

**BOARD OF SUPERVISORS MEETING  
SIXTH MEETING, 2022 SESSION (6)  
FEBRUARY 1, 2022**

The Buena Vista County Board of Supervisors met in regular session on Tuesday, February 1, 2022 at 8:30 A.M. in the Boardroom with Chairman Merten presiding, and the following members present: Altena, Huseman, Ringgenberg, and Snyder and with Auditor Susan Lloyd as clerk for the meeting.

Unless otherwise indicated, all of the following **motions** offered at this meeting were carried with the following vote: Ayes: Altena, Huseman, Merten, Ringgenberg, and Snyder. Nays: none. Abstentions: none.

Motion by Ringgenberg, second by Altena, to approve **today's agenda**, as presented. Carried.

Engineer Bret Wilkinson presented a new quote for a 2022 **John Deere Wheel Loader** 644P, which also includes a grapple bucket, along with the regular bucket, that would be built off of the assembly line, not delivered for 10-12 months. The new quote also shows a trade-in for a 1977 JD 644B, in the amount of \$10,000. Wilkinson would recommend keeping the old wheel loader, and not trading it in, stating that they could use it at one of the gravel sites. The quote for the wheel loader, if ordered, is \$295,000. Motion by Snyder, second by Huseman, to approve and authorize the Engineer to purchase a 2022 **John Deere Wheel Loader 644P**, without a trade-in, for a cost of \$295,000. Carried.

Engineer Bret Wilkinson asked the Board about the department's **summer hours**, stating that working four 10-hour days is efficient. Wilkinson suggested continuing this year with the summer hours being four 10-hour days from June 6 through September 1, and the week of July 4<sup>th</sup>, they would work four 8-hour days and then have the holiday pay, making up their 40 hours. Merten suggested having the Secondary Road guys vote on it, to see if they liked or not. Wilkinson stated that he and Maintenance Supt. McGowan see efficiencies, so they would prefer to go with the four 10-hour days.

Engineer Bret Wilkinson informed the Board that he is getting quotes for the **motor grader** for FY'23 and **dump trucks**. Wilkinson will bring in the quotes soon, so that the equipment can be ordered sooner, rather than later, as it will take twelve months for delivery.

**Secondary Road Report**: They have been cutting brush and blading gravel roads; they will be going out to check signs, for reflectivity, those that are missing, and those that need to be replaced.

Env Health/Zoning Director presented a resolution and agreement for the Board to consider, requesting NW IA Planning & Development to provide the necessary services and assistance to carry out updating of the BV County Comprehensive Land Use Plan, Zoning Ordinance, Floodplain Ordinance and Subdivision Regulations. Motion by Ringgenberg, second by Snyder, to approve and authorize the Chair to sign **Resolution #2022-02-01-A** Requesting the Assistance of the NW IA Planning & Development Commission, and to approve and authorize the Chair to sign the **contract agreement** for their assistance in updating the BV County Comprehensive Land Use Plan, Zoning Ordinance, Floodplain Ordinance and Subdivision Regulations. Carried.

**RESOLUTION No. 2022-02-01-A**

**A RESOLUTION OF THE BUENA VISTA COUNTY BOARD OF SUPERVISORS TO REQUEST THE ASSISTANCE OF THE NORTHWEST IOWA PLANNING AND DEVELOPMENT COMMISSION.**

**WHEREAS**, Buena Vista County has agreed to the Intergovernmental Cooperation Agreement creating the Northwest Iowa Planning and Development Commission (hereinafter called the Planning Agency) and is a member in good standing; and

**WHEREAS**, the County wishes to engage the Planning Agency to provide certain technical and professional services in connection with the...

