

Resolution #2021-12-37

**RESOLUTION BY THE POCAHONTAS COUNTY BOARD OF SUPERVISORS ON
CONSTRUCTION OF A PIPELINE, ELETRIC TRANSMISSION LINE, COMMUNICATION
LINE, UNDERGROUND SERVICE LINE, OR OTHER SIMILAR INSTALLATIONS OVER,
ACROSS, OR BENEATH COUNTY DRAINAGE DISTRICTS AND/OR ANY PRIVATE TILE
SYSTEMS**

WHEREAS, the Board of Supervisors, 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 level districts and tile systems some of which were established under Iowa Code chapter 468 and located within the Pocahontas 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, levee districts and tile lines 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, tile systems, and lands that would benefit from being drained; and

WHEREAS, Iowa Code section 468.186 specifically addresses a proposed line installation on, over, across, or beneath the right-of-way of any drainage, tile system or levee district; and

WHEREAS, Iowa Code section 468.186 mandates that a line 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, multi-county levee district right of way, tile systems 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, engineers, and from an interested company in order to make an informed determination of what conditions are necessary.

NOW THEREFORE BE IT RESOLVED

That in addition to the requirements in Iowa Code chapter 468, Iowa Code chapter 479B, and Iowa Administrative Code chapters 199 1AC 9 and 13, 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 Construction of a Line Over, Across, or Beneath County Drainage Districts and which involve drainage district, levee district, multi-county drainage district, and multi-county levee district right-of-way or any tile located in Pocahontas County.

REQUIREMENTS FOR CONSTRUCTION OF A PIPELINE, ELETRIC TRANSMISSION LINE, COMMUNICATION LINE, UNDERGROUND SERVICE LINE, OR OTHER SIMILAR INSTALLATIONS OVER, ACROSS, OR BENEATH ANY DRAINAGE TILE INFRASTRUCTURES IN POCAHONTAS COUNTY

The Applicant shall file an Application for an Easement for Construction of the Line Over, Across, or Beneath the Tile with the Board, listing each crossing or crossings associated with a tile or open ditch infrastructure and, upon agreement to such an Easement, 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 Construction of a Line Over, Across, or Beneath Tile Lines. 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 Construction of a Line Over, Across, or Beneath Tile Infrastructures, which is the manner of requesting an easement from the Board.
- d) Board - The Board of Supervisors as trustees of individual drainage districts, levee districts, multi-county drainage districts, multi-county levee districts, and as elected officials to protect the investment of Pocahontas County landowners.
- e) Board of Supervisors - The Board of Supervisors of Pocahontas County sitting as the Board of Supervisors and as Drainage District Trustees.
- f) Designee – A person the Board of Supervisors has placed to oversee the project and be their representative.
- g) County - Pocahontas County, Iowa

- h) Crossing Fee - This fee shall only be deemed to reimburse the county for the easement granted at a crossing, publication costs, engineering 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 facilities.
- i) 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.
- j) Line – Construction of a pipeline, electric transmission line, communication line, underground service line, or other similar installations that the Applicant is installing underground.
- k) 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.
- l) County Engineer - A licensed engineer designated by the Board.
- m) Easement - That agreement between the Board and the Applicant granting rights to construct, manage and use a line over, across, or beneath specified tile infrastructures and which incorporates the terms herein.
- n) 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.
- o) Parties -The Board, Drainage District, landowners and Applicant.
- p) Project - The development, construction and operation of a line and associated facilities.
- q) Project Construction Area - The area of project construction including the right ofway granted the Applicant and work limits identified in the Easement.
- u) Requirements - Requirements for Construction of a Line Over, Across, or Beneath Tile Infrastructures.

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 Tile Systems. The Applicant acknowledges that the County's maps of the Tile Systems 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, of the proposed construction and all proposed crossings of the Drainage Tile Infrastructure. If in view of such plats it is determined by the Board that such locations are in conflict with present or proposed Drainage Tile 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 Board. The Applicant and the Board shall work together in good faith to agree upon any alignment changes to be made pursuant to this Paragraph, considering the costs, benefits, feasibility, governing engineering principles, and the need to accommodate any present or proposed Drainage Tile Infrastructure and the affirmative duty of the District to drain the land. In the event the Applicant and the Board cannot agree upon the alignment changes to be made pursuant to this Paragraph, the Applicant and the Board 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 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) NO CONSTRUCTION IS TO COMMENCE ON ANY PORTION OF THE PROJECT WITHIN POCAHONTAS COUNTY WITHOUT APPROVAL OF A RESOLUTION BY THE BOARD OF SUPERVISORS STATING THAT ALL NECESSARY EASEMENTS AND AGREEMENTS ARE IN ORDER FOR THE PROJECT AND THAT PROJECT CONSTRUCTION CAN COMMENCE.
- d) 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 Board 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 of Supervisors stating that all necessary easements and agreements are in order for the Project and that Project construction can commence.
- e) 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 Tile Infrastructure which may be necessary as a result of construction of the installation for which the easement was granted.

