provided to the Drainage Engineer, the work performed by the Applicant Parties shall not be halted or delayed by the failure of the Drainage Engineer or its representative to be present on the site. All reasonable compensation, wages, mileage, and other legitimate expenses for said Drainage Engineer involving work in the Drainage District shall be paid by the Applicant within 30 days of each billing. Said Drainage Engineer will be responsible for inspecting all crossings of Drainage District Infrastructure and shall have the authority to require the Applicant Parties to excavate and expose the crossing of any Drainage District Infrastructure where the Drainage Engineer believes it prudent to visually examine same. Further, said Drainage Engineer has the authority to request that the County Inspector present pursuant to applicable statutes and regulations, including Iowa Code Chapter 479B, suspend construction in the event of imminent risk to persons or property resulting from Applicant's or Applicant Parties' activities. The Drainage Engineer shall specify to the Applicant and the County Inspector details relating to the imminent risk that the construction activity poses as well as a timeline for resuming activities. The Drainage

Engineer and the Applicant shall work together in good faith with the County Inspector to determine whether any activity poses imminent risk to persons or property and the procedure and timeline for resuming activities.

- b) **Construction Specifications.** All crossings of the Drainage District Infrastructure shall be constructed or repaired by Applicant Parties in accordance with pre-construction plans and specifications agreed to between the Applicant and the Drainage Engineer. The construction and maintenance of Applicant's Pipeline Facility shall be carried on in such a manner as to not interfere with, nor interrupt the function of, any Drainage District Infrastructure. The Applicant shall be liable for any damages, including any crop loss or damage to property, caused as a result of any interference or interruption caused by the actions of Applicant or Applicant Parties.
- c) Applicant shall make all reasonable efforts to protect Drainage District Infrastructure from any soil, silt or debris entering the Drainage District Infrastructure. If the Applicant causes soil, silt or debris to enter the Drainage District Infrastructure, the Applicant agrees that the Board may seek injunctive or other appropriate relief against it. Applicant agrees that it shall be subject to fines as determined by the Board and liable to the Board for any and all expenses of seeking such relief, including reasonable attorneys' fees, in the event the Board is required to seek such relief pursuant to this Paragraph.
- d) **Interruption.** In the event it becomes necessary to temporarily stop the normal flow of water in any Drainage District Infrastructure in order to permit the Applicant's construction, installation, and repair the following shall be done by the Applicant.
- e) If the crossing involves a tile line, the replacement of tile with approved pipe or concrete pipe, in the manner approved by the Drainage Engineer, shall be performed as rapidly as possible. If the approved method of repair is impossible and the volume of water flowing in the tile is sufficient to create the possibility of crop loss or property damage, the Applicant will be permitted to temporarily block the tile line to prevent the flow of this tile water into the Pipeline Facility, or tile line ditch. In the event that this tile line is so temporarily blocked, the Applicant will be expected to provide sufficient pumping equipment to pump the impounded tile water across the construction ditch to the undisturbed tile line. Such temporary blockages of said Drainage District tile lines will be removed as rapidly as possible, and any tile repairs caused by this blockage will be immediately repaired at the Applicant's expense. All tile 8" and above will be bored under and will have minimal annular space to prevent damage to the tile. The applicant shall be charged for any and all crop and property damages.

A land owner will be permitted to have a local drainage contractor do all tile repair on his or her land. The bill for all the repair work done by the local contractor shall be paid by the Applicant within 30 days of each billing. If the landowner chooses not to use a local contractor, the Applicant shall be responsible for all tile repairs according to the requirements set forth in this easement and with approval of the Drainage Engineers, in a timeframe that is approved by the Board.

- f) If the crossing involves the crossing of a Drainage District open ditch it will be bored under and will have minimal annular space to prevent damage to the ditch. Only if a waiver is granted will open cut crossings be allowed in open ditches, streams and rivers. If a waiver is granted and the



open ditch stream or river is carrying sufficient flow of water to make it necessary to place a temporary dam across said open ditch, such temporary dams may be constructed only upon approval from the Drainage Engineer and, if applicable, the permission of any private landowner owning property which must be accessed for the construction of such dam and the private landowner provides permission to place water that results from the dam on their property. The maximum elevation of this impounded water shall be determined by the designated Drainage Engineer and all excess water must be allowed to flow across the construction ditch through either a closed metal culvert pipe or by pumping. All temporary dam structures are to be removed as soon as the crossing is completed. The construction and removal of these dams to be in such manner that the smooth and efficient function of the drainage ditch is not impaired, with all costs and damages borne by Applicant.