**Updating of the Buena Vista County Comprehensive Land Use Plan,  
Zoning Ordinance, Subdivision Regulations and Flood Plain Ordinance**

**WHEREAS**, Article III.E of the Intergovernmental Cooperation Agreement gives the Planning Agency the responsibilities outlined in Chapter 28I, Code of Iowa;

**NOW THEREFORE**, it is hereby resolved by the Buena Vista County Board of Supervisors that the Planning Agency be requested to provide staff assistance in the above-mentioned project; and

**THAT**, the Board of Supervisors understands and will comply with Policy Council guidelines regarding the assessments of costs of the Planning Agency staff assistance.

Passed, approved and adopted this 1<sup>st</sup> day of February 2022

/s/ Paul Merten, Chairman, BV County Board of Supervisors.....Attest: Susan K. Lloyd, County Auditor

Tom Schuetz, Alera Group, was present, and reviewed the self-funded portion of the County **health insurance rates**, with Stille Pierce & Pertzborn representatives, Mike Pertzborn and Tony Pertzborn present, along with the following members of the Insurance Committee and Department Heads: Mark Van Hooser (virtual), Rob Danielson (virtual), Yvonne Sandhoff, Kory Elston (virtual), Bret Wilkinson, Angie Wilkinson (virtual), Curt Reis, Jason Butler, Greg Johnson (virtual), and Stacy Blee (virtual). The increase Schuetz calculated based on projected costs, leaving everything as is, would be 5.19%, with a cost increase of \$113,840. Schuetz stated that if the Safe-T Fund were increased, then the increase would be 7.40%, for a cost increase of \$162,293. No action was taken, this will be discussed at the February 15th board meeting.

Motion by Huseman, second by Ringgenberg, to approve the **minutes** of 1/25/22, as printed, today's **claims approval list**, **stamped drainage warrant register** and the following **reports**: None. Carried.

Drainage Engineer Brian Blomme presented the Board with a resolution to consider by the BV County Drainage District on construction of a hazardous liquid pipeline over, across, or beneath county drainage districts. Blomme created the resolution from the one in 2015 used for the Dakota Access Pipeline. Blomme stated that the cost of the crossing in 2015 were \$7,500/crossing, and it would increase to \$9,000/crossing in 2022. Blomme stated that there are 22 crossings for the drainage districts, with the Navigator Pipeline, which would be a total cost to the pipeline of \$198,000. Motion by Snyder, second by Ringgenberg, to approve and authorize the Supervisors to all sign **Resolution #2022-02-01-B** BV Drainage Districts on Construction of a Hazardous Liquid Pipeline over, across, or beneath County Drainage Districts. Ayes: Altena, Huseman, Merten, Ringgenberg, Snyder. Nays: None. Motion carried.

**RESOLUTION #2022-02-01-B  
RESOLUTION BY BUENA VISTA DRAINAGE DISTRICTS  
ON CONSTRUCTION OF A HAZARDOUS LIQUID  
PIPELINE OVER, ACROSS, OR BENEATH COUNTY  
DRAINAGE DISTRICTS**

**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 levee districts established under Iowa Code Chapter 468 and located within Buena Vista 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 district, levee districts, and lands that would benefit from being drained; and

**WHEREAS**, Iowa Code Section 468.186 specifically addresses a proposed pipeline installation on, over, across, or beneath the right-of-way of any drainage or levee district; and

**WHEREAS**, Iowa Code Section 468.186 mandates that a pipeline 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, drainage 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 478B, and Iowa Administrative Code chapters 199 IAC 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 Hazardous Liquid Pipeline 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.