- f) The Line shall have a minimum depth of (8) eight feet from the top of the ground to the top of said line and (2) two feet below any existing tile.
- g) The Applicant shall keep the trench material in separate piles between the topsoil and other material. When backfilling the Applicant shall place (fifteen inches) 15 inches of good black topsoil back on the upper part of the trench.
- h) If any portions of the Tile 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 not inconsistent with the requirements of 199 Iowa Administrative Code Chapter 9 or the terms of this easement. In the event the Applicant and the Board cannot agree as to the cause of and repair for any such damage, the Applicant and the Board 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.
- i) Subsequent to construction of the line, all additional costs of Tile Infrastructure construction, maintenance, improvement or reconstruction caused by the presence of Applicant's line 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 of the Applicant's line which is accompanied by a written verification of the additional costs by the 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 project.
- j) After construction of the installation has been completed in accordance with all conditions under which the easement is granted, the landowners shall maintain its facility at its own expense, and Applicant, or the Applicant's successors in interest, shall maintain the installation at the Applicant's or successor's own expense. If the landowner subsequently undertakes any maintenance, improvement, or reconstruction of its facility which requires the modification, relocation, or reconstruction of the installation, the expense of such modification, relocation, or reconstruction shall be borne by Applicant or the Applicant's successors in interest. The Applicant shall agree to have the county hire to have repairs done and shall pay all bills due on submittal, without cost to the landowner, county, or district. If any reconstruction or realignment of the needed improvements 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 any tile systems arising from the installation, operation, maintenance, or repair of the Project.
- l) Subsequent to construction of the line, 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. The Board shall have the right to have a Designee 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 Designee to be present during such work. Applicant shall be responsible for all costs incurred by the Board and the landowner, including expenses of the Designee related to the Applicant's work within Pocahontas County.
- l) As-Built Plans. As-built plans for all installations related to the Project shall be furnished to the Board within one hundred eighty (180) days of completion of construction that crosses any tile 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 any tile 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.
- m) At all times, the Applicant shall allow the Board, its Designee, and its contractors unrestricted access to the Tile Infrastructure for any and all needs of the land owner as identified by the Board. The Board agrees that it will comply with One Call notification programs before performing any work on the Tile System that may reasonably come into contact with or otherwise impact the Applicant's line. 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.
- n) The Applicant shall pay for all bills submitted by the County for the Designee, mileage, legitimate expenses and also the Applicant shall pay for all repairs, crop loss (now and future) and also the Applicant shall pay for all repairs done by the contractor that the Board shall hire. If the Board causes such work to be done, Applicant shall pay for all costs of the repairs upon receipt. If Applicant fails to pay on receipt, the Applicant shall be liable for all costs of the repairs which shall be collected by the County on behalf of the Landowners in any court having jurisdiction. The Applicant shall be liable to the County for any attorney

fees incurred by the County in pursuing payment.

