Resolution #12-20-2022 (A)

RESOLUTION BY THE PALO ALTO COUNTY BOARD OF SUPERVISORS ON CONSTRUCTION OF A PIPELINE, ELECTRIC TRANSMISSION LINE, COMMUNICATION LINE, UNDERGROUND SERVICE LINE, OR OTHER SIMILAR INSTALLATIONS OVER, ACROSS, OR BENEATH COUNTY DRAINAGE DISTRICT INFRASTRUCTURE AND/OR ANY PRIVATE DRAINAGE INFRASTRUCTURE

WHEREAS, the Board of Supervisors, as trustees of individual drainage districts, (hereinafter Board) is responsible for the maintenance and management of the drainage districts, levee districts, multi-county drainage districts, and multi-county level districts and tile systems some of which were established under Iowa Code chapter 468 and located within the Palo Alto County; and

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

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

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

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

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

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

WHEREAS, it is in the best interest of the public health, convenience and welfare for the Board to establish these additional conditions necessary for the Board to grant

easements across drainage district, levee district, multi-county drainage district, multi-county levee district right of way, tile systems and to determine the applicability of such conditions to other lands contained within a drainage or levee district; and

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

NOW THEREFORE BE IT RESOLVED

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

REQUIREMENTS FOR CONSTRUCTION OF A PIPELINE, ELETRIC TRANSMISSION LINE, COMMUNICATION LINE, UNDERGROUND SERVICE LINE, OR OTHER SIMILAR INSTALLATIONS OVER, ACROSS, OR BENEATH DRAINAGE DISTRICT INFRASTRUCTURE AND PRIVATE DRAINAGE INFRASTRUCTURE IN PALO ALTO COUNTY

The Applicant shall file an Application for an Easement for Construction of the Line Over, Across, or Beneath the Drainage District Infrastructure with the Board, listing each crossing or crossings associated with a tile or open ditch infrastructure and, upon agreement to such an Easement, shall be governed by these Requirements in the Easement and shall comply with all conditions contained therein.

1) **Definitions**
   a) Applicant - the entity requesting an Easement for Construction of a Line Over, Across, or Beneath Drainage District Infrastructure or Private 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 Construction of a Line Over, Across, or Beneath Tile Infrastructures, which is the manner of requesting an easement from the Board.

d) Board - The Board of Supervisors as trustees of individual drainage districts, levee districts, multi-county drainage districts, multi-county levee districts, and as elected officials to protect the investment of Palo Alto County landowners.

e) Board of Supervisors - The Board of Supervisors of Palo Alto County sitting as the Board of Supervisors and as Drainage District Trustees.

f) Drainage Engineer – A licensed engineer the Board of Supervisors has appointed to oversee the project and be their representative. Where the term Drainage Engineer is used in this document the term also includes a designee or representative of the Drainage Engineer. The County Inspector, designated by the Board under 199 Iowa Administrative Code Chapter 9 may also act as the Drainage Engineer for Private Drainage Infrastructure.

g) County - Palo Alto County, Iowa

h) Crossing Fee - This fee shall be reimbursement of the actual reasonable expenses incurred by the county for the easement granted at a crossing including but not limited to publication costs, engineering costs, inspection costs, auditor's cost, necessary copying, and legal services related to the crossing. As expenses accrue, the County, 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 County, 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.

i) Drainage District - any drainage district, levee district, multi-county drainage district, and multi-county levee district created under Iowa Code chapter 468 that are identified in the Application.

j) Line – Construction of a pipeline, electric transmission line, communication line, underground service line, or other similar installations that the Applicant is installing underground.

k) Drainage District Infrastructure - Improvements and infrastructure owned, controlled, or associated with drainage districts, levee districts, multi-county drainage districts, and multi-county levee districts including but not limited to underground tiles, open ditches, pumping stations, levees, and related facilities.

l) Private Drainage Infrastructure – Any part of a drainage system privately owned, including but not limited to tile, ditches, natural streams, and rivers.

m) County Engineer - A licensed engineer designated by the Board.

n) Easement - That agreement between the Board and the Applicant granting rights to construct, manage and use a line over, across, or beneath specified tile infrastructures and which incorporates the terms herein.

o) 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.

p) Parties -The Board, Drainage District, landowners and Applicant.

q) Project - The development, construction and operation of a line and associated facilities.

r) Project Construction Area - The area of project construction including the right ofway granted the Applicant and work limits identified in the Easement.

s) Requirements - Requirements for Construction of a Line Over, Across, or Beneath Tile Infrastructures.

