

**Hancock County Policies Procedures  
and Conditions for Landowner Projects  
Involving Crossing Easements**

**WHEREAS**, pursuant to Chapter 468 of the Iowa Code the Hancock County Board of Supervisors or any Boards of Trustees elected pursuant to Iowa Code §468.500 (hereinafter jointly referred to as the "*Board*"), have a statutory duty as trustees of the public drainage districts located within the county, including levee and multi-county districts (hereinafter collectively referred to as "*District*" or "*Drainage District*"), to be responsible for the maintenance, repair, improvement and management of the improvements in said District (including but not limited to open ditches, underground tiles, levees, and all other drainage facilities within the Districts' right-of-ways, hereinafter collectively referred to as "*District Facilities*" or "*District Facility*"); 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 District to protect the investments made by landowners in drainage districts, levee districts, and lands that would benefit from being drained; and

**WHEREAS**, landowners may desire to construct private crossings or other improvements to their land (a "Project") which will involve the crossing of a District Facility such as an open ditch which requires the District's consent in the form of a crossing easement (hereafter "Crossing Easement"); and

**WHEREAS**, Iowa Code section 468.186 mandates that any person proposing to construct a Project or installation, such as private crossing over, across or through a district right of way, easement, open ditch or similar Facility must, prior to construction, obtain from the governing body of the district an easement to cross the right-of-way; and

**WHEREAS**, in connection with the development and construction of a Project, it may be necessary to:

- a. transport heavy equipment and materials over District Facilities located in the county, and/or
- b. make certain modifications and improvements (both temporary and permanent) to such Facilities to allow construction or to allow equipment and materials to pass over the right-of-way, and/or
- c. place certain under or above-ground structures and equipment for the Project adjacent to, over, across, or beneath certain portions of the District Facilities, and/or

- d. construct, operate and maintain other improvements adjacent to, over, across, or beneath the District Facilities.

**WHEREAS**, it is in the best interest of the public health, convenience and welfare for the Board to establish uniform procedures and conditions necessary to govern construction, maintenance and repair activities within the right-of-way of District Facilities related to any Project; and

**WHEREAS**, the Board hereby adopts these Procedures and Conditions (hereinafter the "**Procedures**").

**NOW THEREFORE BE IT RESOLVED**, that in addition to such other requirements as may be applicable to a particular Project under state or federal law, these Procedures shall be deemed to be incorporated into any Crossing Easement hereafter approved by the District for the construction of a Project, including maintenance and repair of the Project on, over, across or beneath the right-of-way of any Drainage Facilities in Hancock County, Iowa.

### **I. Application and Approval Process**

1. A person (hereafter "*Applicant*" or "*Landowner*") seeking the District's permission to enter upon District right-of-way for the construction of a Project shall file an Application for Crossing Easement on a form to be supplied by the Hancock County Drainage Clerk. Such Application shall identify the Applicant, the landowner and all other parties with an interest in the ownership of the Project, the nature of the proposed Project, and its proposed route within the county. Each Application shall be assessed a one-time fee in the minimum amount of \$750.00 for each crossing of a District Facility (the "Crossing Fee"). Such Crossing Fee shall be determined by the District based on the size and complexity of the proposed Project, and the anticipated administrative burdens and costs attendant with same. The Crossing Fee shall be paid prior to the issuance of any Crossing Easement. The Crossing Fee is non-refundable.

2. Within thirty (30) days from written request, District will provide Landowner with access to any maps and other files for the District(s) potentially impacted by the proposed route of the Project. Applicant/Landowner acknowledge that the District's records may not be accurate or complete, and Applicant/Landowner shall not raise any such inaccuracy or incompleteness as a basis for failure to comply with the provisions herein.

3. District at any time shall have a right to designate an independent professional engineering firm with experience in drainage (hereinafter referred to as the "*Drainage Engineer*") to review at Landowner's expense the Application; to inspect and approve all construction and repair activities on the Project that impact District Facilities; and to otherwise assist and represent the District in carrying out the terms of these Procedures. The District shall provide the Applicant with full contact information (name, address, telephone number, and email address) for the Drainage Engineer. The District may appoint different Drainage Engineers from time-to-time as it deems appropriate depending on the circumstances. In the event a Drainage Engineer has not been retained for a particular Project, the District in conjunction with the County Engineer shall have all oversight roles hereunder.