- g) **Tile Repair Completion.** The Applicant will make all permanent tile line repairs within thirty (30) days following completion of the Pipeline Facility at the crossing, adjacent to, on, over, across, or beneath any Drainage District Infrastructure, taking into account weather and soil conditions, unless a different schedule is agreed to by the Parties. All tiles will be repaired with materials of the same or better quality as that which was damaged and shall be of a size approved by the Drainage Engineer based on current ISU Extension Service Drainage Standards, and be subject to final approval of the Drainage Engineer. Under no circumstances will rigid pipe be allowed to span uncompact ditches as a permanent repair. The back fill must be compacted to not allow future settling and misalignment of the tile. Any damaged underground Drainage District tile shall be marked by placing a highly visible flag or other approved marker which shall remain in place until permanent repairs have been made, inspected, and approved. Before completing permanent tile repairs, all tile lines shall be examined using video camera on both sides of the trench over the full extent of the working easement to check tile that might have been damaged or misaligned by construction equipment. Applicant shall take photographs of all repairs to Drainage District Infrastructure prior to backfilling or covering the repair. Photographs shall bear the exact GPS location of the repair and be provided to the Drainage District within 30 days of completion of the repair. If the Applicant fails to make such repairs within the 10-day period, or such longer period as the Board and Applicant may agree to the Board may make such repairs and invoice the Applicant for the reasonable cost of such repairs. If the Board causes such work to be done, Applicant shall pay for the cost of the repairs within thirty (30) days of receipt of the invoice. If Applicant fails to pay within thirty (30) days, the Applicant shall be liable for all costs of the repairs which shall be collected by the County on behalf of the district in any court having jurisdiction. The Applicant shall be liable to County for reasonable attorney fees incurred by the County in pursuing payment.
- h) If there is evidence that any portion of a Drainage District or Drainage District Infrastructure including but not limited to drain tiles under roads utilized by construction traffic and drain tiles crossed by construction equipment, has been damaged by Applicant or Applicant Parties, those damaged tiles or other Drainage District Infrastructure shall be repaired by the Applicant at the Applicant's expense at the time it is discovered and extending 10 years after the end of the Project construction in the County in a manner acceptable to the Drainage Engineer. The Drainage Engineer and Applicant shall work together in good faith to determine the cause of any damage covered by this Paragraph. In the event the Applicant and the Drainage Engineer cannot agree as to the cause of any such damage, the Applicant and the Drainage Engineer shall mutually agree

upon an independent, third party who is a licensed engineer in Iowa with experience in drainage to determine the cause of such damage. The determination of such independent third-party licensed engineer shall be binding upon the parties. The Applicant shall pay all fees and costs of the independent third-party engineer. Paved public roadways with adjacent tiles shall have the road and tiles bored under the each. No open cut shall be permitted on a public roadway with tiles, unless otherwise agreed to by the County Engineer or the Iowa Department of Transportation. Nothing in this Paragraph shall be construed to require the Applicant to take any action inconsistent with Department of Transportation (“DOT”) rules and regulations. Applicant and Applicant Parties shall temporarily install sufficient cover or other measures for load distribution to avoid damage to the Drainage District Infrastructure.

- i) **Compaction, Rutting and Soil Restoration.** The Applicant shall also be responsible at Applicant’s expense to restore all land within the Drainage District right of ways and adjacent lands to its pre-construction condition as near as is practicable. Restorations shall not be inconsistent with applicable statutes or regulations. The Drainage Engineer and the Applicant shall work together in good faith to make an onsite inspection of the completed restoration and determine compliance with same. In the event that Applicant and the Drainage Engineer cannot agree as to compliance as set forth herein, the Applicant and the Drainage Engineer shall mutually agree upon an independent, third party who is a licensed engineer in Iowa with experience in drainage to determine compliance as set forth herein. The determination of such independent third-party licensed engineer shall be binding upon the parties. The Applicant shall pay all fees and costs of the independent third-party engineer.
- j) **Crossing Specifications.** All crossings of Drainage District Infrastructure shall be constructed by Applicant in accordance with the following specifications:

