

DRAINAGE MINUTES

September 26, 2023

The Bremer County Board of Supervisors as Drainage District Trustees in Bremer County, IA, met in session on Tuesday, September 26, 2023 in the Courthouse, Waverly, Iowa, at 8:15 a.m. Kammeyer, Cerwinske & Hildebrandt present. Unless otherwise noted, all actions were approved unanimously.

Meeting was called to order by Chairman Kammeyer. Hildebrandt moved/Cerwinske second to approve the agenda. Cassandra Johansen, Finance Director, Jennifer Bremner, Real Estate Deputy/Drainage Clerk, Darius P. Robinson, County Attorney, Landon Moore, Engineer, and Tracie Gibler, Mgr. of Public Affairs for Navigator, present.

Public Comment: Gibler read a statement from Navigator Heartland Greenway System.

Cerwinske moved/Hildebrandt second to approve the 9/19/23 minutes.

Board reviewed suggested changes to the draft Bremer County CO2 Pipeline Resolution, permit application, easement application for crossing drainage districts with Robinson.

Hildebrandt moved/Cerwinske second to approve and adopt Resolution No. DD 23-06.

RESOLUTION BY BREMER COUNTY SUPERVISORS IN THEIR CAPACITY AS TRUSTEES OF INDIVIDUAL DRAINAGE DISTRICTS ON THE CONSTRUCTION OF A HAZARDOUS LIQUID PIPELINE OR PIPELINE 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 Bremer 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 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 BREMER 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 or Pipeline 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 OR PIPELINE 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 or Pipeline 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 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 or Pipeline 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 or Pipeline 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 Bremer 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 Bremer County landowners.
- e) County – Bremer County, Iowa
- f) Crossing Fee - This fee shall only be deemed to compensate a Drainage District for the easement granted at a crossing for the additional administrative expense incurred to process, review and enforce the terms of this agreement. The Crossing Fee shall be paid in conjunction with the Application 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 and is non-refundable. As expenses accrue, the Drainage District, in its discretion, will invoice the Applicant on a monthly basis for said fee. Payment is due within thirty (30) days of the invoice date. Interest at the annual rate of 20% will be charged on all amounts not paid when due. Applicant will be liable for all costs and expenses of collection incurred by the Drainage District, including, but not limited to attorney’s fees. The Board and/or Drainage Engineer has the right to stop all construction, in the event of failure to remit payment within the thirty (30) days of receipt of invoice.
- 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, intakes, bulkheads and related facilities.
- i) Drainage Engineer – A licensed engineer designated by the Board. The Drainage Engineer may name a designee from within the Drainage Engineer’s firm. The Board hereby appoints Collin Klingbeil, P.E., Jacobson-Westergard & Associates Inc., 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 regardless of cause. The Applicant will be notified of any such change. Applicant may be reached at the contact information provided in Sec 5(b). 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 Hazardous Liquid Pipeline or Pipeline on, over, across, or beneath Drainage Districts or Drainage

District Infrastructure in the County specified drainage districts in which the application is submitted 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 within a Drainage District 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) Pipeline Facility Replacement Fee - This fee shall only be deemed to compensate a Drainage District for Pipeline Facility Replacement and for the additional administrative expense incurred to process, review and enforce the terms of this agreement. The Pipeline Facility Replacement Fee shall be paid a minimum of two (2) weeks in advance of any work to be performed by the Applicant Parties within the right of way of the Drainage District as delineated in 2(m). In addition to the Pipeline Facility Replacement 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 and is non-refundable. As expenses accrue, the Drainage District, in its discretion, will invoice the Applicant on a monthly basis for said fee. Payment is due within thirty (30) days of the invoice date. Interest at the annual rate of 20% will be charged on all amounts not paid when due. Applicant will be liable for all costs and expenses of collection incurred by the Drainage District, including, but not limited to attorney's fees. The Board and/or Drainage Engineer has the right to stop all construction, in the event of failure to remit payment within the thirty (30) days of receipt of invoice.

s) Project – The development, construction and operation of a Hazardous Liquid Pipeline or Pipeline and associated facilities.

t) Project Construction Area – The area of project construction including the right of way granted to the Applicant and work limits identified in the Easement.

u) Requirements - Requirements for the construction of a Hazardous Liquid Pipeline or Pipeline on, over, across, or beneath Drainage District Infrastructure in the County.

2) General Obligations of Applicant

a) An Applicant that is a Pipeline Company seeking to construct a Hazardous Liquid Pipeline shall not apply for an Easement to cross any Drainage District Infrastructure in the County until the Iowa Utilities Board has issued a final decision and order approving the Pipeline Company's permit, including an approved route and the approval of the use of eminent domain, and until any and all judicial review and appeals of the final decision and order are exhausted, unless the Iowa Utilities Board rules that the Applicant may proceed with the permit pending the appeal process.