4. No later than sixty (60) days prior to the start of the construction on the Project, Landowner shall furnish the District with plans showing the location, including GPS coordinates, of the proposed construction and all proposed crossings of the Drainage District Facilities.

If in view of such plans it is determined by the District that such locations are in conflict with present or proposed Drainage District Facilities 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 Landowner(s) does not object to the relocation, the Landowner shall review such possible alignment changes with the Drainage Engineer. Landowner and 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 Landowner and Drainage Engineer cannot agree upon the alignment changes to be made pursuant to this paragraph, Landowner and 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, the need to accommodate any present or proposed Drainage District Facilities and the affirmative duty of District to drain the land. The decision of such independent third-party licensed engineer shall be binding upon the parties. Landowner shall pay all fees and costs of the independent third-party engineer. Applicant/Landowner acknowledges that under Iowa law it cannot interfere with the drainage of the land and will make design changes to maintain drainage of District Facilities as originally designed if an alternate location is not feasible.

5. Once the Application and plans are approved by the District, it shall by resolution approve the issuance of a Crossing Easement for all crossings of District Facilities involved with the Project. The Crossing Easement shall be a written instrument; shall incorporate such conditions as the parties have agreed upon; shall include a description of all temporary and permanent rights granted for the Project; and shall be deemed to incorporate all provisions of these Procedures. The Crossing Easement shall be recorded with the Hancock County Recorder at Applicant's expense.

**6. NO CONSTRUCTION IS PERMITTED 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 CROSSING FEES HAVE BEEN PAID, EASEMENTS AND INSURANCE AGREEMENTS ARE IN PROPER ORDER FOR THE PROJECT AND THAT CONSTRUCTION OF THE PROJECT MAY COMMENCE.**

7. Applicant shall give District at least thirty (30) calendar days' prior notice of their intention to commence construction on the Project. Said notice shall be made in writing to the Hancock County Drainage Clerk; provided, such notice cannot be given until a Crossing Easement for the Project has been issued by the District.

8. Subject to paragraph 9 below, a Crossing Easement is valid so long as Landowner and

the Project are in compliance with the terms of the Crossing Easement and these Procedures. If Landowner or the Project is not in compliance, Landowner agrees that District may seek appropriate relief against it. Landowner shall be liable to District for any and all expenses incurred in seeking such relief, including court costs and reasonable attorneys' fees, in the event the Project or Landowner is found by a Court to be in violation or breach of the Crossing Easement or these Procedures.

9. A Crossing Easement shall automatically terminate in the event of either: (i) the cessation of construction on all portions of the Project for a continuous period of six (6) months prior to completion, or (ii) upon non-use for a period of five (5) consecutive years. For purposes of this paragraph, a Project that is being actively maintained with reasonable anticipation of a future use shall not have its Easement terminated.

10. Applicant and Landowner shall maintain written documentation of engineering plans and survey maps used for the construction of the Project and file copies of the engineering and surveying documentation with the Hancock County Auditor's Office. "As built" plans for the Project shall be furnished to the District within one hundred eighty (180) days of completion.

## **II. Landowner's Construction and Repair Obligations**

The following provisions shall govern all crossings of District Facilities by the Project, whether as part of the original construction or any later repair, maintenance, replacement or other activities by Landowner or its successors. The Drainage Engineer shall have primary responsibility to oversee and enforce these provisions.

1. Intent. The maintenance of District Facilities is of paramount concern to the Hancock County Board of Supervisors. Thus, it is the goal of these Procedures and the intention of the parties: (i) that the Project be designed and located so as minimize the impact on existing and anticipated District Facilities to the extent reasonably practicable; (ii) that any District Facilities that are damaged, or whose use is interrupted, as a result of work on a Project be repaired/restored as quickly as possible by Landowner, or its successors, at the direction of the District at no cost to the District; and (iii) whenever a District Facility in the vicinity of the Project needs a repair/improvement; replacement, the Landowner, its successors or assigns shall promptly take all steps reasonably required by the District to accommodate the District's work; and these Procedures should be interpreted so as to achieve these results. Nothing in these Procedures shall be interpreted to restrict the District's use and enjoyment of the easement rights under the Iowa Code, and the District maintains all rights of ingress and egress necessary for the inspection, maintenance and repair to its Facilities.
2. Drainage District Access. At all times, Landowner shall allow the District, the Drainage Engineer, and the District's contractors unrestricted access to District Facilities for any and all needs of the District as identified by the District or Drainage Engineer.
3. General Obligations.
  - a. All crossing of District Facilities shall be constructed by Applicant/Landowner in accordance with these Procedures, as well as any pre-construction plans and

