

CONSENT AND CROSSING AGREEMENT

THIS CONSENT AND CROSSING AGREEMENT (the "Agreement") is executed this ___ day of _____, 2023, by and between [SDREA MEMBER], ("Utility") and Navigator Heartland Greenway, LLC ("Crossing Party"). Utility and the Crossing Party are referred to herein collectively as the "Parties".

RECITALS:

WHEREAS, Utility is the holder of easements and certain other rights over a portion of certain real property located in [COUNTY], South Dakota as described in the attached and incorporated **Exhibit "A"** (the "Utility Easements"); and

WHEREAS, pursuant to Utility Easements and the use of the public right-of-way, Utility has installed, maintains, and operates certain facilities in the above-described counties in South Dakota for the purpose of providing services to its Cooperative Members;

WHEREAS, Crossing Party proposes to construct and maintain underground pipeline facilities across Utility's facilities (collectively referred to as "Crossings") for the purpose of accessing, constructing, operating, and maintaining a pipeline. The locations of the Crossing Party's proposed Crossings are more particularly depicted on **Exhibit "B"** attached hereto and incorporated by reference herein; and

WHEREAS, Utility is willing to consent to Crossing Party's construction, maintenance, and use of said Crossings subject to certain conditions.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties agree as follows:

1. Utility hereby agrees to Crossing Party's construction, maintenance and repair of the Crossing Party's facilities within the Utility Easements and public rights-of way as provided in Exhibit A and to cross the Utility's facilities, in the locations depicted on Exhibit B and all future crossings agreed to by Utility, in compliance with all legal and regulatory requirements.
2. Crossing Party agrees to use commercially reasonable efforts to ensure that Crossing Party's use does not: (i) damage any property of Utility; (ii) interfere with Utility's operations; (iii) interfere with Utility's environmental compliance; or (iv) interfere with Utility's use and enjoyment of the Utility's infrastructure, including Utility Easements set forth in Exhibit A.
3. Crossing Party agrees to a minimum separation distance of two (2) vertical feet for all underground utility line Crossings and a minimum separation distance of ten (10) feet when Crossing Party's pipeline runs parallel to Utility's underground utility lines. Crossing Party further agrees to utilize a crossing angle as close to 90 degrees as possible where at all feasible.
4. Crossing Party agrees that any access roads pursuant to construction easements shall maintain at least three (3) feet of dirt between the top of the road and the top of any affected buried utility.



5. Crossing Party agrees that all applicable OSHA and National Electric Safety Code Clearances must be maintained with regard to Overhead Utility Lines, including clearances for construction equipment and all other applicable clearances.

6. Utility and Crossing Party will reasonably coordinate and cooperate so as not to unreasonably interfere with each other's facilities or each other's access to or use of the area described in Exhibit B.

7. Crossing Party shall provide a minimum of forty-eight (48) hours' notice to Utility prior to any installation, construction, excavation, or demolition work on the Utility Easements area, and to ensure further safety and as required by State Law, Crossing Party shall call the South Dakota ONE CALL for a locate prior to beginning any work and in compliance with State Law. Upon such notice by Crossing Party, Utility shall have the right in its sole discretion, but not the obligation, to provide a representative when any construction, excavation, or demolition work is done on the Utility Easements area. The onsite Utility representative will have the authority to shut down work by the contractor if the contractor's activities are reasonably judged to be unsafe by Utility's representative. The Utility representative will be invited to participate in contractor's safety meetings. Whether Utility does or does not have a representative on site, does not in any way, nor to any extent, relieve Crossing Party of responsibility or liability for any damages resulting from the work and presence of Crossing Party on the Utility Easements.

8. If the Parties cannot agree upon crossing details, the Parties shall mutually agree upon an independent third party who is a licensed engineer in South Dakota with experience in similar crossings who shall, with input from both Parties, finally resolve any disputes between the parties with respect to any of the crossing details associated with the crossing. The retention and decision of such independent third-party licensed engineer, which shall be binding upon the parties, must be accomplished in a timely manner so that Crossing Party's construction is not unreasonably delayed. The Parties shall share equally all fees and costs of the independent third-party engineer.

9. Crossing Party agrees to provide Utility a map of all Road and Utility Crossings after construction is completed in accordance with the Crossing Requirements.