#### **4) CROSSING OF OPEN DITCHES**

- a) **Passage of the Applicant's Pipeline Facility in a horizontal plane five (5) feet below design grade of the drainage ditch, or deeper, as may be determined by the Board for a justifiable and legitimate engineering reason in consultation with the Drainage Engineer.**
- b) **The above depth is to extend to a point two (2) times the design base width of the ditch either side of the centerline of the drainage ditch, unless the existing base width is greater than the design base width. If the existing base width is greater than the design width, the depth is to extend to a point two (2) times the existing width either side of the centerline. Where a pit is used for boring under the ditch, the pit has to be (10) ten feet outside the top of the bank of the drainage ditch.**
- c) **The preferred rate of slope for transition from a normal Pipeline Facility laying depth to crossings of drainage ditches shall not be steeper than 3:1. For a justifiable and legitimate engineering or constructability reason, a slope steeper than 3:1 may be approved by the Board in consultations with the Drainage Engineer.**
- d) **If such ditch crossings occur at points of outlets of Drainage District Infrastructure and are within twenty-five (25) feet of said outlets, such outlet facilities must be relocated to a point no less than twenty-five (25) feet from such crossings, in a way that causes no restriction to the outlets. Such**

relocations shall be at the expense of the Applicant and as directed by the Drainage Engineer in his or her sole discretion. When a bore is used to cross the drainage ditch the outlets need not move as long as it has clearance to not harm the outlet. The Engineer will have final say as to movement and clearance.

- e) All crossing of open ditches shall be done by boring. Open cut shall first be approved by the Drainage Engineer after consultation with the Applicant. Following approval from the Drainage Engineer, open cut shall then be approved by the Board. Before approval by the Board, the Applicant shall pay a cash bond of twenty thousand dollars (\$20,000.00) to and retained by the Board for each open cut crossing in addition to the fee for the waiver. The bond shall be returned, without interest, after all damage has been repaired to the satisfaction of the Board. In determining whether boring or open cut is proper, the Board, Drainage Engineer and the Applicant shall work together in good faith, considering the costs, benefits, feasibility, applicable engineering principles, and the interests of the parties. In the event that Applicant, Board and the Drainage Engineer cannot agree, the Applicant and the Drainage Engineer shall mutually agree upon an independent, third party who is a licensed engineer in Iowa with experience in drainage to determine whether boring or open cut is proper, considering the costs, benefits, feasibility, applicable engineering principles, and the interests of the parties. The determination of such independent third-party licensed engineer shall be binding upon the parties. The Applicant shall pay all fees and costs of the independent third-party engineer.

#### **5) CROSSINGS OF DRAINAGE DISTRICT TILE LINES**

- a) All proposed Pipeline Facilities must be placed under the existing Drainage District tile lines, a minimum of three (3) feet below tile. When a bore is required, the Pipeline Facility shall be placed five (5) feet under the flowline of the tile to prevent the need to move the pipe for future improvements.
- b) The minimum separation between the bottom of Drainage District tile lines sized in accordance with current ISU Extension Drainage Standards and installed with the top of existing tile being maintained, shall be three (3) feet, unless determined otherwise, for a justifiable and legitimate engineering reason, by the Board in consultation with the Drainage Engineer.
- c) Drainage District tiles will be crossed by utilizing a bore on tile 8" or more unless a waiver is granted by the Board. Tiles less than 8" may be open cut with the approval of the Engineer. However, for open cut crossings, the Applicant shall replace the Drainage District tile with reinforced concrete pipe of sufficient size determined by the Drainage Engineer in accordance with current ISU Extension Drainage Standards. The concrete pipe strength is at the reasonable discretion of the Drainage Engineer, but the minimum pipe strength is to be 2000D (Iowa Department of Transportation approved) with the standard tongue and groove joints. The Pipe is to have a minimum of three (3) bolt-type connectors at each joint. The installation shall be backfilled and compacted prior to placement of tile with 6 inches of crushed stone approved by the engineer and cradle rock being placed under the tile. Dual Wall HDPE pipe may be substituted for concrete pipe at the reasonable discretion of the Drainage Engineer and installed with 6 inches of crushed stone cradle rock being placed under the tile and backfilled in accordance with the manufacture installation requirements. In the event the Applicant and the Drainage Engineer