specifications agreed to between Applicant and Drainage Engineer and incorporated into the Crossing Easement (which shall not be contrary to the requirements of Iowa law). The Applicant/Landowner shall be responsible to locate all underground District Facilities, and the construction and maintenance of the Project shall be performed in such a manner as to minimize interference with, interruption to or the function of any District Facilities. Applicant/Landowner shall be responsible to pay all costs for any reconstruction, relocation, modification, or reinstallation of any District Facility which is necessary as a result of the construction of the Project.

- b. Applicant/Landowner shall be strictly liable and responsible, at its sole expense, to repair any damage to District Facilities, whether arising from the Project or its operation, maintenance, repair, or replacement. This includes, but is not limited to, damage or interference with District Facilities caused by any collapse or settlement of soils in or near the Crossing Easement.
- c. Applicant shall be responsible for any damage caused by Applicant/Landowner to adjacent landowners arising from the operation, maintenance, or repair of the Project.
- d. Applicant/Landowner will make all permanent tile line repairs within thirty (30) days following completion of the construction activities causing the damage, over, across, beneath or adjacent to any District Facilities, taking into account weather and soil conditions, unless a different schedule is agreed to by the District. All tiles will be repaired with materials of at least the same quality as approved by the Drainage Engineer and sized based on current ISU Extension Service Drainage Standards (or such alternative materials and sizes as mutually agreed upon by Landowner and the Drainage Engineer).
- e. Landowner shall take photographs of all repairs to District Facilities 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 Landowner fails to make such repairs within the 30-day period, or such longer period as the District and Landowner may agree to, the District may make such repairs and invoice Landowner for the reasonable cost of such repairs. If the District causes such work to be done, Landowner shall pay for the cost of the repairs within thirty (30) days of receipt of the invoice. If Landowner fails to pay the invoice within thirty (30) days, Landowner shall be liable for all costs of the repairs, court costs and attorney fees incurred in collecting the amount owed.
- f. After completion of construction of the Project, except in cases of an emergency, Landowner shall provide the District with a minimum of forty-eight (48) hours advanced notice of any work to be performed by Landowner within a District right-of-way. District 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. Landowner shall be responsible for all costs incurred by the District, including expenses of the Drainage Engineer, related to the Landowner's work within the right of way.

- g. Abandonment. If Applicant, its successors or assigns, abandons the Project, it shall remain their responsibility to comply with applicable state and federal laws and regulations and to restore the Crossing Easement or District Facility to the condition it was in prior to construction of the Project in the event the District determines restoration is required to maintain drainage of the lands serviced by the District Facilities. If Landowner fails to restore the lands within 30 days of being provided written notice from the District to do so, the District may make such restoration/repairs and invoice Landowner for the reasonable cost of such restoration/repairs. If the District causes such work to be done, Landowner shall pay for the cost of the restoration/repairs within thirty (30) days of receipt of the invoice. If Landowner fails to pay the invoice within thirty (30) days, Landowner shall be liable for all costs of the restoration/repairs, court costs and attorney fees incurred in collecting the amount owed.

#### 4. Obligations Shall Be Appurtenant to the Land

- a. The Project shall be the responsibility of the Landowner that constructs or permits construction of the Project. All future maintenance and/or repairs of the Project, including all expenses associated therewith, shall be Landowner's responsibility. This obligation shall be appurtenant to and transfer with the land in the event of any sale, conveyance or change of ownership of the land. Landowners hereby bind themselves, their heirs, successors and assigns, including any subsequent owners. Any conveyance of the land involved with the Project shall be deemed to include all of the obligations of a Crossing Easement and the obligations herein.
- b. Landowner's failure to maintain any private crossing of a drainage ditch shall be deemed an obstruction of the ditch and allow the District to order the crossing be removed at Landowner's expense. In addition, the failure to maintain a private crossing may be deemed to constitute an act which obstructs or impedes the ditch pursuant to Iowa Code section 468.149. In the event of failure of a private crossing, or other obstruction or impediment to the drainage ditch, it shall be Landowner's responsibility to remove the crossing. Pursuant to Iowa Code section 468.149, if Landowner does not remove the crossing after being given written notice to do so, the District shall have the right to repair or remove the crossing and assess the expense of the repair or removal to Landowner, which expenses shall be certified and collected in the same manner as other taxes.