**REQUIREMENTS FOR CONSTRUCTION OF A HAZARDOUS LIQUID PIPELINE OVER, ACROSS, OR BENEATH COUNTY DRAINAGE DISTRICTS**

The Applicant shall file an Application for an Easement for Construction of a Hazardous Liquid Pipeline Over, Across, or Beneath County Drainage Districts 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 Construction of a Hazardous Liquid Pipeline Over, Across, or Beneath County Drainage District. 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 Hazardous Liquid Pipeline Over, Across, or Beneath County Drainage Districts, 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, and multi-county levee districts.
- e. Board of Supervisors – the Board of Supervisors of Buena Vista County sitting as the Board of Supervisors, and as Drainage District Trustees.
- f. County – Buena Vista County, Iowa
- g. Crossing Fee – This fee shall only be deemed to reimburse a Drainage District 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 the Issuance of the easement and/or consent to cross the district’s facilities.
- h. 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.
- i. 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.
- j. Drainage Engineer – A licensed engineer designated by the Board. The Drainage Engineer may name a designee. The Board hereby appoints Brian Blomme as the Board’s designated Drainage Engineer for all matters contained herein. The designated Drainage Engineer may be changed at any time by the Board. The Applicant will be notified of any such change. Brian Blomme may be reached: Drainage Department, 215 East Fifth Street, Storm Lake, Iowa 50588; Phone (712)213-7458. Where the term Drainage Engineer is used in this document the term also includes a designee or representative of the Drainage Engineer.
- k. Easement – That agreement between the Board and the Applicant granting rights to construct, manage and use a hazardous liquids pipeline over, across, or beneath specified drainage districts and which incorporates the terms herein.
- l. 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.
- m. Parties – The Board, Drainage District, Landowners and Applicant.
- n. Project – The development, construction and operation of a hazardous liquid pipeline and associated facilities.
- o. Project Construction Area – The area of project construction including the right-of-way granted the Applicant and work limits identified in the Easement.
- p. Requirements – Requirements for Construction of a Hazardous Liquid Pipeline Over, Across, or Beneath County Drainage Districts.

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

- a. Within thirty (30) days from the Applicant filing an Application, the Board will provide the Applicant with access to all maps and other files related to the Drainage Districts. The Applicant acknowledges that the County's maps of the Drainage Districts may not be accurate or complete, and the Board shall bear no responsibility for their accuracy; nor shall Applicant raise any such inaccuracy or incompleteness as a basis not to comply with the repair/restoration provisions herein.
- b. The Applicant shall then, no later than ninety (90) days prior to the start of the construction on the Project, furnish the Board with plats showing the location, including GPS coordinates, of the proposed construction and all proposed crossings of the Drainage District Infrastructure. If in view of such plats it is determined by the Board that such locations are in conflict with present or proposed Drainage District Infrastructure or the affirmative duty of the district to drain the land, and, for a justifiable and legitimate engineering reason, that a more desirable location is possible and the shift would not be in conflict with any state or federal requirements or siting restrictions, requirements or approvals, and/or the landowner(s) does not object to the relocation, the Applicant shall review such possible alignment changes with the Drainage Engineer. The Applicant and the Drainage Engineer shall work together in good faith to agree upon any alignment changes to be made pursuant to this Paragraph, taking into account the costs, benefits, feasibility, governing engineering principles, and the need to accommodate any present or proposed Drainage District Infrastructure and the affirmative duty of the district to drain the land. In the event the Applicant and the Drainage Engineer cannot agree upon the alignment changes to be made pursuant to this Paragraph, the Applicant and the Drainage Engineer shall mutually agree upon an independent, third party who is a licensed engineer in Iowa with experience in drainage to determine what alignment changes should be made pursuant to this Paragraph, taking into account the costs, benefits, feasibility, governing engineering principles, government approvals, and the need to accommodate any present or proposed Drainage District Infrastructure and the affirmative duty of the District to drain the land. The decision of such independent third-party licensed engineer shall be binding upon the parties. The Applicant shall pay all fees and costs of the independent third-party engineer. Applicant acknowledges that under Iowa law it cannot interfere with the drainage of the land and will make design changes to accommodate drainage if a more desirable location is not feasible.
- c. 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 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 Drainage Engineer and the County Auditor. Notice cannot be given until an Easement for the Project has been approved by the Board and passage of a resolution by the Board of Supervisors stating that all necessary easements and agreements are in order for the Project and that Project construction can commence.
- e. Two (2) weeks after notice as provided in according to section 2(d) above and in compliance with these Requirements, the Applicant shall be allowed to construct the Project at the Applicant's own expense and the Applicant shall pay all costs of any reconstruction, relocation, modification, or reinstallation of the Drainage District Infrastructure which may be necessary as a result of construction of the installation for which the easement was granted.