cannot agree on the requirements or conditions of this Paragraph, the Applicant and the Drainage Engineer shall mutually agree upon an independent, third party who is a licensed engineer in Iowa with experience in drainage to determine what changes should be made pursuant to this Paragraph, taking into account the costs, benefits, feasibility, governing Engineering principles, government approvals, and the need to accommodate any present or proposed Drainage District Infrastructure and the affirmative duty of the District to drain the land. The decisions of such independent third-party licensed engineer shall be binding upon the Parties. The Applicant shall pay all fees and costs of the independent third-party engineer.

- d) The length of tile to be replaced by any of the above alternates is as follows:
  - (a) Eight (8) inch tile and smaller: Six (6) feet either side of the top of trench excavated for the installation, measured at right angles to the centerline of the crossing location.
  - (b) Ten (10) inch tile or larger: Ten (10) feet either side of the top of trench excavated for the installation, measured at right angles to the centerline of crossing location.
- e) If the Applicant's Pipeline Facility disturbs or requires replacement of any portion of a tile drain less than twenty inches in diameter, and a portion of such drain will remain wholly or partially exposed after the construction project has been completed, the portion which is to remain exposed and not less than three feet of such drain immediately on either side of the portion which is to remain exposed, shall be replaced with steel pipe of not less than sixteen gauge conforming to current industry standards regarding diameter and wall thickness with the Drainage Engineer's approval.

## 6) Waivers

- a) Where the Board or its designee finds that extraordinary hardships, due to unusual topographic or other conditions, beyond the control of the Applicant, may result from strict compliance with the conditions imposed by the Board, the Board or its designee will be permitted to waive certain conditions so that substantial justice may be done and the public interest secured; provided that such waiver will not have the effect of nullifying the intent or purpose of the conditions imposed by the Board, and will not be detrimental to tile infrastructure, the public health, safety or welfare or injurious to other property in the County in which the Pipeline is situated.
- b) The Board or its designee shall hear and decide an Applicant's requests for waivers from the conditions imposed by the Board. The Board or its designee shall base their determination on technical justifications, and shall have the right to attach such conditions to waivers as the Board or its designee deems necessary to further the purposes and objectives of the conditions imposed by the Board. Requests for waivers shall be submitted in writing by the Applicant at the time the pre-construction requirements are filed with the Board or its designee, and shall state fully and clearly all facts relied upon by the Applicant and shall be supplemented with maps, plans or other additional data which may aid the Board or its designee in the analysis of the proposed project.

Applications for the waiver shall be considered with the pipeline permit application, and the Board or its designee will render their decision on the applied-for waiver no later than thirty (30) days after the meeting at which the proposed Pipeline project application and request for waiver was submitted.

Waiver application fee of fifty dollars (\$50) plus administration costs for Trustees and employees to process the applications, billed at an hourly rate per waiver shall be made simultaneously with accompanying application documents to Emmet County Treasurer, payable to Emmet County. Such payment is necessary and reasonable for the County to promote the health, convenience, order, and welfare of the present and future inhabitants of Emmet County including, but not limited to, tile infrastructure, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.

- c) In granting any waivers, modifications, or approvals, the Board or its designee may require such conditions as will, in their judgment, secure substantially the objectives or the standards and requirements so varied, modified, or approved. In granting any waiver, the Board or its designee shall prescribe only conditions that they deem necessary to, or desirable for, the public interest. These conditions may include, without being limited to personal, surety, performance, or maintenance bonds, or other legal instruments.

In making their findings, as required herein, the Board or its designee shall take into account the nature of the existing use of the land in the vicinity of the Pipeline right-of-way or easement area, and any probable effects of the proposed Pipeline on the tile infrastructure, health, safety and welfare of the surrounding residents and environment.

The Board or its designee must ensure the preservation and enjoyment of the property rights of the land owners. The County is responsible for promoting the health, convenience, order, and welfare of the present and future inhabitants of Emmet County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.

