

DICKINSON COUNTY ORDINANCE

ORDINANCE BY DICKINSON COUNTY ON THE CONSTRUCTION OF A LIQUID PIPELINE, PIPELINE, ELECTRIC TRANSMISSION LINE, COMMUNICATION LINE, UNDERGROUND SERVICE LINE, OR OTHER SIMILAR INSTALLATION ON, OVER, ACROSS, OR BENEATH DRAINAGE DISTRICTS IN DICKINSON COUNTY

Ordinance No. 22-1

WHEREAS, the Board of Supervisors, as trustees of individual drainage districts, (hereinafter Board) is responsible for the maintenance and management of the drainage districts established under Iowa Code chapter 468 and located within Dickinson County, Iowa 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, Iowa Code section 468.186 specifically addresses proposed pipelines, electric transmission lines, communication lines, underground service lines, or other similar installations on, over, across, or beneath the right-of-way of any drainage district; and

WHEREAS, Iowa Code section 468.186 mandates that an applicant, before beginning construction, obtain from the governing body of the drainage 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 district may, as a condition of granting such an 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 districts to determine the applicability of such conditions to other lands contained within a drainage district.

NOW THE DICKINSON COUNTY BOARD OF SUPERVISORS THEREFORE ADOPTS THE FOLLOWING:

In addition to the requirements in Iowa Code Section 468, Iowa Code Section 479B and Iowa Administrative Code chapters 199 1AC9 and 13, the Board shall require the inclusion of the following conditions, pursuant to Iowa Code Section 468.186, in any easement proposed for Board approval which provides easement rights for construction of a line over, across, or beneath a drainage district located in Dickinson County.

The Applicant shall file an application for an easement for the construction of a pipeline, electric transmission line, communication line, underground service line, or other similar installation over, across, or beneath any drainage district in Dickinson County with each applicable district, listing each

crossing or crossings associated with a project 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 the construction of a liquid pipeline, pipeline, electric transmission line, communication line, underground service line, or other similar installation on, over, across, or beneath a drainage district in Dickinson County including its contractors, subcontractors, suppliers, designees, or representatives. The Applicant filing the application must be the owner of the Project. Applicant includes all assignees and successors in interest.
- b) Application – An application for an easement for the construction of a liquid pipeline, pipeline, electric transmission line, communication line, underground service line, or other similar installation on, over, across, or beneath a drainage district in Dickinson County, which is the manner of requesting an easement from the Board.
- c) Board - The Dickinson County Board of Supervisors as trustees of individual drainage districts.
- d) County – Dickinson County, Iowa
- e) Fee - A fee shall only be deemed to reimburse the county for the easement granted at a crossing covering publication costs, engineering costs, inspection costs, auditor's cost, necessary copying, and legal services related to the crossing. Said fee shall be paid in conjunction with the issuance of the easement to cross the drainage district. (See Section 7(g) of this Ordinance.)
- f) Drainage District – any drainage district created under Iowa Code chapter 468 that are identified in the Application.
- g) Line – Construction of a pipeline, electric transmission line, communication line, underground service line, or other similar installations that the Applicant is installing.
- h) Drainage Engineer – A licensed engineer designated by the Board. The Drainage Engineer may name a designee. The designated Drainage Engineer may be changed at any time by the Board. The Applicant will be notified of any such change.
- i) Easement – An agreement between the Board and the Applicant granting rights to construct a pipeline, electric transmission line, communication line, underground service line, or other similar installation on, over, across, or beneath a drainage district in Dickinson County.
- j) Parties – The Board, Drainage District, and Applicant.