- i. The Applicant shall pay a Crossing Fee of seven thousand five hundred dollars (\$7,500.00) for each and every time the Pipeline Facility crosses a district tile line and or open ditch within five (5) years of the passing of this Resolution, and Applicant understands the fee will apply to every crossing, even if crossed multiple times within the same district. The Applicant shall also pay a Pipeline Facility replacement fee for each and every time the Pipeline Facility is replaced; and said fee shall be in the amount of seven thousand five hundred dollars (\$7,500.00) per crossing plus 3.5% per year (compounded annually) from the year this Resolution is passed.
- b) Within 30 days of the Applicant filing an Application, the Board will provide the Applicant with timely 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 neither the Board nor the District shall bear 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. Applicant understands if physical copies are requested the Applicant shall pay the current copying fee. If digital copies are preferred Applicant shall provide a thumb drive or other device to save the documents requested.
- c) The Applicant shall, 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 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, 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 even if the location desired by the Board is more expensive than the location designated by the Applicant in Applicant's plats.
- d) 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 seventy-two (72) hours in advance of any exploratory excavation. The Drainage Engineer, in their sole discretion, 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 exclusively by the Drainage Engineer and reimbursed to the landowner/tenant by the Applicant. Applicant will be liable for all costs 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 at its expense to the satisfaction of the Drainage Engineer and Board.
- e) **NO CONSTRUCTION IS TO COMMENCE ON ANY PORTION OF THE PROJECT WITHIN THE DRAINAGE DISTRICT RIGHT OF WAY WITHOUT APPROVAL 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) 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 shall not be given and construction shall not commence until all of the following conditions have been satisfied: (1) the Applicant has complied with the provisions of Section 2 of this Resolution ; (2) an Easement for the Project has been approved by the Board; and (3) the Board has approved a resolution finding that all necessary Easements, including any private easements, and other agreements are obtained and in order for the Project and that Project construction may commence.

g) Two weeks after notice as provided in according to section 2(f) 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.

h) 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 within thirty (30) days or as otherwise 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.

i) Subsequent and in perpetuity 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 of the 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.

j) As set forth in Iowa Code 468.186(2) 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, the Drainage District shall maintain its facility at its own expense, and 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 or a new drainage district is established under Iowa Code 468 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 and as long as the project is present in the ground.

k) The Applicant shall at any time subsequent to the commencement of construction, and at Applicant's sole expense, reconstruct, move, or replace its Pipeline Facility as may be necessary to accommodate any changes in the slope, grade, capacity, size of tile, or any other change in the Drainage District Infrastructure resulting from a future repair or improvement to the Drainage District Infrastructure, or pay the increased cost of modifying the design of the Drainage District repair or improvement to comply with the construction and repair standards set forth below in Section 3. 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.

l) Applicant shall be responsible for any damage caused by the Applicant Parties to the Drainage District and Drainage District Infrastructure arising from the operation, maintenance, or repair of the Project. If the Applicant fails to make such repairs within the thirty (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 Drainage 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.

m) Subsequent to construction of the Project, except in cases of an Emergency, Applicant shall provide Board with a minimum of two (2) weeks 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 the Drainage Engineer being 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 and reasonable attorney fees.

n) 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.

o) 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.

p) If the Applicant fails to properly repair or pay damages on any portion of the Drainage District or Drainage District Infrastructure that is damaged as a result of the Project as required herein or fails to pay damages as described and set forth in the entirety of this agreement, 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 thirty (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 Drainage 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 all construction and repair activities by the Applicant that may impact the Drainage District and 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 may 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 right-of-way shall be charged to Applicant and exclusive of any Crossing Fee. Applicant shall pay expenses for said Drainage Engineer within thirty (30) days of invoice. 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 be present pursuant to applicable statutes and regulations, including Iowa Code §§ 479.29 and 479B.20 and 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 which shall not be contrary to applicable statutes and regulations. 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 Drainage District Infrastructure or Private Drainage 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 fails to make such repairs within the thirty (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 Drainage District in any court having jurisdiction. The Applicant shall be liable to the County for reasonable attorney's fees incurred by the County in pursuing payment. 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 it shall be liable to the Board for any and all expenses incurred by the Board for seeking such relief, including reasonable attorneys' fees.
- d) Interruption. The Applicant shall provide the Drainage Engineer or the Board at least a twenty-four (24) hour verbal (via telephone) notice prior to the Applicant interfering with or interrupting the function of any Drainage District Infrastructure, except when emergency repair or maintenance occurs. If interference or interruption occurs on an emergency basis, the Applicant shall verbally (via telephone) notify the Drainage Engineer or the Board within twenty-four (24) hours of said interference or interruption. 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. 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, maintenance and repair the following shall be done by the Applicant.