- d) The Board or its designee shall have the final authority to grant or deny a waiver under this Section. For each waiver application, the Board or its designee shall report their findings and recommendations. The Board, in conjunction with their regularly scheduled monthly meetings, shall set aside time for a public comment on all proposed waivers under this Section.

## **7) Crop and or damage to land**

Any damage to crops and or land in the easement area during construction and to the timeframe of the Easement shall be regulated by that agreement. Any crop and or land damage outside the easement area or inside the easement area after the timeframe of the Easement caused by drainage issues such as but not limited to, mismanagement of waters moving through any Drainage District Infrastructure, broken, crushed and misaligned tiles caused by any part of the pipeline's installation, maintenance or operation including settling of soils left less than properly compacted.

## **8) Soil moisture**

No equipment is allowed on Drainage District Infrastructure and an Easement when there are adverse soil conditions due to rain events, antecedent moisture, or ponded water, where the passage of construction equipment may cause rutting that mixes topsoil and subsoil, may prevent the effective removal or replacement of topsoil and subsoil, may prevent proper decompaction, or may damage underground tile lines. Any allowance under such conditions shall be at the sole discretion and approval of the Drainage Engineer.

## **9) Board's Representations, Warranties and Covenants**

- a) Notice of Repair, Improvement, Maintenance or New Construction. The Board shall give the Applicant at least ninety (90) days written notice of the proposed repair, improvement, maintenance, or new construction of drainage facilities in a Drainage District that the Board believes may impact any of the Project facilities. The Board shall also give at least twenty-four (24) hours verbal (via telephone) notice of emergency maintenance repairs in the Drainage District that may expose, cover up or disturb any Pipeline Facility belonging to Applicant, so that Applicant may arrange to protect same. Emergency (24 hour) notice shall be given by calling Applicant at at the contact number in the Application. The Board also agrees that it will comply with One Call notification programs before performing any work pursuant to this Paragraph.

**Limitation on Liability.** So long as Applicant receives the notice set forth in Section 4(i) above, the Board and the Drainage District shall have no responsibility for damages to Applicant's property occasioned by any construction or maintenance operation of the Drainage District subsequent completion of the Project, except for damages resulting from the willful misconduct or gross negligence of the Board and/or its representatives or agents.

Applicant shall be responsible for actual property damage caused by constructing and maintaining the Project. These damages are separate and distinct from any payment made to the Drainage District or Board for expenses, crossing fees or Easements. The determination of these damages shall be by the Board exclusively; provided, however, that Applicant maintains its right to seek judicial review of any such damage determination of the Board in accordance with Iowa Code Chapter 468. Damages shall not be duplicative of damages claimed by and paid to landowners. Payment shall be made by the Applicant within thirty (30) days of the Board's determination.

## **10) Notices**

- a) Written Notice. Any notice, demand, or other communication "Notice" related to these Requirements shall be in writing and given personally or by registered or certified mail return receipt requested. A courtesy copy of the Notice may be sent by facsimile transmission or electronic mail.
- b) Notices shall be given to the Parties at their addresses set forth below.

Emmet County Board of Supervisors  
c/o Emmet County Auditor's Office

609 1st avenue North  
Estherville Iowa 51334  
712-362-4261

Applicant Address as provided in Application.

- c) By providing Notice to the other party, any party may at any time designate a different address or person to which such notice or communication shall be given.
- d) Notice by hand delivery shall be effective upon receipt.
- e) Notice to Applicant Parties. Applicant agrees to provide a copy of these Requirements to the Applicant Parties and advise same of their obligation to comply. The Applicant shall be responsible to make certain all of its contractors, subcontractors, agents, employees and representatives comply with all Requirements contained herein.
- f) Applicant acknowledges an affirmative duty to keep notification information current.

#### **11) Indemnity**

With respect to claims made by third parties, Applicant agrees to indemnify, protect, and defend the County, Board and Drainage District from and against any and all demands, liens, claims, or causes of action and any and all liability, costs, expenses, and judgments incurred in connection therewith (including court costs and reasonable attorney's fees), whether arising in equity, at common law, or by State, Federal, local or other statute, rule or regulation, including environmental law, or under the law of torts (including negligence and strict liability) ("claim") relating to the Project and to the extent caused by the Applicant Parties proportionate share of negligence, negligent actions or inactions, provided, however, that Applicant's contractual obligation of indemnification shall not extend to the percentage of the claim attributable to the County or Drainage District's negligence, willful misconduct, or strict liability imposed upon the County or Drainage District as a matter of law.