2) General Obligations of Applicant

a) Within thirty (30) days from the Applicant filing an Application, the Board will provide the Applicant with access to all maps and other files related to the Tile Systems. The Applicant acknowledges that the County's maps of the Tile Systems may not be accurate or complete, and the Board shall bear no responsibility for their accuracy; nor shall Applicant raise any such inaccuracy or incompleteness as a basis not to comply with the repair/restoration provisions herein. The Applicant shall work in coordination with the Drainage Engineer in order to physically locate and expose as needed the Drainage District Infrastructure at points of proposed crossings, in order to gather

survey location and elevation information necessary to comply with the requirements herein. The Drainage Engineer shall be notified at least seventy-two (72) hours in advance of any exploratory excavation. The Drainage Engineer will determine whether soil moisture conditions are suitable for field investigations. Every effort should be made to minimize crop damages during field investigations, including preference for conducting investigations outside the cropping season. Any damages caused during field investigations will be determined by the Drainage Engineer and reimbursed to the landowner/tenant by the Applicant. Applicant will be liable for all costs and expenses of collection incurred by the County, including, but not limited to attorney's fees. Any damages to Drainage District Infrastructure shall be repaired by the Applicant to the satisfaction of the Drainage Engineer.

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 and profiles showing the location, including GPS coordinates and elevations, of the proposed Line and Drainage District Infrastructure at all proposed crossings of the Drainage District Infrastructure within the construction limits. If in view of such plats it is determined by the Drainage Engineer 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 suchpossible 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, considering 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 PALO ALTO COUNTY WITHOUTAPPROVAL 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 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 in accordance with Iowa Code 468.186 the Applicant shall pay all costs of any reconstruction, relocation, modification, or reinstallation of Drainage District Infrastructure and Private Drainage 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 Infrastructure, or Private Drainage Infrastructure in or adjacent to the project construction area are damaged by the Applicant Parties as aresult 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 resolution. The Board may demand in writing that the Applicant make repairs 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 Applicant shall agree to have the Board hire to have the repairs done, and the Applicant shall pay all bills due on submittal, without cost to the landowner, county, or drainage district. If the bill submitted to the Applicant is not paid within thirty (30) days interest at an annual rate of 20% will be added to the bill. The Applicant shall be liable for all costs of repairs and damages which shall be collected by the County 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. 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.

g) Subsequent to construction of the line, all additional costs of Drainage District Infrastructure or Private Drainage Infrastructure construction, maintenance, improvement or reconstruction caused by the presence of Applicant's line shall be paid by the Applicant. To receive compensation under this paragraph, the Board shall either present an invoice specifying the additional costs caused by the presence of the Applicant's Line which is accompanied by a written verification of the additional costs by the 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 project.

h) After construction of the installation has been completed in accordance with all conditions under which the easement is granted, the landowners shall maintain its facility at its own expense, and Applicant, or the Applicant's successors in interest, shall maintain the installation at the Applicant's or successor's own expense. If a drainage district or landowner subsequently undertakes any maintenance, improvement, or reconstruction of its drainage facility which requires the modification, relocation, or reconstruction of the installation, the expense of such modification, relocation, or reconstruction shall be solely borne by Applicant or the Applicant's successors in interest. The Applicant agrees to complete such modification, relocation, or reconstruction within one hundred twenty (120) days of receipt of written request from the Board, or such longer time period as the Board may specify, at the Applicant's sole expense. 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.

i) Applicant shall be responsible to remedy any damage caused by the Applicant Parties to any tile systems arising from the installation, operation, maintenance, or repair of the Project.

j) Subsequent to construction of the line, except in cases of an Emergency, Applicant shall provide Board with a minimum of seventy-two (72) hours advanced notice of any work to be performed by the Applicant Parties. The Board shall have the right to have the 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 landowner, including expenses of the Drainage Engineer related to the Applicant's work within Palo Alto County.