- f. If any portions of the Drainage District or Drainage District Infrastructure in or adjacent to the project construction area are damaged by the Applicant Parties as a result of the Project construction, the Applicant, at their sole expense, shall promptly repair such damage as directed by the Board, provided that such direction is 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 Drainage Engineer cannot agree as to the cause of the 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 the 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.
- g. Subsequent to construction of the pipeline, all additional costs for Drainage District Infrastructure construction, maintenance, improvement or reconstruction caused by the presence of Applicant's pipeline 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 pipeline 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 Facilities project.
- h. After construction of the installation has been completed in accordance with all conditions under which the easement is granted, the drainage District 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 Drainage District subsequently undertakes any maintenance, improvement, or reconstruction of its facility which requires the modification, relocation, or reconstruction of the installation, the expense of such modifications, relocation, or reconstruction shall be borne by Applicant or the Applicant's successors in interest.
- i. The Applicant shall at any time subsequent to the commencement of construction, and at Applicant's sole expense, reconstruct or replace its installation as may be necessary to conform to new grade or alignments resulting from maintenance, improvement or construction operations of the Drainage District. The Applicant agrees to do this within one hundred twenty (120) days of receipt of written request from the Board, or such longer time period as the Board may specify, without cost to the Drainage District. Such reconstruction or realignment of Applicant's improvements shall be made in accordance with the approval 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.
- j. Applicant shall be responsible to remedy 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.
- k. Subsequent to construction of the pipeline, except in cases of an Emergency, Applicant shall provide Board with a minimum of forty-eight (48) hours advanced notice of any work to be performed by the Applicant Parties within the right-of-way of the Drainage District. The Board shall have the right to have a Drainage Engineer present during any such work. If proper notice is given pursuant to this Paragraph, such work shall not be delayed by the failure of a Drainage Engineer to be present during such work. Applicant shall be responsible for all costs incurred by the Board and the Drainage District, including expenses of the Drainage Engineer related to the Applicant's work within the right-of-way.

- I. 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 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.
- m. 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 before performing any work on the Drainage District Infrastructure that may reasonably come into contact with, or otherwise impact the Applicant's pipeline. 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. If the Applicant fails on its own to properly repair any portion of the Drainage District or Drainage District Infrastructure that is damaged as a result of the Project as required hereunder, the Board may demand in writing that the Applicant repair same within thirty (30) days, or such longer period as the Board and Applicant may agree. If the Applicant fails to make such repairs within the 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 within thirty (30) days the Applicant shall be liable for all costs of the repairs which shall be collected by the County on behalf of the district in any court having jurisdiction. The Applicant shall be liable to County of reasonable attorney fees incurred by the County in pursuing payment.

