

Resolution- 15-1201

**RESOLUTION BY SAC COUNTY DRAINAGE DISTRICTS ON  
CONSTRUCTION OF A HAZARDOUS LIQUID PIPELINE OVER,  
ACROSS, OR BENEATH COUNTY DRAINAGE DISTRICTS**

**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 levee districts established under Iowa Code Chapter 468 and located within the Sac 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 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 Board to protect the investments made by landowners in drainage districts, levee districts, and lands that would benefit from being drained; and

**WHEREAS**, Iowa Code Section 468.186 specifically addresses a proposed pipeline installation on, over, across, or beneath the right-of-way of any drainage or levee district; and

**WHEREAS**, Iowa Code Section 468.186 mandates that a pipeline 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, and multi-county levee district right of way and to determine the applicability of such conditions to other lands contained within a drainage or

Board of Supervisors.

- f) County - Sac County, Iowa.
- g) Crossing Fee - This fee shall only be deemed to reimburse a Drainage District for the easement granted at a crossing, 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 and/or consent to cross the District's facilities.
- h) 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.
- i) 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.
- j) Drainage Engineer – A licensed engineer designated by the Board. The Drainage Engineer may name a designee. The Board hereby appoints Ivan Droessler as the Board's designated Drainage Engineer for all matters contained herein. The designated Drainage Engineer may be changed at any time by the Board. The Applicant will be notified of any such change. Ivan Droessler may be reached at: I & S Group, 1725 North Lake Avenue, Storm Lake, Iowa 50588; Phone (712)732-7745. Where the term Drainage Engineer is used in this document the term also includes a designee or representative of the Drainage Engineer.
- k) Easement-That agreement between the Board and the Applicant granting rights to construct, manage and use a hazardous liquids pipeline over, across, or beneath specified drainage districts and which incorporates the terms herein.
- l) 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.
- m) Parties – The Board, Drainage District, and Applicant.
- n) Project – The development, construction and operation of a hazardous liquid pipeline and associated facilities.
- o) Project Construction Area- The area of project construction including the right of way granted the Applicant and work limits identified in the Easement.

- c) NO CONSTRUCTION IS 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 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 the Applicant shall pay all costs of any reconstruction, relocation, modification, or reinstallation of the Drainage District 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 or Drainage District Infrastructure in or adjacent to the project construction area are damaged by the Applicant Parties as a result 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 easement. 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 pipeline, all additional costs of Drainage District Infrastructure construction, maintenance, improvement or reconstruction caused by the presence of Applicant's pipeline 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 pipeline which is accompanied by a written verification of the additional costs by the Drainage Engineer or reach an

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 Drainage District, including expenses of the Drainage Engineer related to the Applicant's work within the right of way.

- l) 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. 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 Drainage District 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.
- m) At all times, the Applicant shall allow the Board, its designee, and its contractors unrestricted access to the Drainage District Infrastructure for any and all needs of the Drainage District 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 pipeline. 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.
- n) If the Applicant fails on its own to properly repair any portion of the Drainage District or Drainage District Infrastructure that is damaged as a result of the Project as required hereunder, the Board may demand in writing that the Applicant repair the same 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 30 day period, or such longer period as the Board and Applicant may agree to, the Board may make such repairs and invoice the Applicant for the reasonable cost of such repairs. If the Board causes such work to be done, Applicant shall pay for the cost of the repairs within thirty (30) days of receipt of the invoice. If Applicant fails to pay within thirty (30) days, the Applicant shall be liable for all costs of the repairs which shall be collected by the County on behalf of the District in any court having jurisdiction. The Applicant shall be liable to County for reasonable attorney fees incurred by the County in pursuing payment.