k) 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 or Private Drainage 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 and elevations of all crossings of any Drainage District Infrastructure or Private Drainage 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.

l) At all times, the Applicant shall allow the Board, its Drainage Engineer, and its contractors unrestricted access to the Drainage District Infrastructure or Private Drainage Infrastructure for any and all needs of the landowner 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 line. Applicant may send a watchman at their own expense to observe the work. Work shall not be delayed if a properly notified watchman is not present.

m) The Applicant shall pay for all bills submitted by the County for the Drainage Engineer, mileage, legitimate expenses and also the Applicant shall pay for all repairs, crop loss (now and future) and also the Applicant shall pay for all repairs done by the contractor that the Board shall hire. If the Board causes such work to be done, Applicant shall pay for all costs of the repairs upon receipt. If the bill submitted to the Applicant is not paid within thirty (30) days, interest at a rate of 20% will be added to the bill. If Applicant fails to pay, the Applicant shall be liable for all costs of the repairs which shall be collected by the County on behalf of the Landowners in any court having jurisdiction. The Applicant shall be liable to the County for any attorney fees incurred by the County in pursuing payment. 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.

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 Infrastructure and Private Drainage Infrastructure. The County Inspector, designated by the Board under 199 Iowa Administrative Code Chapter 9 may also act as the Drainage Engineer for Private Drainage Infrastructure. The Applicant Parties shall keep the Drainage Engineer informed of the work schedule 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 back filling. 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 to be present on the site. All reasonable compensation, wages, mileage, and other legitimate expenses for said Drainage Engineer involving crossings of Drainage District Infrastructure or Private Drainage Infrastructure shall be billed to the Applicant and shall be due on receipt. Said Drainage Engineer will be responsible for inspecting all crossings of Drainage District Infrastructure and Private Drainage Infrastructure and shall have the authority to require the Applicant Parties to excavate and expose the crossing of any Drainage District Infrastructure or Private Drainage Infrastructure where the designee believes it prudent to visually examine same. Further, said Drainage Engineer has the authority to request that the Board present pursuant to Iowa Code §479B.20 suspend construction in the event of imminent risk to persons or property resulting from Applicant's or Applicant Parties' activities. The Drainage Engineer shall specify to the Applicant and the Board details relating to the imminent risk that the construction activity poses as well as a timeline for resuming activities. The Board and the Applicant shall work together in good faith with the Drainage Engineer 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 Drainage District Infrastructure or Private Drainage Infrastructure shall be constructed or repaired by Applicant Parties in accordance with pre- construction plans and specifications agreed to between the Applicant and the Drainage Engineer. The construction and maintenance of Applicant's 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) Interruption. In the event it becomes necessary to temporarily stop the normal flow of water in any Drainage District Infrastructure or Private Drainage 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 repair of the tile per the requirements of this resolution shall be performed as rapidly as possible. If the volume of water flowing in the tile is sufficient to create the possibility of crop loss or property damage, the Applicant will be permitted to temporarily block the tile line to prevent the flow of this tile water into the line, or tile line ditch. In the event that this tile line is so temporarily blocked, the Applicant will be expected to provide sufficient pumping equipment to pump the impounded tile water across the construction ditch to the undisturbed tile line. Such temporary blockages of said tile lines will be removed as rapidly as possible, and any tile repairs caused by this blockage will be immediately repaired at the Applicant's expense. The Applicant shall be charged for any and all crop damage.

   ii) If the crossing involves the crossing of an open ditch that is carrying sufficient flow of water to make it necessary to place a temporary dam across said open ditch, such temporary dams may be constructed only upon approval from the Engineer and, if applicable, the permission of any landowner owning property which must be accessed for the construction of such dam and the landowner provides permission to place water that results from the dam on their property. The maximum elevation of this impounded water shall be determined by the 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. If there is evidence that any portion of Drainage District Infrastructure or Private Drainage Infrastructure, including but not limited to drain tiles under roads utilized by construction traffic and drain tiles crossed by

