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May 9, 2023

**Via E-Mail Only**

Matthew Ung, M.B.A., M.Th.  
Chairman Board of Supervisors  
Woodbury County  
620 Douglas St.  
Sioux City, IA 51101  
Cell: (712) 490-7852

RE: Joint Representation of Woodbury County in Iowa Utilities Board Pipeline Permit Proceedings  
Concurrent (Joint) Representation and Conflict Waiver

Dear Mr. Ung:

This consent and waiver letter confirms that our Firm has been asked to represent Woodbury County, in addition to Delaware, Floyd, Emmet, Butler, and Bremer Counties, acting by and through their Boards of Supervisors (individually a "County" and collectively the "Counties") in connection with certain matters arising from the state and local regulation of hazardous liquid pipelines, and in particular participation in pending contested case permit proceedings before the Iowa Utilities Board (the "IUB") in connection with a carbon capture pipeline project proposed by Navigator Heartland Greenway ("IUB Permit Proceedings").

As you know, our Firm has an existing and long-standing client relationship with all of the Counties. Given the proposed concurrent representation of the Counties, we cannot undertake a representation where we will advocate or negotiate for one party against the others. However, our ethical rules allow us to undertake joint representation of all Counties in a specific matter provided that we can competently and diligently represent each client, and each client provides informed consent in writing to the representation.

Joint Representation and Common Interests

We believe that we can competently and diligently jointly represent the Counties in the limited matter of the IUB contested case permit proceedings. In those proceedings, the legal issues involved are likely to impact either the zoning and home rule powers of each county within their jurisdiction or the zoning and home rule powers of counties generally. In the case of the former, there is no conflict because the jurisdiction of each county does not interfere with the other counties. In the case of the latter, the zoning and home rule powers of all counties are likely to be affected equally in which case there is a high likelihood no party will be adverse to the others.

In short, as long as the Counties are in agreement on the applicable law, substantive policy issues, and tactical and strategic implementation of their shared goals, we believe that we can competently and diligently continue to represent the Counties and that representing the Counties in front of the IUB would not pose a conflict with our representation of them in other matters. In the event there are actual disagreements of substance between the Counties on the applicable law, substantive policy issues, and tactical and strategic implementation of shared goals, we will attempt to resolve such disagreements or disputes amicably during the joint representation. However, if any one County or Counties remains in dispute or disagreement after good faith attempts at resolution, then one or more of the following may occur:

- (1) the County in disagreement may withdraw from the joint representation and resume separate participation in the proceedings;
- (2) the Firm may decline to advise any of the Counties with respect to such issue; and/or
- (3) the Firm may need to obtain informed consent or withdraw as counsel for one or more Counties, or from the joint representation in its entirety. Such withdrawal by the Firm would not generally, however, impact our ongoing representation of the Counties on any other matters not directly related to or arising from the IUB Permit Proceedings which are the focus of this limited joint representation.

If the Counties desire to pursue this joint representation, the firm requires they agree to the following:

- An acknowledgement that the Firm has been asked to represent them before the IUB in the IUB Permit Proceedings jointly with the other Counties; and
- An acknowledgement from all Counties that the analyses, work product, and preparation of filings for each County on any given question, action, or issue arising during the proceedings is likely to be duplicative if performed separately by each individual County and that each County would rather pursue their goals now through a collaborative process than individually through preparation of their own analyses, work product, and filings, with the understanding and agreement that all Counties will receive the same work product unless they opt to make a separate filing or take some other action individually; and
- An acknowledgement that engaging in this joint representation may prevent Ahlers & Cooney, P.C. from representing any one or more Counties should an adversarial dispute arise with the other Counties as a result of the IUB's handling of the permit proceeding, provided however that the Firm may elect to continue with the representation of one or more Counties with informed consent or otherwise, consistent with attorney ethical rules on conflict of interests.

In the course of the joint representation of the Counties, we will not have communications with one County relevant to the IUB proceedings that are confidential from the other Counties. For matters relevant to this limited joint representation in the IUB proceedings, we have a legal and ethical duty to share with all of you the information we receive and the comments that we give. In other words, your conversations with us with respect to this matter

are not privileged as between the Counties and could not be claimed as privileged should any dispute arise between you. If you want independent advice concerning this matter, or if you wish to be able to discuss matters in complete privacy, you will need to seek such advice from alternate counsel.