3) Construction and Repair Standards

- a) Examination. The Board shall appoint a Designee to inspect and approve all construction and repair activities by the Applicant that impact the Tile Infrastructure. The Applicant Parties shall keep the designee informed of the work schedule on tile and any changes to such schedule. A designee shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and back filling. If, however, proper notice is provided to the designee, the work performed by the Applicant Parties shall not be halted or delayed by the failure of the designee to be present on the site. All reasonable compensation, wages, mileage, and other legitimate expenses for said designee involving work in the Tile Infrastructure shall be billed to the Applicant and shall be due on receipt. Said designee will be responsible for inspecting all crossings of Tile Infrastructure and shall have the authority to require the Applicant Parties to excavate and expose the crossing of any Tile Infrastructure where the designee believes it prudent to visually examine same. Further, said designee has the authority to request that the Board present pursuant to Iowa Code §479B.20 suspend construction in the event of imminent risk to persons or property resulting from Applicant's or Applicant Parties' activities. The designee shall specify to the Applicant and the Board details relating to the imminent risk that the construction activity poses as well as a timeline for resuming activities. The Board and the Applicant shall work together in good faith with the Designee 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 Tile Infrastructure shall be constructed or repaired by Applicant Parties in accordance with pre- construction plans and specifications agreed to between the Applicant and the Designee which shall not be contrary to the requirements of 199 Iowa Administrative Code chapter 9. The construction and maintenance of Applicant's installation shall be carried on in such a manner as to not interfere with, nor interrupt the function of, any Tile 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) Interruption. In the event it becomes necessary to temporarily stop the normal flow of water in any Tile Infrastructure in order to permit the Applicant's construction, installation, and repair the following shall be done by the Applicant.
- d) If the crossing involves a tile line, the replacement of tile with approved schedule 80 pipe or concrete pipe, in materials and manner approved by the Designee, 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 line, 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 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. The Applicant shall be charged for any and all crop damage.

- e) If the crossing involves the crossing of an open ditch that 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 Engineer and, if applicable, the permission of any landowner owning property which must be accessed for the construction of such dam and the 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 designee 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.
- f) Tile Repair Completion. 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 designee based on current Iowa State University (ISU) Extension Service Drainage Standards, and be subject to final approval of the Board. Applicant shall take photographs of all repairs to Tile 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. The Board shall 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 upon receipt of the invoice. If Applicant fails to pay the Applicant shall be liable for all costs of the repairs which shall be collected by the County on behalf of the Landowner in any court having jurisdiction. The Applicant shall be liable to County for reasonable attorney fees incurred by the County in pursuing payment.
- g) If there is evidence that any portion of Tile 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 Infrastructure shall be repaired by the Applicant at the Applicant's expense at the end of the Project construction in the County in a manner acceptable to the designee. The designee 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 designee cannot agree as to the cause of any such damage, the

Applicant and the designee 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 Iowa Department of Transportation ("IA DOT") rules and regulations. Applicant and Applicant Parties shall temporarily install sufficient cover or other measures for load distribution to avoid damage to the Infrastructure.

- h) Compaction, Rutting and Soil Restoration. The Applicant shall also be responsible at Applicant's expense to restore all land to its pre-construction condition as near as is practicable. Standards to be followed at a minimum are the Land Restoration Standards found in Iowa Code section 479B.20, Iowa Administrative Code 199 IAC 9, and the Applicant's Agricultural Mitigation Plan. The Designee and the Applicant shall work together in good faith to make an onsite inspection of the completed restoration and determine compliance with the Land Restoration Standards found in Iowa section 479B.20, Iowa Administrative Code 199 IAC 9, and Applicant's Agricultural Mitigation Plan. The open trench in the field shall meet a proctor value of 95 percent plus/minus 5 percent and plus or minus 5 percent of optimum moisture, and the top 15 inches of topsoil which shall be left in a normal planting state which shall be 50 per cent of proctor valve, plus/minus 5 percent and plus or minus 5 percent of optimum moisture. In addition, all material in the top 15 inches shall pass the #16 sieve anywhere the Applicant or the Applicant Parties digs, drives, walks, or travels in any matter. The only exception to this rule is the top of the gravel road where the gravel is placed. In the road R.O.W, the open cut in the gravel road (where the gravel is placed and vehicles travels on) shall be 95 percent and plus or minus 5 percent of optimum moisture on all the open trench. The road ditch shall be 95 per cent of proctor value, except for the top 8 inches which shall be left in a smooth state for seeding. All hard surface roads shall be bored and the road ditch be the same has previous stated. This includes not only the open trench but also anywhere the Applicant and his Applicant Parties digs, drives, walks, or travels in any matter. In the event that Applicant and the Designee cannot agree as to compliance as set forth herein, the Applicant and the Designee 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 Applicant or the Pocahontas Board of Supervisors may at any time hire a soils engineer to do proctors and nuclear gauge tests, which shall be paid in its entirety by the Applicant and shall be tested anywhere on the jobsite where the Applicant digs, drives, walks or travels in any matter. 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.