construction equipment, has been damaged by Applicant or Applicant Parties, those damaged tiles or other Infrastructure shall be repaired by the Applicant at the Applicant's expense. 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 Board. 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. If tile lines are found to be damaged, 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. If damage is determined to be caused by the Applicant, repairs must be made to the satisfaction of the Drainage Engineer. Applicant shall take photographs of all repairs to Drainage District Infrastructure and Private Drainage 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. Repairs to tile must be made within 14 days after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. Paved public roadways with adjacent tiles shall have the road and tiles bored under the each. No open cut shall be permitted on a public roadway with tiles, unless otherwise agreed to by the County Engineer or the Iowa Department of Transportation. Nothing in this Paragraph shall be construed to require the Applicant to take any action inconsistent with Iowa Department of Transportation ("IA DOT") rules and regulations. Applicant and Applicant Parties shall temporarily install sufficient cover or other measures for load distribution to avoid damage to the Drainage District Infrastructure or Private Drainage Infrastructure.

e) Construction in Wet Conditions. The Drainage Engineer, in consultation with the pipeline company and the landowner or person in possession of the land pursuant to a lease, if present, shall determine when construction should not proceed in a given area due to wet conditions. The Drainage Engineer shall have the sole authority to determine whether construction should be halted due to wet

conditions. Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed, or underground drainage structures may be damaged.

f) Compaction, Rutting and Soil Restoration. The Applicant shall also be responsible at Applicant's expense to restore all land to its pre-construction condition as near as is practicable. Standards to be followed at a minimum are the Land Restoration Standards found in Iowa Code section 479B.20, Iowa Administrative Code 199 IAC 9, the Applicant's Agricultural Mitigation Plan, and the requirements in this resolution. 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, the Applicant's Agricultural Mitigation Plan and this resolution.The Applicant shall keep the trench material in separate piles between the topsoil and other material. When backfilling the Applicant shall place the topsoil back on the upper part of the trench. The backfilled material in the lower extent of the trench in the field shall meet a proctor value of 95 percent plus/minus 5 percent and plus or minus 5 percent of optimum moisture, and the top 15 inches of topsoil shall be restored to a normal planting state which shall be 50 per cent of proctor value, plus/minus 5 percent and plus or minus 5 percent of optimum moisture. In addition, all material in the top 15 inches shall pass the #16 sieve anywhere the Applicant or the Applicant Parties digs, drives, walks, or travels in any matter. The only exception to this rule is the top of the gravel road where gravel is placed. In the road R.O.W, the open cut in the gravel road (where the gravel is placed and vehicles travels on) shall be 95 percent and plus or minus 5 percent of optimum moisture on the entire open trench. The road ditch shall be 95 per cent of proctor value, except for the top eight (8) inches which shall be left in a smooth state for seeding. All hard surface roads shall be bored, and the road ditch be the same has previous stated. This includes not only the open trench but also anywhere the Applicant and his Applicant Parties digs, drives, walks, or travels in any matter. In the event that Applicant and the 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 Applicant shall pay all fees and costs of the independent third-party engineer. The Applicant, the Drainage Engineer, or the Board may at any time order proctors and nuclear gauge tests, which shall be paid entirety by the Applicant and may be tested anywhere on the jobsite where the Applicant digs, drives, walks or travels in any matter. The determination of such independent third-party licensed

engineer shall be binding upon the parties.

g) Rock and debris removal shall be in accordance with the requirements of 199 IAC Chapter 9.5(5).

h) In order to protect Drainage District Infrastructure and Private Drainage Infrastructure in the County, there shall be a minimum depth of eight (8) feet from the existing ground surface to the top of said Line along the entire length of the Line installed in the County.

i) Crossing Specifications. All Line crossings of Drainage District Infrastructure or Private Drainage Infrastructure shall be constructed by Applicant in accordance with the following specifications:

i) CROSSING OF OPEN DITCHES

(1) Passage of the Applicant's installation 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 of bank of the drainage ditch.

(3) The rate of slope for transition from a normal installation laying depth to crossings of drainage ditches shall not be steeper than 4:1 as measured perpendicular with the alignment of the drainage ditch. 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 any Drainage District Infrastructure or Private Drainage 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.

ii) CROSSINGS OF TILE LINES

(1) All Lines crossing Drainage District tile infrastructure shall be bored a minimum depth of (5) five feet under the flowline of existing tile within fifteen (15) feet of the centerline of the tile as measured perpendicular to the tile's alignment.