In deciding whether or not to consent to the joint representation, the Counties should consider how our limited representation as described above could or may affect them. For example, clients that are asked to consent to conflicts should consider whether there is any material risk that their attorney will be less diligent on their behalf due to the conflict. Similarly, clients should consider whether there is any material risk that their confidential information or other proprietary matters will be used adversely to them due to the conflict. We do not believe that our obligations of loyalty and confidentiality to any party will impair our ability to represent the Counties in this matter in the limited manner described herein, but of course you may ask me any questions you may have regarding the contents of this letter and you should seek the independent advice of your County Attorney or other lawyer outside of our Firm regarding the contents of this letter.

In addition, this representation involves participation in the IUB Permit Proceedings for a pipeline that crosses multiple counties. There is a substantial possibility that other counties will also seek to participate in the same IUB Permit Proceedings, and we may also be asked to represent them in the Proceedings. We do not believe that such representation, if it occurs, will adversely affect our ability to jointly represent the Counties with respect to the permit proceedings because actual disagreements among the counties is unlikely. In the event that other counties seek our representation in the permit proceedings, we may request that the applicable county grant a conflict waiver and/or enter into this or another similar agreement for joint representation. By entering into this joint representation, the Counties consent to the potential inclusion of additional counties in the joint representation without further action on their part, if such additional counties agree to the terms and conditions of this letter.

#### Scope of Limited Representation

If all Counties approve and consent to this joint representation as described above, then the additional terms of our representation are as follows:

We understand the representation in this matter to include the following responsibilities:

- Attend regular and special meetings of each County's Board of Supervisors, and other meetings with state officials or pipeline company representatives as necessary and, in each instance, as may be requested by the Counties related to the IUB Permit Proceedings.
- Advise the Counties on legal and regulatory matters related to state and federal pipeline regulations, state and federal permits, local ordinances and permits, and county home rule authority as and to the extent related to the IUB Permit Proceedings.
- Represent the Counties in the IUB Permit Proceedings.
- Review, draft, file, and, if applicable, negotiate all pleadings, motions, testimony, briefs, and other filings necessary and convenient as part of the IUB Permit Proceedings.

We have discussed with you the fact that the complexity of local, state and federal pipeline regulations, along with the magnitude of the proposed carbon capture pipeline projects, lead to the possibility that the Counties' ordinances might be challenged in court or that the IUB proceedings could result in further state or federal litigation resulting or arising from the IUB's decisions and orders during the IUB Permit Proceedings. The scope of this representation is to assist with the participation in IUB Permit Proceedings as described above, which could include appeals or further judicial review by various parties to the Proceedings.

At this time, the scope does not include defending the Counties against various legal claims not arising from the IUB Permit Proceedings, including administrative claims and state and federal litigation not related to the IUB Permit Proceedings. Representation of the Counties in such matters, if they arise, is subject to the specifics of such claims, a review of actual or potential conflicts of interest, and a separate engagement letter. Any additional legal services, except those services incidental to and necessarily included in connection with this joint representation, must be reflected in separate correspondence, including litigation matters and bond counsel services.

The scope of our representation does not include advice or services regarding accounting, tax, engineering, financial matters, business management, and related non-legal matters and advice. If you wish for us to consult with other professionals retained by one or more Counties regarding the subject of this limited joint representation, we will communicate with the Counties, in writing, to confirm the scope of such consultations prior to initiating the same.

#### Billing Practices and Procedures

Our services are billed hourly, at the rate in effect at the time services are performed. The firm periodically reviews and adjusts billing rates, usually on an annual basis with increases effective January 1. I will be chiefly responsible for providing the legal services in this matter, but may obtain the assistance of other attorneys or paralegals in the firm, including the attorneys listed below at the rates effective as of January 1, 2023:

- Tim Whipple at \$350 per hour
- Steve Nadel, for general counsel, at \$470 per hour
- Elizabeth Burnett for general counsel at \$220 per hour
- Jason Craig, for litigation related questions, at \$355 per hour

I may also call upon others in the firm to assist us from time to time. This may involve attorneys with specialized knowledge and skill, associate attorneys or legal or administrative assistants. Work performed by other attorneys and legal assistants will be billed at their hourly rate in effect at the time the services are performed.

