

Hancock County
Procedures and Conditions for Construction in
Drainage District Right-of-Way

Table of Contents

<u>Title</u>	<u>Page No.</u>
I. Application and Approval Process	3
II. Applicant's Construction and Repair Obligations	5
1. Intent	5
2. Drainage District Access	6
3. General Obligations	6
4. Applicant's Obligations in the event of Future Work on District Facilities	7
III. Crossing Specifications	9
1. Construction and Repair Standards	9
2. Crossing of Open Ditches	9
3. Crossing of Tile Lines	10
4. Flow Interruption	11
5. Compaction, Rutting and Surface Restoration	11
6. Inspection	11
7. Road Crossings	12
IV. Indemnification/Insurance	12
1. Indemnity	12
2. Insurance	13
a. Limits	13
b. Proof of Insurance	13
c. Term	13
V. Miscellaneous Provisions	13
1. Drainage District Easement	14
2. Assignment	14
3. Binding Effect	14
4. Iowa Law	15
5. Remedies Available to the Board	15
6. Modification	15
7. Waiver	15
8. Severability	15
9. Notices	15
10. Agent for Service of Process	16
11. Timely Performance	16
12. Amendment	16

WHEREAS, pursuant to Chapter 468 of the Iowa Code the Hancock County Board of Supervisors and those 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 "*Districts*" or "*Drainage District*"), to be responsible for the maintenance, repair, improvement and management of the improvements in said Districts (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 "*Facilities*"); 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 mandates that any person proposing to construct a pipeline, electric transmission line, communication line, underground service line, or similar installation (hereinafter referred to as an "*Installation*" or "*Project*") on, over, across or beneath a District right-of-way must, prior to construction, obtain from the governing body of the District an easement to cross the right-of-way; and

WHEREAS, Iowa Code section 468.186 further provides that the governing body of the District may, as a condition of granting such easement, attach thereto such additional conditions as it deems necessary; and

WHEREAS, in connection with the development and construction of an Installation, it will 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 Installation 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 the Board deems necessary to govern construction activities within the right-of-way of District Facilities related to any Installation; 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 Installation under state or federal law, these Procedures shall be deemed to be incorporated into any Crossing Easement hereafter approved by the Board for the construction of an Installation, Maintenance, and Improvement on, over, across, or beneath the right-of-way of any Drainage District in Hancock County, Iowa.

I. Application and Approval Process

1. Any person seeking the Board's permission to enter upon District right-of-way for the construction of an Installation (the "*Applicant*") 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 and all other parties with an interest in the ownership of the Installation, the nature of the proposed Installation, and its proposed route within the county.

- a. 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"). The Crossing Fee is non-refundable. Such Crossing Fee shall be determined by the Board based on the size and complexity of the proposed Installation, and the anticipated administrative burdens and costs attendant with same.
- b. Should the initial Crossing Fee be deemed to be insufficient to cover the administrative and other costs to the District incurred in connection with the Crossing Easement or the Installation, Applicant shall be responsible for payment of such additional fees and expenses, incurred by the District.
- c. It is the intent of these procedures and conditions that all costs and expenses, including interest charged by contractors or engineers, incurred in connection with a Crossing Easement and Installation be the sole responsibility of the Applicant. The Crossing Fee, and any other costs or expenses incurred by the District, shall be paid prior to the issuance of any Crossing Easement.
- d. Applicant's responsibility to pay the costs and expenses of the District related to the Crossing Easement and Installation includes all expenses incurred after submission of the Application, whether before, during or after construction of the Installation. This includes Applicant's obligation to pay interest or finance charges on past due amounts.

2. Within thirty (30) days from written request, the Board will provide the Applicant with access to any maps and other files for the Districts potentially impacted by the proposed route

of the Installation. The Applicant acknowledges that the District's records may not be accurate or complete, and the Applicant shall not raise any such inaccuracy or incompleteness as a basis for failure to comply with the provisions herein.

3. The Board 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 the Applicant's Expense the Application; to inspect and approve all construction and repair activities on the Installation that impact District Facilities; and to otherwise assist and represent the Board in carrying out the terms of these Procedures. The Board shall provide the Applicant with full contact information (name, address, telephone number, and email address) for any such Drainage Engineer. The Board may appoint different Drainage Engineers from time-to-time as it deems appropriate depending on the circumstances giving rise to same. In the event a Drainage Engineer has not been retained for a particular Installation, the Board in conjunction with the County Engineer shall have all oversight roles hereunder.

4. The Applicant shall then, no later than ninety (90) days prior to the start of the construction on the Installation, furnish the Board with plats showing the location, including GPS coordinates, of the proposed construction and all proposed crossings of the Drainage District Infrastructure. If in view of such plats it is determined by the Board 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 the landowner(s) does not object to the relocation, the Applicant shall review such possible alignment changes with the Drainage Engineer. The Applicant and the 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 the Applicant and the Drainage Engineer cannot agree upon the alignment changes to be made pursuant to this Paragraph, 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 what alignment 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. Applicant acknowledges that under Iowa law it cannot interfere with the drainage of the land and will make design changes to accommodate drainage if a more desirable location is not feasible.

5. Once the Application and final plans are approved by the Board, the Board shall by Resolution approve the issuance of a Crossing Easement for all crossings of District Facilities involved with the Installation. 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 Installation; and shall be deemed to incorporate all provisions of these Procedures. The 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 INVOICES FOR NECESSARY CROSSING FEES AND OTHER EXPENSES WHICH HAVE BEEN SUBMITTED FOR PAYMENT TO APPLICANT HAVE BEEN PAID, EASEMENTS AND INSURANCE AGREEMENTS ARE IN PROPER ORDER FOR THE PROJECT AND PROVIDING THAT CONSTRUCTION OF THE INSTALLATION MAY COMMENCE.**

7. The Applicant should in most circumstances give the Board at least thirty (30) calendar days' prior notice of their intention to commence construction on the Installation, but shall give said notice a minimum of seven (7) days prior to commencement of construction. 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 Installation has been issued by the Board. The Board in its sole discretion may waive the notice requirements in this subsection.