Any questions as to the applicability shall be interpreted in favor of the County or Drainage District so as to provide protection to the County or Drainage District.

#### **12) Miscellaneous Provisions**

- a) Assignment. The Applicant's interests are transferable. However, assignee is required to comply with all Requirements set forth herein.
- b) Binding Effect. These Requirements contained herein shall be binding upon, and inure to the benefit of, the Applicant, Drainage Districts and their respective heirs, successors (by merger, consolidation or otherwise) and permitted assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Area, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.

- c) Iowa Law. The Application and Requirements are entered into under the laws of the State of Iowa, and Iowa law shall apply to the interpretation hereof. Any legal action to enforce or interpret these Requirements or Application shall be brought exclusively in Iowa District Court in Emmet County, or, if there is a basis for federal question jurisdiction, in the United States District Court for the Third Judicial District of Iowa, and the Parties hereby waive all objections to the jurisdiction and venue of these courts.
- d) Applicant shall comply with all other Emmet County ordinance requirements.
- e) Any incompliance to any laws or rules will stop all construction and or operation of the project until the infraction (infractions) are all brought back into compliance to the approval of the Engineers and the Supervisors.
- f) Severability. If any provisions of the Application and Requirements are determined to be unenforceable, invalid or excessive, the Application and Requirements can thereafter be modified, to implement the intent of the Applicant and Board to the maximum extent allowable under law and the remainder of the Application and Requirements shall remain unaffected and in full force and effect.
- g) Agent for Service of Process. The Applicant shall appoint an agent for service of process in Iowa and register such address with the Secretary of State. If the Applicant designates a different Agent or person who is authorizes to accept service of any process resulting from this Easement, Applicant shall provide written notice setting out the name, address and telephone number of said agent to Board within thirty (30) days of filing Application.
- h) Insurance. Before starting construction and to the extent of Applicant's indemnity obligations hereunder, Certificates of Insurance or self-insurance naming the Drainage District as an additional insured for the Project shall be filed by the Applicant for itself and for the Applicant Parties, with the County Auditor and shall contain a provision that the policies will not be canceled or materially changed until at least ten (10) days prior written notice has been given to the Board. If the Project involves a pipeline as defined under Iowa Code section 479, 479A, or 479B, Applicant shall also certify that the insurance does not contain exclusion for environmental pollution or Applicant shall provide an alternative environmental pollution policy that meets the minimum requirements as defined below.

Insurance shall be written for not less than the following limits (These limits shall be adjusted every 5 years to reflect the changes over that time in the U.S. Bureau of Labor Statistics' CPI-U index):

i) Workers' Compensation	Statutory Limits
ii) Contractor's Liability and Property Damage	
Bodily Injury	\$1,000,000
Each person	\$1,000,000
Each Accident	\$5,000,000



iii) Property Damage		
Each Accident Aggregate		\$5,000,000
iv) Automobile		
Liability and Property Damage		\$1,000,000
Bodily Injury		\$5,000,000
Each Person		\$1,000,000
Each Accident		\$5,000,000
Property Damage		\$1,000,000
Each Accident Aggregate		\$5,000,000
v) Commercial General Liability (CGL) and Umbrella		
Liability Insurance		\$10,000,000

Applicant shall maintain Commercial General Liability (“CGL”) Insurance in a limit of not less than \$10,000,000 for each occurrence. This required minimum limit may be met through a combination of primary and excess liability policies. The CGL Insurance shall cover liability arising from premises operation, independent contractors, personal injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract.