- i. 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 and 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, with all costs and damages borne by Applicant.
 - ii. If the crossing involves the crossing of a Drainage District 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 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.
 - iii. It is agreed and understood that Applicant will be responsible for, and pay damages to, any and all landowners within the Drainage District in which the crossing is located, and landowners within any adjoining Drainage District that outlets into the district in which the pipeline easement is located, for erosion and crop loss resulting from the interruption of water draining through the Drainage District Infrastructure caused by the construction, installation, maintenance or repair of the Pipeline Facility by the Applicant Parties. Damages for crop loss for each landowner shall be calculated as: the October cash bid for corn in dollars (or the amount marketed by the landowner whichever is higher), times the percentage of yield reduction (based upon the average yield for the parcel damaged), times the number of acres damaged by the interruption.
- e) **Tile Repair Completion.** In the event the Applicant Parties damage a Drainage District tile line during construction, installation, maintenance or repair of the Pipeline Facility, the Drainage District tile shall be permanently repaired before the Applicant Parties may proceed with any further construction, installation, maintenance or repair of the Pipeline Facility. 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. Any damaged underground Private Drainage Infrastructure 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 visually by televising on both sides of the trench over the full extent of the working easement to check for 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 thirty (30) days of completion of the repair. If the Applicant fails to make such repairs, the Board may make such repairs and invoice the Applicant for the reasonable cost of such repairs. If the Applicant fails to stop work on the Pipeline Facility and repair the drainage tile line, the Applicant agrees the Board may seek injunctive or other appropriate relief against it. Applicant agrees it shall be liable to the Board for any and all expenses for seeking such

relief, including reasonable attorneys' fees. 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 Drainage 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.

- f) Tile damaged by traffic. In the event a Drainage District tile line is damaged by Applicant Parties by driving any vehicle or equipment over it, the Applicant shall repair the damaged tile line before driving any more vehicles or equipment over the area where the damaged tile line is located, unless a different deadline is agreed to by the Board in writing (electronic mail is acceptable). If the Applicant causes soil, silt or debris to enter the Drainage District Infrastructure, by driving any vehicle or equipment over it, the Applicant agrees that the Board may seek injunctive or other appropriate relief against it. Applicant agrees it shall be liable to the Board for any and all expenses incurred by the Board for seeking such relief, including reasonable attorneys' fees. 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. Public roadways with adjacent tiles shall have the road and tiles bored underneath both. 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.
- g) 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 as outlined in Iowa Administrative Code Chapter 9 (199 IAC 9.5), and any subsequent administrative rule or statute. 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. Rock and debris removal shall be in accordance with the requirements of 199 IAC Chapter 9.5(5).
- h) 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.
- i) Crossing Specifications. All crossings of Drainage District Infrastructure shall be constructed by Applicant in accordance with the following specifications:
 - i. CROSSING OF OPEN DITCHES
 - (1) Passage of the Applicant's Pipeline Facility shall be bored 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.

- (2) The above depth is to extend to a point at least ten (10) feet beyond the top bank of the drainage ditch.
 - (3) The rate of slope for transition from a normal Pipeline Facility laying depth to crossings of drainage ditches shall not be steeper than 4:1. For a justifiable and legitimate engineering or constructability reason, a slope steeper than 4:1 may be approved by the Board in consultations with the Drainage Engineer.
 - (4) If such ditch crossings occur at points of outlets of Drainage District Infrastructure, 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 Drainage Engineer in his or her sole discretion.
 - (5) All crossing of open ditches shall be done by boring unless the Board makes the exception to allow an open cut following consultation with the Drainage Engineer and the Applicant. Before approval by the Board, the Applicant shall pay a cash bond to be retained by the Board for each open cut crossing. The bond shall be determined by the following formula: the number of acres set forth in the current assessment schedule for the Drainage District in which the crossing is located, and any adjoining districts that outlet into said district, multiplied by two hundred fifty (250) (representing stipulated bushels per acre) times seven dollars (\$7.00) (representing stipulated price per bushel). The bond shall be returned without interest after all damages have been repaired to the satisfaction of the Board or the application is denied.
- ii. **CROSSING OF DRAINAGE DISTRICT TILE LINES**
- (1) All proposed Pipeline Facilities shall be bored a minimum of five (5) feet under the flowline of the existing tile within fifteen (15) feet of the centerline of the tile as measured perpendicular to the tile's alignment.
 - (2) 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.
 - (3) 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 either with steel pipe of not less than sixteen gauge or polyvinyl chloride pipe conforming to current industry standards regarding diameter and wall thickness.