Each County will be billed for *its proportionate share* of the total costs of the joint representation on a monthly basis, for all services rendered and all expenses advanced. For this representation, the proportionate shares shall be equal, and shall be determined by dividing the fees and costs to be billed by the number of Counties jointly represented. The firm will advance usual and necessary expenses incurred in connection with your representation if the individual amounts do not exceed \$250. If an expense exceeds that amount, the firm will forward the

provider's statement directly to you for payment. Your monthly statement will contain an itemized list of the services performed and expenses incurred. If your County uses other services or has other open matters with the Firm, these expenses will be shown separately from those other costs. Should you have any questions about the statement, please call. The firm reserves the right to withdraw from your representation if each monthly statement is not paid within 60 days of issuance.

#### Other Matters for Consideration

As you are aware, our firm represents many political subdivisions, including cities, counties, school districts, and other companies and individuals. It is possible that, during the time we are representing your County, one or more of our present or future clients will have transactions with the County or matters involving the IUB. It is also likely that we may be asked to represent, in an unrelated matter, our other clients. We do not believe such representation, if it occurs, will adversely affect our ability to jointly represent the Counties as provided in this letter, either because such matters will be sufficiently different from the County joint representation so as to make such representations not adverse, or because the potential for such adversity is remote or minor, and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of our County joint representation. We do reserve the right (and the County, by accepting our representation on these terms, consents thereto) to continue to represent, or to represent in the future, other clients on matters where the County joint interests may be adverse, but that do not have a substantial relationship to any matter on which we are representing the Counties.

In the interest of facilitating our services to you, we may send documents, information or data electronically or via the Internet or store electronic documents or data via computer software applications hosted remotely or utilize cloud-based storage. Your confidential electronic documents or data may be transmitted or stored using these methods. We may use third party service providers to store or transmit these documents or data. In using these electronic communication and storage methods, we employ reasonable efforts to keep such communications, documents and data secure in accordance with our obligations under applicable laws, regulations, and professional standards; however, you recognize and accept that we have no control over the unauthorized interception or breach of any communications, documents or data once it has been transmitted or if it has been subject to unauthorized access while stored, notwithstanding all reasonable security measures employed by us or by our third party vendors. By your acceptance of this letter, you consent to our use of these electronic devices and applications and submission of confidential client information to or through third party service providers during this engagement.

#### Next Steps:

By executing this informed consent, joint representation letter, the County acknowledges that we have informed you of our potential representation of other Counties, as described herein, and we understand that you have determined to recommend to the Board of Supervisors that they seek our representation for the limited purposes described herein.

If the contents of this letter are agreeable, please present this letter to the Board of Supervisors for approval, and then sign one copy of this letter and return it to me by email or by U.S. mail.

If you disagree with or otherwise believe anything herein to be incorrect or mistaken in any way, then please let me know as soon as possible. We will only be able to represent the Counties in this matter if all Counties are in agreement regarding this limited representation.

Finally, should you have any questions on this matter, please don't hesitate to contact me. The firm appreciates the opportunity to serve as your counsel in connection with this matter. We look forward to working with you.

Very truly yours,

AHLERS & COONEY, P.C.

By

*/s/ Timothy J. Whipple*

Timothy J. Whipple

**WAIVER AND CONSENT**

**Woodbury County has had the opportunity to seek advice from independent counsel of their own choosing concerning the proposed concurrent representation and any conflict of interest associated therewith, and hereby knowingly and voluntarily waives and consents to any actual, potential, or perceived conflict of interest associated with Ahlers & Cooney, P.C.'s representation of Delaware, Floyd, Emmet, Butler, and Bremer along with Woodbury County, and any additional counties which seek to join the joint representation on the same terms and conditions, as set forth herein.**

Woodbury County\*

Dated: May 16, 2023 By 

\*Approved by action of the governing body on May 16, 2023.