#### 5. Landowner's Obligations in the Event of Future Work on District Facilities.

- a. Landowner shall be responsible to pay all costs for any future repair, reconstruction, relocation, modification, or reinstallation of any District Facility which is necessary as a result of the repair, reconstruction, maintenance, or relocation of a Project.

- b. After construction of a Project has been completed in accordance with the Crossing Easement, Landowner or Landowner's successors in interest, shall be responsible to maintain the Project at their sole expense; If a District subsequently undertakes any repair, maintenance, improvement, or reconstruction of its Facilities which requires the modification, relocation, or reconstruction of a Project, the expense of such modification, relocation, or reconstruction of the Project shall be borne solely by Landowner or Landowner's successors in interest.
- c. Applicant/Landowner shall at any time subsequent to the commencement of construction, and at Landowner's sole expense, reconstruct or replace the Project, as may be necessary to conform to new grade or alignments resulting from maintenance, improvement or construction operations of the District. Landowner agrees to do this within one hundred twenty (120) days of receipt of written request from the District, or such longer time period as the District may specify, without cost to the Drainage District. Such reconstruction or realignment of the Project shall be made in accordance with and approved by the District. If Landowner fails to comply within the time period specified above, or such longer period as the District may specify, Landowner agrees the District may seek injunctive or other appropriate relief against it, requiring specific performance of such reconstruction or realignment. Applicant/Landowner agrees that it shall be liable to the District for any and all expenses of seeking such relief, including reasonable attorneys' fees, in the event the District is required to seek such relief pursuant to this Paragraph.

### **III. Project Specifications.**

The following specifications shall apply to the construction, placement, maintenance or repair of any Project on, over, under, beneath, or across a District right-of-way, but shall be subject to modification by the District upon the recommendation of the Board or Drainage Engineers.

1. Construction and Repair Standards and Inspection.
  - a. Inspection. The District shall appoint a Drainage Engineer to inspect and approve all construction and repair activities by Landowner that impact the Drainage District and District Facilities. Landowner shall keep the Drainage Engineer informed of the work schedule on Drainage District right of way and any changes to such schedule. The Drainage Engineer will be responsible for inspecting all crossings of District Facilities and shall have the authority to request that the County Inspector be present pursuant to applicable statutes and regulations, including Iowa Code §§ 479.29 and 479B.20 and to suspend construction or repairs in the event of imminent risk to persons or property resulting from Landowner's activities. The Drainage Engineer shall specify to Landowner the details relating to the imminent risk that construction activities pose as well as a timeline for resuming activities. The Drainage Engineer and Landowner shall work together in good faith with the County Inspector to determine whether any activity poses imminent risk to persons or property and the procedure and timeline for resuming activities.
  - b. Construction Specifications. All crossings of District Facilities shall be constructed, maintained and repaired by Landowner in accordance with pre-construction plans

and specifications agreed to between Applicant/Landowner and the Drainage Engineer which shall not be contrary to applicable statutes and regulations. The construction, maintenance and repair of the Project shall be carried on in such a manner as to not interfere with, nor interrupt the function of, any District Facilities. Landowner 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 construction, repair or maintenance activities of Landowner.

- c. Input or oversight by the Drainage Engineer does not create a joint venture between the parties and Landowner retains the responsibility and duty to determine the method and manner by which construction is ultimately completed to meet Landowner's obligations under Procedures and Landowner retains the responsibility and duty to supervise and control entities performing work on the Project.
- d. A Project which adversely affects drainage provided by a District Facility shall be deemed an obstruction of the Drainage Facility and allow the District to order the Project be immediately repaired at Landowner's sole expense. If drainage provided by the District Facility cannot be restored to its original design, the District may order the Project be removed.
- e. Landowner's failure to maintain a Project may be deemed an act which obstructs or impedes the ditch pursuant to Iowa Code section 468.149. In the event of failure of the private crossing or other obstruction or impediment to the drainage ditch, it shall be Landowner's responsibility to repair or remove the Project. Pursuant to Iowa Code section 468.149, if Landowner does not remove the Project after being given written notice to do so, the District shall have the right to repair or remove the Project and assess the expense of the repair or removal to Landowner, which expenses shall be certified and collected in the same manner as other taxes.