If the Project involves a pipeline as defined under Iowa Code section 479, 479A, or 479B, Applicant shall obtain coverage for liability arising from pollution, explosion, collapse, underground property damage caused by Applicant, its employees, contractors, representatives, and agents to the extent of its indemnity obligations hereunder. Included in the CGL Policy or a separate Policy, Applicant must have insurance for sudden and accidental environmental pollutant liability caused by Applicant, its contractors, representatives, and agents in connection with the project and use of the Easement. Coverage shall be maintained in an amount of at least \$10,000,000 per loss event.

vi) Remedies available to the Board: In the event that Applicant should fail to comply with any provision of the insurance section of this ordinance, then the Board may provide Applicant with a written notice by service of process as allowed by the Iowa Rules of Civil Procedure upon Applicant or by certified mail upon Applicant at Applicant’s last known address. Such notice shall specify the default and shall allow Applicant 30 days to cure the default and/or contest that a default exists. In the event that Applicant fails to cure the default within such time, the Board may seek an injunction from the Iowa District Court against the Applicant concerning the operation of a Project and shall be entitled to enjoin any and all operations until such time as the Applicant shall cure said default.

The Board shall be entitled to collect from Applicant all reasonable attorney’s fees and expenses relating to any injunction as arising under this subsection.

The above remedies are not exclusive. The Board shall be entitled to use or devise any other remedy to the Board at law or in equity.

vii) **Proof of Insurance:** Applicant shall cause certificates of insurance evidencing all of the above insurance policies and coverage to be provided promptly to the County upon request by the Board but no more than one time annually.

All of the above required insurance policies shall reflect that the Board will receive thirty (30) days prior written notice of cancellation in coverage and shall reflect that the insurer has waived any right of subrogation against the Board.

viii) **Term:** These insurance requirements shall remain in effect for the term of the Easement.

- i) **Timely Performance.** Time is important in the performance of each and every obligation to be performed by the Applicant and Board hereto.
- j) Applicant agrees to pay a one-time Crossing Fee. The minimum Crossing Fee is \$7500.00 per crossing but may be increased by the Board on a case-by-case basis after reviewing the application. The Crossing Fee shall only be deemed to reimburse the Drainage District for the Easement granted at a crossing, publication costs, Auditor, Supervisor and clerical costs, Supervisors inspection costs, and legal services related to a crossing. Said fee shall be paid in conjunction with the issuance of the Easement. In addition to the crossing fee, the county will appoint two engineering firms to watch over the construction of the pipeline. One will specialize in drainage and the other in the restoration of the land. All costs of both will be paid by the pipeline owner within 30 days of every billing. This will include but is not limited to engineering time and expenses, the engineers' inspectors, county engineer, office staff, and mileage for the above. The pipeline owner will also reimburse the county for all secondary roads workers and engineering staff that is needed at any time to ensure the safety and protection of all secondary roads and right of ways.
- k) Applicant shall pay to the land owner 150% of the damage caused to the land owner's property within the Drainage District.
- l) Any Easement agreed to by the Board is subject to existing regulations and statutes, and any regulations and statutes which may be amended, promulgated or enacted.
- m) If the Applicant abandons the Project, the Applicant shall comply with applicable state and federal statutes and regulations.
- n) Any requirement of this Easement as to design specifications or time periods may be altered or amended by agreement in writing between the Board, in consultation with the Drainage Engineer and Drainage Attorney, and the Applicant.
- o) The Easement is valid so long as Applicant is in compliance with its terms. If the Applicant is not in compliance with the terms of the Easement, the Applicant agrees that the Board may seek injunctive or other appropriate relief against it. The Applicant shall be liable to the Board for any and all expenses of seeking such relief, including reasonable attorneys' fees, in the event the

Applicant is found by a Court to be in material, uncured breach of a specific requirement of the Easement.

- p) Drainage District Easements precede and will be dominant over easements that cross or intersect it in any way.

Approved this 25 day July 2023.  
EMMET COUNTY BOARD OF SUPERVISORS

Todd Glasnapp  
Todd Glasnapp, Chairperson

ATTEST:  
Amy M. Sathoff  
Amy M. Sathoff, Auditor

AYE:

NAY:

Jeff Gunders  
Name, Supervisor

\_\_\_\_\_  
Name, Supervisor

[Signature]  
Name, Supervisor

\_\_\_\_\_  
Name, Supervisor

Diana Hansen  
Name, Supervisor

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Name, Supervisor

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Name, Supervisor

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Name, Supervisor

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Name, Supervisor

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Name, Supervisor