(2) All Lines crossing Private Tile Infrastructure shall have a minimum depth of eight (8) feet from the existing ground surface at the location of the crossing to the top of said Line and must also be placed under existing Private tile line infrastructure, while also maintaining a minimum of two (3) feet of separation between the Line and the existing tile line.

(3) The minimum separation between the bottom of any tile lines sized in accordance with current ISU Extension Drainage Standards and installed with the top of existing tile being maintained, shall be two (3) feet, unless determined otherwise for a justifiable and legitimate engineering reason, by the Board in consultation with the Drainage Engineer.

(4) Private Tile Infrastructure may be crossed by either an open cut or by utilizing a bore.However, for open cut crossings, the Applicant shall pay to replace the tile with reinforced concrete pipe of sufficient size determined by the 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 standard tongue and groove joints. The Pipe is to have a minimum of three (3) bolt-type connectors at each joint. The Line shall be backfilled with Class I (1 ½" crushed stone) material, or other material approved by the Drainage Engineer, up to and cradling the tile. The replacement tile shall be connected to the existing tile by a PC-2 concrete collar connection in accordance with Iowa DOT Standard Road Plan SW-211. In the event the Applicant and the Board cannot agree on the requirements or conditions of this Paragraph, the Applicant and the Board shall mutually agree upon an independent, third-party who is a licensed engineer in Iowa with experience in drainage to determine what changes should be made pursuant to this Paragraph, considering the costs, benefits, feasibility, governing engineering principles, government approvals, and the need to accommodate any present or proposed Tile Infrastructure and the affirmative duty of the District to drain the land. The decision of such independent third-party licensed engineer shall be binding upon the

parties. The Applicant shall pay all fees and costs of the independent third-party engineer.

(5) The extent of tile to be replaced by any of the above alternates shall be as follows:

(a) Eight (8) inch tile and smaller: Minimum of six (6) feet either side of the top of trench excavated for the installation of line, measured at right angles to the centerline of the crossing location with a minimum of two (2) feet on each end placed on undisturbed soil.

(b) Ten (10) inch tile or larger: Minimum of ten (10) feet either side of the top of trench excavated for the installation of line, measured at right angles to the centerline of crossing location with a minimum of two (2) feet on each end placed on undisturbed soil.

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 Tile that the Board believes may impact any of the Project facilities. The Board shall also give at least twenty-four (24) hours verbal (via telephone) notice of emergency maintenance repairs in the that may expose, cover upon disturb any installation belonging to Applicant, so that Applicant may arrange to protect same. Emergency (24 hour) notice shall be given by calling Applicant at the County Engineer's Office 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 performing any work pursuant to this Paragraph.

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

c) Applicant shall be responsible for actual property damage caused by constructing and maintaining the Project. These damages are separate and distinct from any payment made to the Board for expenses, crossing fees or easements. The determination of these damages shall be by the Board exclusively; provided, however, that Applicant maintains its right to seek judicial review of any such

damage determinationof 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.

Palo Alto County Board of Supervisors
c/o Palo Alto County Auditor's Office
1010 Broadway, PO Box 95
Emmetsburg, IA 50536
712-852-2924

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, Tile Infrastructures, and Landowners from and against any and all demands, liens, claims, or causes of action and any and all liability, costs, expenses, and judgments incurred in connection

therewith (including court costs and reasonable attorney's fees), whether arising in equity, at common law, or by State, Federal, local or other statute, rule or regulation, including environmental law, or under the law of torts (including negligence and strict liability) ("claim") relating to the Project and/or resulting from or arising out of the use of the easement by Applicant, its servants, agents or invitees and to the extent caused by the Applicant Parties proportionate share of negligence, negligent actions or inactions, provided, however, that Applicant's contractual obligation of indemnification shall not extend to the percentage of the claim attributable to the County or Landowners' negligence, willful misconduct, or strict liability imposed upon the County or Landowner as a matter of law.