2. Flow Interruption. In the event it becomes necessary to temporarily stop the normal flow of water in any District Facility in order to permit construction, installation, or repair work on the Project, the following shall be observed:

- a. If a 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 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 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 Landowner.



3. Compaction, Rutting and Surface Restoration. Landowner shall temporarily install sufficient cover, or other measures acceptable to the District, for load distribution to avoid damage from above-ground loads when crossing any District Facilities. Landowner shall be responsible at Landowner's expense to restore all land within the District right-of-ways to pre-construction condition as near as is practicable. Said restoration shall include rock/debris removal and reseeding of road ditches and ditch banks. Standards to be followed at a minimum are those found in Iowa Code section 479B.20, Iowa Administrative Code 199 IAC 9, and 49CFR 195, if applicable, to Landowner. The Drainage Engineer and Applicant/Landowner shall work together in good faith to make an onsite inspection of the completed restoration and determine compliance.
  
4. Inspection. The Drainage Engineer is authorized by the District to inspect and approve all construction and repair activities by Landowner that impact District Facilities. All reasonable compensation, wages, mileage, and other legitimate expenses for said engineer shall be paid by Landowner. Drainage Engineer will be responsible for inspecting all crossings and shall have the authority to require the construction parties to excavate and expose the crossing of any District Facility where the Drainage Engineer reasonably believes the work has caused damage to the Facilities. The Drainage Engineer has the authority in his or her reasonable discretion to suspend construction in the event of imminent risk to persons or property resulting from construction activities.
  
5. Road Crossings. Nothing in these Procedures or a Crossing Easement shall authorize the placement of a Project under, across, or above any public road right-of-way, which placement will require the necessary approval of the governmental body with jurisdiction over that right-of-way.

#### **IV. Indemnification/Insurance**

1. Indemnity. Applicant/Landowner agrees to indemnify, protect, hold harmless and defend Hancock County and its employees, agents and representatives, the Hancock County Board of Supervisors, the individual District members, and each Drainage District from and against any and all demands, liens, claims or causes of action of any kind, and any and all liability, costs, expenses, and judgments of any kind, including but not limited to personal injury, death, property damage or economic loss, incurred in connection with or relating to Applicant/Landowner's construction, operation, or maintenance of a Project or any other related use of the Crossing Easement hereunder (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, specifically including any environmental law, or under the law of torts (including negligence and strict liability) ("*Claim*") to the extent such Claim results from Applicant/Landowner's alleged negligence, recklessness, or willful misconduct. This indemnity shall be interpreted to include, but not be limited to, claims by landowners affected by a Project. Nothing in this policy shall inure to the benefit of any third party insurer or constitute a waiver of any statutory or common law immunity from tort liability available to Hancock County, its employees, agents and representatives or to the Drainage District.
  
2. Insurance. Before starting any construction activities on a Project (whether the original

Project or subsequent work), and to the extent of Applicant's indemnity obligations hereunder, Certificates of Insurance naming the above indemnified parties as additional insureds shall be filed by the Applicant/Landowner for itself and for all parties performing said work, with the County Auditor. Applicant/Landowner shall also certify that the insurance does not contain exclusion for environmental pollution, or Applicant/Landowner 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:

a. Limits.

	Statutory Limits
(i) Workers' Compensation	
(ii) Contractor's Liability and Property Damage	
Bodily Injury	\$1,000,000
Each person	\$1,000,000
Each Accident	\$5,000,000
(iii) Property Damage	
Each Accident Aggregate	\$5,000,000
(iv) Automobile	
Liability and Property Damage	\$1,000,000
Bodily Injury	\$5,000,000
Each Person	\$1,000,000
Each Accident	\$5,000,000
Property Damage	\$1,000,000
Each Accident Aggregate	\$5,000,000
(v) Commercial General Liability and Umbrella	
Liability Insurance ( <u>each occurrence</u> )	\$5,000,000

The CGL Insurance shall cover liability arising from premises operation, the action of Applicant/Landowner, and its employees, agents, and independent contractors, personal injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract, and shall include coverage for liability arising from pollution, explosion, collapse, or underground property damage.

The CGL Policy or a separate policy, must have insurance for sudden or accidental environmental pollutant liability caused by Applicant, or its contractors, representatives and agents in connection with the Project and use of the District right-of-way. Coverage shall be maintained in an amount of at least \$5,000,000 per loss event. Any permitted successor to Applicant must provide the same certificate of insurance.