- g) Crossing Specifications. All crossings of Tile Infrastructure shall be constructed by Applicant in accordance with the following specifications:

4) CROSSING OF OPEN DITCHES

- a) All crossing of Drainage District facilities shall require a permit from Pocahontas County Engineer's Office. It will have addition regulations that must be followed.
- b) Passage of the Applicant's installation 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 Designee.
- c) 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 any 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.
- d) The preferred rate of slope for transition from a normal installation 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 Designee.
- e) If such ditch crossings occur at points of outlets of any tile infrastructures or 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. Such relocations shall be at the expense of the Applicant and as directed by the Engineer in his or her sole discretion.
- g) All crossing of open ditches shall be done by boring or open cut as agreed to by the Engineer following consultation with the Applicant. In determining whether boring or open cut is proper, the Designee 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 and the Designee cannot agree, the Applicant and the Designee 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 TILE LINES

- a) All crossing of Drainage District facilities shall require a permit from Pocahontas County Engineer's Office. It will have addition regulations that must be followed.
- b) All crossing of Drainage District tile lines shall be bored at a depth of (5) five feet under the

flowline of existing tile.

- c) All proposed installations must be placed under the existing tile lines, while maintaining a minimum of two (2) feet of separation between the installation and the existing tile lines and a minimum of (eight) 8 feet of cover.
- d) The minimum separation between the bottom of any tile lines sized in accordance with current ISU Extension Drainage Standards and installed with the top of existing tile being maintained, shall be two (2) feet, unless determined otherwise for a justifiable and legitimate engineering reason, by the Board in consultation with the Designee.
- e) Drain tiles may be crossed by either an open cut or by utilizing a bore. However, for open cut crossings, the Applicant shall pay to replace the tile with reinforced concrete pipe of sufficient size determined by the Designee in accordance with current ISU Extension Drainage Standards. The concrete pipe strength is at the reasonable discretion of the Designee 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 pipeline shall be backfilled and compacted prior to placement of tile with 6 inches of 2-inch crushed stone cradle rock being placed under the tile. Dual Wall HDPE pipe may be substituted for concrete pipe at the reasonable discretion of the Designee and installed with 6 inches of 2-inch 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 Board cannot agree on the requirements or conditions of this Paragraph, the Applicant and the Board 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, considering the costs, benefits, feasibility, governing engineering principles, government approvals, and the need to accommodate any present or proposed Tile 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.
- f) The length of tile to be replaced by any of the above alternates shall be as follows:
 - 1) Eight (8) inch tile and smaller: Six (6) feet either side of the top of trench excavated for the installation of line, measured at right angles to the centerline of the crossing location.
 - 2) Ten (10) inch tile or larger: Ten (10) feet either side of the top of trench excavated for the installation of line, measured at right angles to the centerline of crossing location.

6) 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 Tile 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 that may expose, cover upon disturb any installation belonging to Applicant, so that Applicant may arrange to protect same. Emergency (24 hour) notice shall be given by calling Applicant and the County Engineer's Office or at such other number provided from time to time to the Board by the Applicant. This shall also be followed up by an electronic mail to all parties concerned. The Board also agrees that it will comply with OneCall notification programs before performing any work pursuant to this Paragraph.
- b) Limitation on Liability. So long as Applicant receives the notice set forth in Section 4(i) above, the Board and the Landowner shall have no responsibility for damages to Applicant's property occasioned by any construction maintenance operation of the subsequent to Applicant's installation, except for damages resulting from the willful misconduct or gross negligence of the Board and/or its representatives or agents.
- c) 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 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.

7) 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.

Pocahontas County Board of Supervisors
c/o Pocahontas County Auditor's Office
99 Court Square, Suite 7
Pocahontas, IA 50574
Phone: 712-335-3361

And the address of the Applicant

- 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.

8) Indemnity

With respect to claims made by third parties, Applicant agrees to indemnify, protect, and defend the County, Board, Tile Infrastructures, and Landowners 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/or resulting from or arising out of the use of the easement by Applicant, its servants, agents or invitees 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 Landowners' negligence, willful misconduct, or strict liability imposed upon the County or Landowner as a matter of law.

9) 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, landowners 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 Pocahontas County, or, if there is a basis for federal question jurisdiction, in the United States District Court for the Northern District of Iowa, and the Parties hereby waive all objections to the jurisdiction and venue of these courts.