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, landowners and their respective heirs, successors (by merger, consolidation or otherwise) and permitted assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Area, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.

c) Iowa Law. The Application and Requirements are entered into under the laws of the State of Iowa, and Iowa law shall apply to the interpretation hereof. Any legal action to enforce or interpret these Requirements or Application shall be brought exclusively in Iowa District Court in Palo Alto 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 Palo Alto County, the Palo Alto County Board of Supervisors, and the Drainage Districts as an additional insured for the Project shall be filed by the Applicant for itself and for the Applicant Parties, with the County Auditor. Applicant shall also certify that the insurance does not contain exclusion for environmental pollution or Applicant shall provide an alternative environmental pollution policy that meets the minimum requirements as defined below. This insurance shall be written for not less than the current year of the Iowa Statewide Urban Design and Specifications Section 1070.

Applicant shall maintain Commercial General Liability ("CGL") Insurance in a limit of not less than $10,000,000 each occurrence. This required minimum limit may be met through a combination of primary and excess liability policies. The CGL Insurance shall cover liability arising from premises operation, independent contractors, personal injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract. Applicant shall obtain coverage for liability arising from pollution, explosion, and collapse, underground property damage caused by Applicant, its employees, contactors, representatives, and agents to the extent of its indemnity obligations hereunder.

Included in the Commercial General Liability Policy or a separate Policy, Grantee must have insurance for sudden and accidental environmental pollutant liability caused by Applicant, its contractors, representatives, and agents in connection with the project and use of the easement. Coverage shall be maintained in an amount of at least $10,000,000 per loss event.

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.

i) Remedies available to the Board: In the event that Applicant should fail to comply with any provision of the insurance section of this ordinance, then the Board may provide Applicant with a written notice by service of process as allowed by the Iowa Rules of Civil Procedure upon Applicant or by certified mail upon Applicant at Applicant's last known address.

Such notice shall specify the default and shall allow Applicant 30 days to cure the default and/or contest that a default exists. In the event that Applicant fails to cure the default within such time, the Board may seek an injunction from the Iowa District Court for Palo Alto County against the Applicant concerning the operation of a line and shall be entitled to enjoin any and all operations until such time as the Applicant shall cure said default.

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

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.

g) 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.

h) Bonding: Applicant shall have bonding form be filled out in its entirety and in force before work and shall begin and shall remine in force for 10 years after pipeline has been completed. This bond shall also move forward and be kept in force if the pipeline is ever sold, bought, or transferred to any other owner, company, firm, or corporation.

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

j) Term: These insurance requirements shall remain in effect for the term of the easement.

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

l) Nothing in the Application and Requirements shall be interpreted to restrict the landowner's use and enjoyment of the easement. Unless otherwise stated, the 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 District Infrastructure.

m) Applicant agrees to pay an hourly inspection, being billed monthly to the

applicant. Inspection Fee being the normal charge out rate per hour. This fee shall only be deemed to reimburse the County for the easement granted at a crossing, publication costs, engineering costs, inspection costs, and legal services related to a crossing. Said fee shall be paid in conjunction with the issuance of the Easement. Applicant shall pay said fee within receipt of the invoice. If Applicant fails to pay within thirty (30) days, the Applicant shall be liable to the County for all costs incurred, including attorney fees, in pursuit of payment. The Board and/or 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.

n) The Easements 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.

o) Any requirement of this Easement as to design specifications or time periods may be altered or amended by agreement in writing between the Board, in consultation with the Board, Drainage Attorney, and the Applicant.

p) 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.

q) If for any reason the Applicant or the Applicant Parties are not following or cannot meet the requirements of this resolution or if the Drainage Engineer believes they cannot meet the requirements of this resolution, the Drainage Engineer will halt all work on the pipeline within Palo Alto County until Applicant or the Applicant Parties can meet the requirements of this resolution.

Passed and approved this 20th day of December, 2022.

The vote thereon being as follows:

Ayes: Ron Graettinger, Craig Mem'll, Linus Solberg, Roger Faulstick, Keith Wirtz.

Nays: none.

Resolution Passed.

Keith Wirtz, Chair, Palo Alto County

Attest: Carmen Moser

Carmen Moser, Palo Alto County Auditor

Motion by Ron Graettinger, 2nd by Roger Faulstick. Resolution on file in Auditor's Office + posted on County website under Board of Supervisors tab.