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

- a. Examination. The Board shall appoint a Drainage Engineer to inspect and approve all construction and repair activities by the Applicant that impact the Drainage District 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 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 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 incorporated into the Crossing Fee. Said Drainage Engineer will be responsible for inspecting all crossings of Drainage District Infrastructure and shall have the authority to require the Applicant Parties to excavate and expose the crossing of any Drainage District Infrastructure where the Drainage Engineer believes it prudent to visually examine same. Further, said Drainage Engineer has the authority to request that the County Inspector present pursuant to 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 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 crossing 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 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 Drainage District Infrastructure. The Applicant shall be liable for any damages, including any crop loss or damage to property, caused as a result of any interference or interruption caused by the actions of Applicant or Applicant Parties.
- c. Interruption. In the event it becomes necessary to temporarily stop the normal flow of water in any Drainage District Infrastructure in order to permit the Applicant's construction, installation, and repair the following shall be done by the Applicant.
  - i. If the crossing involves a tile line, the replacement of tile with approved metal 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, or tile line ditch. In the event that this tile line is so temporarily blocked, the Applicant will be expected to provide sufficient pumping equipment to pump the impounded tile water across the construction ditch to the undisturbed tile line. Such temporary blockages of said Drainage District tile lines will be removed as rapidly as possible, and any tile repairs caused by this blockage will be immediately repaired at the Applicant's expense.
  - 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.
- d. Tile Repair Completion. The Applicant will make all permanent tile line repairs within ninety (90) days following completion of construction in the County, adjacent to, over, or beneath any Drainage District Infrastructure, taking into account weather and wet soil conditions, unless a different schedule is agreed to by the Parties. All tiles will be repaired with materials of the same or better quality as that which was damaged and shall be of a size approved by the Drainage Engineer based on current Iowa State University (ISU) Extension Service Drainage Standards and be subject to final approval of the Drainage Engineer. Applicant shall take photographs of all repairs to Drainage District Infrastructure prior to backfilling or covering the repair. Photographs shall bear the exact GPS location of the repair and be provided to the Drainage District within 30 days of completion of the repair. If the Applicant fails to make such repairs within the ninety (90) day period, or such longer period as the Board and Applicant may agree to, the Board may make such repairs and invoice the Applicant for the reasonable cost of such repairs. If the Board causes such work to be done, Applicant shall pay for the cost of the repairs within thirty (30) days of



receipt of the invoice. If Applicant fails to pay within thirty (30) days, the Applicant shall be liable for all costs of the repairs which shall be collected by the county on behalf of the district in any court having jurisdiction. The Applicant shall be liable to County for reasonable attorney fees incurred by the County in pursuing payment.

- e. If there is evidence that any portion of a Drainage District or Drainage District Infrastructure, including but not limited to drain tiles under roads utilized by construction traffic and drain tiles crossed by construction equipment, has been damaged by Applicant or Applicant Parties, those damaged tiles or other Drainage District Infrastructure shall be repaired by the Applicant at the Applicant's expense at the end of the Project construction in the county in a manner acceptable to the Drainage Engineer. The Drainage Engineer and Applicant shall work together in good faith to determine the cause of any damage covered by this Paragraph. In the event the Applicant and the Drainage Engineer cannot agree as to the Cause of any such damage, the Applicant and the Drainage Engineer shall mutually agree upon an independent, third party who is a licensed engineer in Iowa with experience in drainage to determine the cause of such damage. The determination of such independent third-party licensed engineer shall be binding upon the parties. The Applicant shall pay all fees and costs of the independent third-party engineer. Paved public roadways with adjacent tiles shall have the road and tiles bored under the reach. 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.
- f. Compaction, Rutting and Soil Restoration. The Applicant shall also be responsible at Applicant's expense to restore all and within the Drainage District right-of-way 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 Drainage Engineer 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. 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.
- g. Crossing Specifications. All crossing 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 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 Drainage Engineer.
    - 2. The above depth is to extend to a point two (2) times the design base width of the ditch either side of the centerline of the drainage ditch, unless the existing base width is greater than the design base width. If the existing base width is greater than the design width, the depth is to extend to a point two (2) times the existing width.