4) Board's Representations, Warranties and Covenants

- a) **Notice of Repair, Improvement, New Construction or Establishment of a New Drainage District.** Upon tentative approval of an Engineer's Report for the establishment of a new Drainage District that may require a crossing by the Pipeline and an easement therefore, or the repair or improvement of an existing Drainage District wherein the Pipeline Facility is located, the Board shall provide written notice in accordance with Iowa Code 468.14 through 468.18 to the Applicant of the date and time of the hearing on the consideration and final approval of the report (i.e at least twenty (20) days prior to the date of said hearing). 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 installation belonging to Applicant, so that Applicant may arrange to protect same. Emergency (24 hour) notice shall be given by calling Applicant at the phone number listed in paragraph 5(b) or as amended by Applicant pursuant to the term set forth herein. The Board also agrees that it will comply with One Call 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 Drainage District shall have no responsibility for damages to Applicant's property occasioned by any construction or maintenance operation of the Drainage District subsequent to

completion of the Project, 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 damage to real and personal property caused by constructing and maintaining the Project. These damages, including without limitation crop loss, erosion, and compaction, 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 by the Applicant pursuant to a private easement agreement or otherwise. Payment shall be made by the Applicant within thirty (30) days of the Board's determination.

5) Notices

- a) Written Notice. Unless otherwise provided herein, 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. As required in Iowa Code section 468.126 (1), when a petition for repair to a Drainage District Infrastructure that is within the Pipeline Facility Easement is approved by the Board and the repair amount is under the threshold amount set forth in Iowa Code section 468.126 (4)(c), although not required as set forth in Iowa Code section 468.126 (1)(a), the Board shall notify the Applicant prior to the petition being sent to the contractor. The Applicant shall be notified by telephone and electronic mail providing a copy of the approved petition to the person designated by the Applicant in Section 5 (b) of this document, or as amended by the applicant.
- b) Notices shall be given to the Parties at their addresses set forth below.

Bremer County Courthouse
c/o Bremer County Auditor's Office
415 E. Bremer Avenue
Waverly, IA 50677
319-352-0340

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.

6) 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.

7) Miscellaneous Provisions

- a) Assignment. The Applicant's interests are not transferable without prior written approval of the Board. Assignee is required to comply with all Requirements set forth herein and provide proof of bond and insurability.
- 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 expenses and damages set forth in paragraphs 2(h), 2(l), 2(p), 3(c), 3(d), 3(f), and as provided elsewhere here within, are in addition to any and all statutory and common law damages available including, but not limited to, sections 468.148 through 468.150. The Application and Requirements are entered into under the laws of the State of Iowa, and Iowa law shall apply to the interpretation hereof except where federal law is referenced herein. Any legal action to enforce or interpret these Requirements or Application shall be brought exclusively in Iowa District Court in Bremer 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) Applicant shall comply with all other applicable State, Local and Bremer County ordinance requirements.
- e) Severability. If any provision of the Application and Requirements is determined by any court 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.
- f) 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.
- g) Insurance. The Applicant shall, no later than ninety (90) days prior to the start of construction and to the extent of Applicant's indemnity obligations herein, Certificates of 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 sixty (60) 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 ten (10) 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 any and all liability arising from their actions and the actions of the Applicant Parties, their agents employees, contractors, representatives including, without limitation, pollution, explosion, collapse, flooding, ANY property damage, wrongful death and personal injury. 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 agreement, 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 thirty (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 available 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 sixty (60) 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.

h) Timely Performance. Time is of the essence in the performance of each and every obligation to be performed by the Applicant and Board hereto.

i) 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 one hundred fifty (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.

j) Any Easement agreed to by the Board is subject to existing Iowa regulations and statutes, and any regulations and statutes which may be amended, promulgated, or enacted.

- k) If the Applicant abandons the Project, the Applicant shall comply with applicable state and federal statutes and regulations.
- l) 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.
- m) 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.

Passed and approved this 26th day of September, 2023.

Cerwinske gave an update on DD #5 Work Order DD5-22-1.

Cerwinske moved/Hildebrandt second to adjourn at 8:20 a.m.

The above and foregoing is a true and correct copy of the minutes and proceedings of the September 26, 2023 meeting of the Bremer County Board of Supervisors as Drainage District Trustees.

Ken Kammeyer, Chairman

Attest: _____
Shelley Wolf, Auditor