- b. Proof of Insurance: Landowner shall upon requests cause certificates of insurance evidencing all of the above insurance policies and coverage to be provided to the County.
- c. Term: These insurance requirements shall remain in effect for the term of the easement granted with the Crossing Easement.

**V. Miscellaneous Provisions**

1. Drainage District Easement. Nothing in the Application, Procedures or Crossing Easement shall be interpreted to restrict the District's use and enjoyment of its easement created by Iowa Code section 468.27. The District maintains all rights of ingress and egress to the easement and its Drainage Facilities.

2. Assignment. Any proposed transfer or assignment of a Crossing Easement shall not be valid unless consented to in writing by the District. In exercising this consent, the District may require any proposed assignee to demonstrate its ability to comply with these Procedures and the terms of the Crossing Easement. PROVIDED, all holders of a Crossing Easement shall be required to notify the District of any proposed assignment thereof, which notice shall include contact information for the assignee, including its name, address, phone, fax, email and the name of a contact person, as well as proof of the insurance as required herein.

3. Binding Effect. The requirements contained herein shall be binding upon, and inure to the benefit of, the Applicant, Landowner and any successors (by merger, consolidation or otherwise) and permitted assigns, and all other persons or entities acquiring an interest in all or any portion of the Project. Landowner, its successors and assigns shall be responsible to make certain all contractors, subcontractors, agents, employees and representatives comply with all requirements contained in the Crossing Easement and these Procedures.

4. Iowa Law. These Procedures 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 Procedures or any Crossing Easement shall be brought exclusively in the Iowa District Court in Hancock 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. Applicant, Landowner or its successors shall be responsible for all expenses and costs, including reasonable attorney fees, in the event Hancock County and its employees, agents and representatives, the Hancock County Board of Supervisors, individual District members or the District is the prevailing party in any such legal proceedings as determined by the court.

5. Remedies. In the event Applicant/Landowner should fail to comply with any provision of the Crossing Easement or these policies, the District shall provide Applicant with written notice specifying the default, and providing 30 days to cure the default and/or contest that a default exists, except in the event of an emergency, in which case the District may take immediate action to address the situation. The remedies set forth in these Procedures are not exclusive. The Board or District shall be entitled to use or devise any other remedy available to the District whether at law or in equity. In any judicial or administrative action brought to interpret or enforce the Crossing Easement or the terms of these Procedures, the District shall be entitled to collect from Applicant/Landowner its reasonable attorney fees, court costs and expenses.

6. Modification. These policies and procedures may be altered or amended only by an agreement in writing between the District, in consultation with the Drainage Engineer and Drainage Attorney, and the Applicant/Landowner.

7. Waiver. Any decision not to enforce any provision of these policies and procedures or the Crossing Easement by the District shall not operate as or be construed as a waiver of any

subsequent breach, or waiver or failure to enforce, of any provision of the procedures or policies. A waiver shall not be binding upon the District unless in writing.

8. Severability. If any provisions of these policies and procedures are determined to be unenforceable, invalid or excessive, the remainder shall be unaffected and remain in full force and effect.

9. Notices. Except as otherwise required hereunder, any notice, demand, or other communication ("*Notice*") required by these policies or procedures or a Crossing Easement shall be in writing and given personally or by overnight delivery by Fed Ex, UPS, or similarly respectable carrier. A courtesy copy of the Notice may be sent by facsimile transmission or electronic mail. Applicant/Landowner may at any time designate a different address or person to which such notice or communication shall be given. Landowner acknowledges an affirmative duty to keep its current notification information on file with the District.

10. Agent for Service of Process. Each Applicant/Landowner shall appoint an agent for service of process in Iowa and register such address with the District and, if applicable, the Iowa Secretary of State. If the Applicant/Landowner designates a different agent or person who is authorized to accept service of any process or notice hereunder, Applicant/Landowner shall provide written notice setting out the name, address and telephone number of said agent to District within thirty (30) days.

11. Timely Performance. Time is important and of the essence in the performance of each and every obligation to be performed by Applicant/Landowner pursuant to these Procedures. This shall include, but not be limited to, Applicant/Landowner agreeing to comply with repair restoration rules and requirements set forth herein.

12. Amendment. These Procedures may be amended by the Board from time-to-time; PROVIDED any amendment shall not affect a Crossing Easement already issued, other than any changes to the liability insurance requirements, which shall be effective upon the next annual certification of insurance by Applicant.