2) General Obligations of Applicant

- a) Within thirty 30 days from the Applicant filing an Application, the Board will provide the Applicant with access to all maps and other files related to the drainage district. The Applicant acknowledges that the County's maps of the drainage district may not be accurate or complete, and the Board shall bear no responsibility for their accuracy; nor shall Applicant raise any such inaccuracy or incompleteness as a basis not to comply with the repair/restoration provisions herein.
- b) The Applicant shall then, no later than ninety (90) days prior to the start of the construction on the Project, furnish the Board with plats showing the location, including GPS coordinates, of the proposed construction and all proposed crossings of the drainage district. If in review of such plats it is determined by the Board that such locations conflict with present or proposed drainage districts, the Applicant shall review such possible alignment changes with the Drainage Engineer.
- c) **NO CONSTRUCTION IS TO COMMENCE ON ANY PORTION OF THE PROJECT WITHIN DICKINSON COUNTY WITHOUT APPROVAL OF A RESOLUTION BY THE BOARD OF SUPERVISORS STATING THAT ALL NECESSARY EASEMENTS AND AGREEMENTS ARE IN ORDER FOR THE PROJECT AND 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 Dickinson County. Said notice shall be made in writing to the Board, 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 completed.
- e) The Applicant shall pay all costs of any reconstruction, relocation, modification, or reinstallation within the drainage district which may be necessary because of construction of the installation for which the easement was granted.
- f) The Line shall have a minimum depth of five (5) feet from the top of the ground to the top of said line and/or two (2) feet below the existing tile.
- g) If any portions of the drainage district in or adjacent to the project construction area are damaged by the Applicant due to the Project construction, the Applicant, at their sole expense, shall promptly repair such damage as directed by the Board.
- h) After construction of the Project, all additional costs of drainage district construction, maintenance, improvement, or reconstruction caused by the presence of the Project 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 Project which is accompanied by a written verification of the additional costs by the Drainage Engineer.
- i) After construction of the Project has been completed in accordance with all conditions under which the easement is granted, the Drainage District shall maintain its facility at its own expense, and the Applicant, or the Applicant's successors in interest, shall maintain the Project at the

Applicant's or successor's own expense. If the drainage district subsequently undertakes any maintenance, improvement, or reconstruction of its facility which requires the modification, relocation, or reconstruction of the Project, the expense of such modification, relocation, or reconstruction shall be borne by Applicant or the Applicant's successors in interest.

- j) Applicant shall be responsible for any damage caused by the Applicant to the drainage district from the operation, maintenance, or repair of the Project.
- k) After construction of the Project, Applicant shall provide Board with a minimum of ten (10) days advanced notice of any work to be performed by the Applicant. The Board shall have the right to have a Drainage Engineer present during any such work.
- l) **As-Built Plans.** As-built plans for all installations related to the Project shall be furnished to the Board within ninety (90) days of completion of construction that crosses the drainage district. Said plans shall include a plan, a profile and a location using the civil monument or GPS locations. All plans shall include exact GPS coordinates of all crossings of the drainage district. 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 all expenses of seeking such relief, including reasonable attorneys' fees, in the event the Board is required to seek such relief pursuant to this Paragraph.
- m) The Applicant shall pay for all bills submitted by Dickinson County for any mileage, legitimate expenses and the Applicant shall pay for all repairs, crop loss (now and in the future) and 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.

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.
- b) **Construction Specifications.** All crossings of the drainage district shall be constructed or repaired by the Applicant in accordance with pre-construction plans and specifications agreed to between the Applicant, Board and the Drainage Engineer which shall not be contrary to applicable statutes and regulations.
- c) **Interruption.** In the event it becomes necessary to temporarily stop the normal flow of water to permit the Applicant's construction, installation, and repair. The Applicant and the Drainage Engineer shall come to an agreement regarding a plan that shall be the least impactful regarding the stoppage of the water flow.
- d) **Compaction, Rutting and Soil Restoration.** The Applicant shall also be responsible at Applicant's expense to restore all land within the drainage district right of ways and adjacent lands to its pre-construction condition as near as is practicable. Restorations shall be consistent with applicable statutes and regulations. 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 same.

- e) Crossing Specifications. All crossing specifications of a drainage district shall be agreed to by Applicant and the Drainage Engineer.

4) Board's Representations, Warranties and Covenants

- i) Notice of Repair, Improvement, Maintenance or New Construction. The Board shall give the Applicant at least thirty (30) days written notice of the proposed repair, improvement, maintenance, or new construction in a drainage district that the Board believes may impact any of the Project facilities. The Board shall also give at least twenty-four (24) hours verbal (via telephone) notice of emergency maintenance repairs in the drainage district.
- ii) Limitation on Liability. So long as Applicant receives the notice set forth in Section 4(i) above, the Board and the drainage district shall have no responsibility for damages to the Applicant's property occasioned by any construction or maintenance operation of the drainage district after completion of the Project, except for damages resulting from the willful misconduct or gross negligence of the Board and/or its representatives or agents.
- iii) Applicant shall be responsible for actual property damage caused by constructing and maintaining the Project. These damages are separate and distinct from any payment made to the drainage district or Board for expenses, fees, or easements. The determination of these damages shall be by the Board exclusively and 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.