10. By granting its consent, Utility does not waive or relinquish any rights or benefits that it may have, either expressed or implied, under or by reason of its existing Easements. Crossing Party agrees that the granting of this consent by Utility does not diminish Utility's ability to use the area described in the Easements, and further agrees to cooperate with any future easement needs of Utility, to the extent that said use and cooperation does not interfere with Crossing Party's use and enjoyment of the easements and other rights granted to Crossing Party.

11. Crossing Party agrees and acknowledges that nothing in this Agreement will obligate Utility to replace, remove or relocate any of its equipment as it exists and is located on, over or under the Easements as of the date of this Agreement. If Utility agrees to relocate an electric line or facility, Crossing Party shall cover relocation costs.

12. Crossing Party agrees to keep the Crossing Party Facilities within the Easements in a neat and safe condition and clear of all obstructions. Crossing Party agrees to notify Utility immediately in the event any damages are caused by Crossing Party or a Crossing Party contractor to Utility's facilities. Crossing Party agrees that it shall either repair or replace (at its expense), or reimburse Utility, for the damage caused to Utility's facilities, including in the event of a rupture

or leak. Crossing Party will reimburse Utility for its expense within thirty (30) days after receipt of Utility 's invoice.

13. This Agreement shall be construed and interpreted in accordance with the laws of the State of South Dakota.

14. This Agreement contains the entire agreement between the Parties in connection with any matter mentioned or contemplated herein, and all prior or contemporaneous proposals, agreements, understandings, and representations, whether oral or written, are merged herein and superseded hereby. This Agreement shall be binding on the successors or assigns of Utility and Crossing Party. No such assignment shall relieve Crossing Party of its obligations under this agreement unless such assignee confirms, in writing, that it consents to and agrees to be bound by the terms and conditions of this Agreement. Nothing contained herein shall be construed to abrogate or relinquish any rights granted by the original Easements.

15. This Agreement may be executed simultaneously or in counterparts, each of which together shall constitute on and the same Agreement.

16. The invalidity, illegality or unenforceability of any provisions or part of any provision of this Agreement under any law shall not affect the other provisions or parts of this Agreement which shall remain in full force and effect. However, the material breach of any individual provision herein may at the option of the party offended by the breach, constitute a breach of the agreement in its entirety.

17. The Agreement will be incorporated into any forthcoming permit granted by the South Dakota Public Utilities Commission. Any dispute related to compliance with this Agreement may be presented to the PUC.

Utility and Crossing Party each represent and warrant to the other that (i) such representing and warranting party has the right and authority to execute this Consent, (ii) the person signing this Consent on such party's behalf is authorized to do so, and (ii) when signed by such party, this Consent constitutes a valid and binding agreement enforceable against the party in accordance with its terms. Utility represents and warrants to Crossing Party that it is the current owner and holder of the rights of the grantee under the Utility Easements. Crossing Party represents and warrants to Utility that it has or will have the right to construct, operate, and maintain its facilities at the time of such construction, operation, and maintenance as contemplated herein.

Crossing Party shall indemnify and hold harmless Utility, and its officers, directors, members, partners, agents, employees and representatives from any claim, demand suit, expense or liability (collectively, "Claims") to the extent arising out of Crossing Party's exercise of the rights granted in this Agreement, including, but not limited to, environmental damage, property damage, personal injury and/or death. However, Crossing Party shall not be liable for any Claims arising out of the negligence or willful misconduct of Utility, its affiliates and their officers, directors, members, partners, agents, employees, invitees, or representatives.

All notices to either party hereto shall be in writing and served personally on, or sent by first class U. S. Mail, postage prepaid, to the addresses as follows:

If to Crossing Party:

Navigator Heartland Greenway, LLC

[ADDRESS]

If to Utility:

[SDREA MEMBER COMPANY]

[SDREA MEMBER COMPANY ADDRESS]

[COUNTERPART SIGNATURE PAGES FOLLOW]

DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written,

[SDREA Member]

By: _____
Name: _____
Title: _____

Navigator Heartland Greenway, LLC

By: _____
Name: _____
Title: _____

DRAFT

Exhibit A

Utility Easements

DRAFT

Exhibit B

Crossing Locations

DRAFT