- d) 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.
- e) 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 authorized 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.
- f) Insurance. Before starting construction and to the extent of Applicant's indemnity obligations hereunder, Certificates of Insurance or self-insurance naming the Pocahontas County, the Pocahontas County Board of Supervisors, and the Drainage Districts as an additional insured for the Project shall be filed by the Applicant for itself and for the Applicant Parties, with the County Auditor. 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. This insurance shall be written for not less than the current year of the Iowa Statewide Urban Design and Specifications Section 1070.
- g) Applicant shall maintain Commercial General Liability ("CGL") Insurance in a limit of not less than \$10,000,000 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. Applicant shall obtain coverage for liability arising from pollution, explosion, and collapse, underground property damage caused by Applicant, its employees, contractors, representatives, and agents to the extent of its indemnity obligations hereunder.
- h) Included in the Commercial General Liability Policy or a separate Policy, Grantee 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.
- i) These limits shall be adjusted every 10 years to reflect the changes over that time in the U.S. Bureau of Labor Statistics' CPI-U index.
- j) 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 for Pocahontas County against the Applicant concerning the operation of a line and shall be entitled to enjoin any and all operations until such time as the Applicant shall cure said default.

- k) The Board shall be entitled to collect from Applicant all reasonable attorney fees and expenses relating to any injunction as a rising under this subsection.
- l) 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.
- m) 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.
- n) Bonding: Applicant shall have bonding form be filled out in its entirety and in force before work and shall begin and shall remine in force for 10 years after pipeline has been completed. This bond shall also move forward and be kept in force if the pipeline is ever sold, bought, or transferred to any other owner, company, firm, or corporation.
- o) 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 anyright of subrogation against the Board.
- p) Term: These insurance requirements shall remain in effect for the term of the permeant easement.
- q) Timely Performance. Time is important in the performance of each and every obligation to be performed by the Applicant and Board hereto.
- r) Nothing in the Application and Requirements shall be interpreted to restrict the Drainage District's use and enjoyment of the easement created by Iowa Code Section 468.27. Unless otherwise stated, the Drainage District's easement shall be 150 feet on either side of the center line of the drainage improvement. The Drainage District maintains all rights of ingress and egress to the easement and the drainage improvement.
- s) Applicant agrees to pay an hourly inspection, being billed monthly to the applicant. Inspection Fee being the normal charge out rate per hour. This fee shall only be deemed to reimburse the County for the easement granted at a crossing, publication costs, engineering costs, inspection costs, and legal services related to a crossing. Said fee shall be paid in conjunction with the issuance of the Easement. Applicant shall pay said fee within receipt of the invoice. If Applicant fails to pay within thirty (30) days, the Applicant shall be liable to the County for all costs incurred, including attorney fees, in pursuit of payment. The Board and/or Designee has the right to stop all construction, in the event of failure to remit payment within the thirty (30) days of receipt of invoice.
- t) The Easement agreed to by the Board are subject to existing regulations and statutes, which may be promulgated or enacted.

- u) This shall include, but not be limited to, Applicant agreeing to comply with land restoration rules and requirements set forth by Iowa Utilities Board in 199 Iowa Administrative Code Chapter 9 and requirements of Iowa Code 479B.20 and in connection with abandonment, 49CFR part 195 and Iowa Code Section 479B.
- v) 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 Board, Drainage Attorney, and the Applicant.
- w) 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.
- x) All Crossings of Pocahontas County Secondary Road Right-of- Way and any crossing of any Drainage District Facilities shall require a separate permit for each crossing from the Pocahontas County Engineers Office.
- y) If for any reason the Applicant or the Applicant Parties are not following or cannot meet the requirements of this resolution or if the Designee believes they cannot meet the requirements of this resolution, the Designee will halt all work on the pipeline within Pocahontas County until Applicant or the Applicant Parties can meet the requirements of this resolution.
- z) The Applicant or the Applicant Parties shall not cross a second road crossing until all work has been accomplished behind the second crossing and meets all requirements according to this resolution. Work shall cease and not proceed into the second road crossing until ALL work has been accomplished up to that second road crossing. This applies to all areas of work except the last mile before leaving the county, in which the road between the two counties shall not be crossed by the Applicant or the Applicant Parties until all work according to the resolution set forth in this resolution and all bills have been paid up to date.

Passed and approved this 28th day of December, 2021.

This resolution upon passing completely replaces Resolution #2021-10-#29

The vote thereon being as follows:



Clarence Siepker, Chairman

Jeff Ives



Kyle Smith



Louis Stauter



Brent Aden

Ayes: Siepker, Ives, Smith, Aden, Stauter

Nays: None



Attest: Kelly Jepsen, Pocahontas County Auditor