Dickinson County Board of Supervisors
c/o Dickinson County Auditor
1802 Hill Avenue, Suite 1400
Spirit Lake, Iowa 51360
712-336-3356

Address listed on Applicant's Application

- 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) 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 Dickinson County, the Board and Drainage District from and against any and all demands, liens, claims, or causes of action and any and all liability, costs, expenses, and judgments incurred in connection therewith (including court costs and reasonable attorney's fees), whether arising in equity, at common law, or by State, Federal, local or other statute, rule or regulation, including environmental law, or under the law of torts (including negligence and strict liability) relating to the Project and to the extent caused by the Applicant's proportionate share of negligence, negligent actions or inactions, provided, however, that Applicant's contractual obligation of indemnification shall not extend to the percentage of the claim attributable to the County or Drainage District's negligence, willful misconduct, or strict liability imposed upon the County or Drainage District as a matter of law.

7) Miscellaneous Provisions

- a) Assignment. The Applicant's interests are transferable. However, the 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, Dickinson County Drainage Districts and their respective heirs, successors (by merger, consolidation or otherwise) and permitted assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Area, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.
- c) Iowa Law. The application and requirements are entered into under the laws of the State of Iowa. Any legal action to enforce or interpret these requirements or application shall be brought exclusively in Iowa District Court in Dickinson 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) Insurance. Before starting construction and to the extent of Applicant's indemnity obligations hereunder, Certificates of Insurance or self-insurance naming Dickinson County, the Dickinson County Board of Supervisors, and the Drainage District as an additional insured for the Project

shall be filed by the Applicant with the Dickinson 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 for each occurrence. The CGL Insurance shall cover liability arising from premises operation, independent contractors, personal injury, and liability assumed under an insured, including the tort liability of another assumed in a business contract. Applicant shall obtain coverage for liability arising from pollution, explosion, collapse, and underground property damage caused by Applicant, its employees, contractors, representatives, and agents to the extent of its indemnity obligation hereunder. Included in the CGL policy or a separate policy, Applicant must have insurance for sudden and accidental environmental pollutant liability caused by the 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.

- f) 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. If Applicant fails to cure the default within such time, the Board may seek an injunction from the Iowa District Court for Dickinson County against the Applicant concerning the operation of the Project and shall be entitled to enjoin all operations until such time as the Applicant shall cure said default.

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

Proof of Insurance: Applicant shall cause certificates of insurance evidencing all of the above insurance policies and coverage to be provided promptly to Dickinson County upon request by the Board but no more than one time annually.

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

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

- g) Applicant agrees to post a one-time fee of one million dollars with the Dickinson County Treasurer. Said fee may be increased, decreased, or waived by the Board on a case-by-case basis after reviewing the application. The fee shall only be used to reimburse the Drainage District for the easement granted at a crossing, open ditch or tile, publication costs, engineering costs, repair costs,

inspection costs and legal services related to a crossing. Said fee shall be paid in conjunction with the issuance of the Easement. Any monies from the fee not used five years after the completion of the Project shall be donated to a Dickinson County charity of the Applicant's choosing or refunded to the applicant.

- h) Any Easement agreed to by the Board is subject to existing regulations and statutes, and any regulations and statutes which may be amended, promulgated, or enacted.
- i) Applicant shall comply with land restoration rules and requirements set forth by the Iowa Utilities Board in Section 199 Iowa Administrative Code Chapter 9 and the requirements of Iowa Code 479B.20 and in connection with abandonment, 49 CFR part 195 and Iowa Code Section 479B.

The Easement is valid so long as Applicant follows 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 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.


William Leupold

Chairman, Dickinson County Board of Supervisors



Steve Clark

Dickinson County Board of Supervisors



Tim Fairchild

Dickinson County Board of Supervisors



Jeff Thee

Dickinson County Board of Supervisors



Kim Wermersen

Dickinson County Board of Supervisors

Attest:



Lori Pedersen, Dickinson County Auditor