3. 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 Drainage Engineer.
4. If such ditch crossings occur at points of outlets of Drainage District Infrastructure 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 Drainage Engineer in his or her sole discretion.
5. All crossing of open ditches shall be done by boring or open cut as agreed to by the Drainage Engineer following consultation with the Applicant. In determining whether boring or open cut is proper, the Drainage Engineer and the Applicant shall work together in good faith, considering the costs, benefits, feasibility, applicable engineering principles, and the interests of the parties. In the event that Applicant and the Drainage Engineer cannot agree, the Applicant and the Drainage Engineer shall mutually agree upon an independent, third party who is a licensed engineer in Iowa with experience in drainage to determine whether boring or open cut is proper, considering the costs, benefits, feasibility, applicable engineering principles, and the interests of the parties. The determination of such independent third-party licensed engineer shall be binding upon the parties. The Applicant shall pay all fees and costs of the independent third-party engineer.

ii. CROSSING OF DRAINAGE DISTRICT TILE LINES

1. All proposed installations must be placed under the existing Drainage District tile lines, while maintaining a minimum of two (2) feet of separation between the installation and the existing drainage district tile lines.
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 two (2) feet, unless determined otherwise for a justifiable and legitimate engineering reason, by the Board in consultation with the Drainage Engineer.
3. Drain tiles may be crossed by either an open cut or by utilizing a bore. However, for open cut crossings, the Applicant shall replace the Drainage District tile with reinforced concrete pipe of sufficient size determined by the Drainage Engineer in accordance with current ISU Extension Drainage Standards. The concrete pipe strength is at the reasonable discretion of the Drainage Engineer but the minimum pipe strength is to be 2000D (Iowa Department of Transportation approved) with the standard tongue and groove joints. The pipe is to have a minimum of three (3) bolt-type connectors at each joint. The pipeline shall be backfilled and compacted prior to placement of tile with six (6) inches of two (2") inch crushed stone cradle rock being placed under the tile. Dual wall high density polyethylene (HDPE) pipe may be substituted for concrete pipe at the reasonable discretion and approval of the Drainage Engineer and installed with six (6) inches of two (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 Drainage

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

4. The length of tile to be replaced by any of the above alternates is as follows:
  - a. Eight (8) inch tile and smaller: Six (6) feet either side of the top of trench excavated for the installation of pipeline, measured at right angles to the centerline of the crossing location.
  - b. Ten (10) inch tile or larger: Ten (10) feet either side of the top of trench excavated for the installation of pipeline, measured at right angles to the centerline of crossing location.
5. If the Applicant's installation disturbs or requires replacement of any portion of a tile drain less than twenty (20) 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 (3) 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 (16) 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, Maintenance or New Construction. The Board shall give the Applicant at least ninety (90) days written notice of the proposed repair, improvement, maintenance, or new construction of drainage facilities in a Drainage District that the Board believes may impact any of the Project facilities. The Board shall also give at least twenty-four (24) hours verbal (via telephone) notice of emergency maintenance repairs in the Drainage District that may expose, cover up or disturb any installation belonging to Applicant, so that Applicant may arrange to protect same. Emergency (24 hour) notice shall be given by calling Applicant at:

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or at such other number provided from time to time to the Board by the Applicant. The Board also agrees that it will comply with One Call notification programs before any work pursuant to this Paragraph.

- b. Limitation on Liability. So long as Applicant receives the notice set forth in Section 4(a) 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 Applicant's installation, except for damage 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 Drainage District or Board for expenses, crossing fees or easements. The determination of these damages shall be by the Board exclusively; provided, however, that Applicant maintains its right to seek judicial review of any such damage determination of the Board in accordance with Iowa Code Chapter 468. Damages shall not be duplicative of damages claimed by and paid to landowners. Payment shall be made by the Applicant within thirty (30) days of the Board's determination.

**5) 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:

Buena Vista County  
 c/o Buena Vista County Auditor  
 Buena Vista County Courthouse  
 215 East Fifth Street  
 Storm Lake, Iowa 50588  
 Phone: 712-749-2542  
 Attention: Auditor

Applicant's Name: \_\_\_\_\_

Applicant's Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Applicant's Phone: \_\_\_\_\_

Applicant's Email: \_\_\_\_\_

Attention: \_\_\_\_\_

- 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/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 Drainage District's negligence, willful misconduct, or strict liability imposed upon the County or Drainage District as a matter of law.