- c) Interruption. In the event it becomes necessary to temporarily stop the normal flow of water in any Drainage District 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 replacement of tile with approved metal pipe or concrete pipe, in the manner approved by the Drainage Engineer, shall be performed as rapidly as possible. If the approved method of repair is impossible and 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 pipeline, 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 Drainage District 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.
  - ii) If the crossing involves the crossing of a Drainage District 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 designated 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. The Applicant will make all permanent tile line repairs within ninety (90) days following completion of construction in the County, adjacent to, over, across, or beneath any Drainage District Infrastructure, taking into account weather and soil conditions, unless a different schedule is agreed to by the Parties. 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 Drainage Engineer. Applicant shall take photographs of all repairs to

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, and Applicant's Agricultural Mitigation Plan. 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 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) Crossing Specifications. All crossings of Drainage District Infrastructure shall be constructed by Applicant in accordance with the following specifications:

i) CROSSING OF OPEN DITCHES

- (1) Passage of the Applicant's installation 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 two (2) times the design base width of the ditch either side of the centerline of the drainage ditch, unless the existing base width is greater than the design base width. If the existing base width is greater than the design width, the depth is to extend to a point two (2) times the existing width.
- (3) The preferred rate of slope for transition from a normal installation laying depth to crossings of drainage ditches shall not be steeper than 3:1. For a justifiable and legitimate engineering or constructability reason, a slope steeper than 3:1 may be approved by the Board in consultations with the Drainage Engineer.
- (4) If such ditch crossings occur at points of outlets of Drainage District 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.
- (5) All crossing of open ditches shall be done by boring or open cut as agreed to by the Drainage Engineer following consultation with the Applicant. In determining whether boring or open cut is proper, the Drainage Engineer and the Applicant shall work together in good faith, considering the costs, benefits, feasibility, applicable engineering

experience in drainage to determine what 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.

- (4) The length of tile to be replaced by any of the above alternates is as follows:
  - (a) Eight (8) inch tile and smaller: Six (6) feet either side of the top of trench excavated for the installation of pipeline, measured at right angles to the centerline of the crossing location.
  - (b) Ten (10) inch tile or larger: Ten (10) feet either side of the top of trench excavated for the installation of pipeline, measured at right angles to the centerline of crossing location.
- (5) If the Applicant's installation disturbs or requires replacement of any portion of a tile drain less than twenty inches in diameter, and a portion of such drain will remain wholly or partially exposed after the construction project has been completed, the portion which is to remain exposed and not less than three feet of such drain immediately on either side of the portion which is to remain exposed, shall be replaced either with steel pipe of not less than sixteen gauge or polyvinyl chloride pipe conforming to current industry standards regarding diameter and wall thickness.

#### **4) Board's Representations, Warranties and Covenants**

- i) 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 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 that may expose, cover up or 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 \_\_\_\_\_

Dakota Access LLC  
Attn: Legal Department  
1300 Main Street  
Houston, Texas 77002  
Fax: 713-989-1212

- 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 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) ("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 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 transferrable. However, assignee IS required to comply with all Requirements set forth herein.

i) Workers' Compensation	Statutory Limits
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 (each occurrence)	\$10,000,000

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, collapse, underground property damage caused by Applicant, its employees, contractors, representatives, and agents to the extent of its indemnity obligations hereunder.

a) Included in the CGL policy or 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.

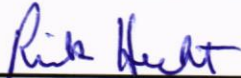
These limits shall be adjusted every 10 years to reflect the changes over that time in the U.S. Bureau of Labor Statistics' CPI-U index.

vi) 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


with the issuance of the Easement.

- j) The Easement agree 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.
- k) 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 Drainage Engineer and Drainage Attorney, and the Applicant.
- l) 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.

**Passed and approved this 1<sup>st</sup> day of December, 2015.**



**Rick Hecht, Chairman**



**Dean Stock**



**Ranell Drake**

**The vote thereon being as follows:**

**Ayes:** \_\_\_\_\_

**Nays:** \_\_\_\_\_

**Attest:** 

**James W. Dowling, Sac County Auditor**