**7) Miscellaneous Provisions**

- a. Assignment. The Applicant's interests are transferable. However, assignee is required to comply with all Requirements set forth herein.
- b. Binding Effect. These Requirements contained herein shall be binding upon, and inure to the benefit of, the Applicant, Drainage Districts and their respective heirs, successors (by merger, consolidation or otherwise) and permitted assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Area, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.
- c. Iowa Law. The Application and Requirements are entered into under the laws of the State of Iowa, and Iowa law shall apply to the interpretation hereof. Any legal action to enforce or interpret these Requirements or Application shall be brought exclusively in Iowa District Court in Buena Vista 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 authorizes to accept service of any process resulting from this Easement, Applicant shall provide written notice setting out the name, address and telephone number of said agent to Board within thirty (30) days of filing Application.
- f. Insurance. Before starting construction and to the extent of Applicant's indemnity obligations hereunder, Certificates of Insurance or self-insurance naming the Board 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 following limits:

i. Workers' Compensation	Statutory Limits
ii. Contractor's Liability and Property Damage	
Bodily Injury	\$1,000,000.00
Each person	\$1,000,000.00
Each Accident	\$5,000,000.00

iii. Property Damage

Each Accident Aggregate	\$5,000,000.00
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iv. Automobile

Liability and Property Damage	\$1,000,000.00
Bodily Injury	\$5,000,000.00
Each Person	\$1,000,000.00
Each Accident	\$5,000,000.00
Property Damage	\$1,000,000.00
Each Accident Aggregate	\$5,000,000.00

- v. Commercial General Liability and Umbrella. Liability Insurance \$10,000,000.00 each occurrence Applicant shall maintain Commercial General Liability (“CGL”) Insurance in a limit of not less than \$10,000,000.00 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.

- a. Included in the CGL 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 \$10,000,000.00 per loss event.

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.

- vi. Remedies available to the Board. In the event that Applicant should fail to comply with any provision of the insurance section of this resolution 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 for Buena Vista County against the Applicant concerning the operation of a pipeline 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 fees and expenses relating to any injunction as arising under this subsection. The above remedies are not exclusive. The Board shall be entitled to use or devise any other remedy to the Board at law or in equity.
- vii. Proof of Insurance. Applicant shall cause certificates of insurance evidencing all of the above insurance policies and coverage to be provided promptly to the County upon request by the Board but no more than one time annually.
- a. All of the above required insurance policies shall reflect that the Board will receive thirty (30) days’ prior written notice of

cancellation in coverage and shall reflect that the insurer has waived any right of subrogation against the Board.

- viii. Term. These insurance requirements shall remain in effect for the term of the easement.
- g. Timely Performance. Time is important in the performance of each and every obligation to be performed by the Applicant and Board hereto.
- h. 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 District Infrastructure. The Drainage District maintains all rights of ingress and egress to the easement and the drainage improvement.
- i. Applicant agrees to pay a one-time Crossing Fee of \$9,000.00 per crossing. This fee shall only be deemed to reimburse the Drainage District 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.
- j. The Easement agreed to by the Board are subject to existing regulations and statutes, which may be promulgated or enacted.
  - i. 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.
- k. 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.
- l. 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 1<sup>st</sup> day of February, 2022**

/s/ Paul Merten, Chairman, Kelly Snyder, Vice-Chairman, Rhonda Ringgenberg, Member, Don Altena, Member, and Tom Huseman, Member.....Attest: Susan K. Lloyd, County Auditor

Motion by Ringgenberg, second by Altena, to pay a per diem rate to the **Zoning Board and Board of Adjustment Commissioners**, \$50/meeting plus mileage, effective February 1, 2022. Carried.

There being no further business, motion by Snyder, second by Ringgenberg, to adjourn the meeting at 11:40 a.m. until Tuesday, February 8 at 8:30 a.m. for a special meeting.