8. Subject to paragraph 9 below, a Crossing Easement is valid so long as Applicant and the Installation are in compliance with the terms of the Crossing Easement and these Procedures. If the Applicant is not in compliance, including the failure to pay costs or expenses, including any interest on overdue amounts, the Applicant agrees that the Board may seek appropriate relief against it. The Applicant shall be liable to the Board for any and all expenses incurred in seeking such relief, including court costs, and reasonable attorneys' fees, in the event the Applicant is found by a Court to be in 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 Installation for a continuous period of six (6) months prior to completion, or (ii) upon non-use for a period of one year. For purposes of this paragraph, an Installation that is being actively maintained with reasonable anticipation of a future use shall not have its Easement terminated.

10. "As built" plans for all Installations that cross Drainage District Facilities shall be furnished to the Board within one hundred eighty (180) days of completion. Said plans shall include a plat, a profile and a location using the civil monument or GPS locations. All plans shall include exact GPS coordinates of all crossings of District Facilities, as well as materials and operational information (e.g. -pressure, voltage, size, overhead clearances). The "as built" plans shall also include emergency contact information for the Applicant and any person responsible for the operation of the Installation (including address, cellphone, fax, and email). PROVIDED, however, the Board agrees to execute an appropriate confidentiality agreement (as provided by Applicant) in conjunction with the delivery of said plans. Applicant agrees the Board is entitled injunctive or other appropriate relief 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 court costs and reasonable attorneys' fees, in the event the Board is required to seek such relief pursuant to this paragraph.

II. Applicant's Construction and Repair Obligations

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

1. Intent. The maintenance of the 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 all Installations 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 an Installation be repaired/restored as quickly as possible by Applicant or its successors at the direction of the Board at no cost to the District; and (iii) that whenever a District Facility in the vicinity of an Installation needs a repair/improvement; replacement, the Applicant, its successors or assigns shall promptly take all steps reasonably required by the Board 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 Drainage District's use and enjoyment of the easement rights under the Iowa Code, and the Drainage 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, Applicant shall allow the Drainage District, the Drainage Engineer, and the Drainage District's contractors unrestricted access to the District Facilities 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 District Facilities that may reasonably come into contact with, or otherwise impact the Installation. 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.

3. General Obligations.

a. All crossing of District Facilities shall be constructed by Applicant in accordance with these Procedures, as well as any pre-construction plans and specifications agreed to between the Applicant and the Drainage Engineer and incorporated into the Crossing Easement (which shall not be contrary to the requirements of Iowa law). The Applicant shall be responsible to locate all underground District Facilities, and the construction and maintenance of Applicant's Installation shall be performed in such a manner as to minimize interference with, or interruption to, the function of any District Facilities. The Applicant shall be responsible to pay all costs for the construction of an Installation, including the costs of any reconstruction, relocation, modification, or reinstallation of any District Facility which is necessary as a result of the construction of the Installation.

b. Applicant shall be strictly liable and responsible, at its sole expense, to repair any damage to District Facilities, whether arising from the installation, operation, maintenance, repair, or replacement of an Installation. 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. The Applicant shall also be responsible to repair any tiles damaged in the District right-of-way. All such repair shall be performed promptly and as directed by the Board, provided that such direction is not inconsistent with the requirements of these Procedures.

c. Applicant shall be responsible to remedy any damage caused by the Applicant to the Drainage District, District Facilities or adjacent landowners arising from the operation, maintenance, or repair of the Installation. If there is evidence that any District Facilities, including but not limited to tiles under roads utilized by construction traffic or tiles crossed by construction equipment, have been damaged by Applicant or its contractors, subcontractors, or agents (hereinafter the "Affiliates"), those District Facilities or damaged tiles shall be promptly repaired by the Applicant at the Applicant's sole expense consistent with these Procedures.

d. The Applicant 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 Board. 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 the Applicant and the Drainage Engineer).

e. Applicant 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 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 the invoice within thirty (30) days, the Applicant shall be liable for all costs of the repairs, interest on the past due amount, court costs and attorney fees incurred in collecting the amount owed.

f. After completion of construction of the Installation, except in cases of an emergency, Applicant shall provide Board with a minimum of forty-eight (48) hours advanced notice of any work to be performed by the Applicant within a District right-of-way. The Board 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. 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.

g. Abandonment. If Applicant, its successors or assigns, abandons an Installation, 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 Installation in the event the Board determines

restoration is required to maintain drainage of the lands serviced by the District Facilities.

4. Applicant's Obligations in the Event of Future Work on District Facilities.

- a. The Applicant shall be responsible to pay all costs for any future reconstruction, relocation, modification, or reinstallation of any District Facility which is necessary as a result of the repair, reconstruction, maintenance, or relocation of the Installation.
- b. After construction of the Installation has been completed in accordance with the Crossing Easement, Applicant, or the Applicant's successors in interest, shall be responsible to maintain the Installation at their sole expense; PROVIDED, if a District subsequently undertakes any repair, maintenance, improvement, or reconstruction of its Facilities which requires the modification, relocation, or reconstruction of the Installation, the expense of such modification, relocation, or reconstruction of the Installation shall be borne solely by Applicant or the Applicant's successors in interest.
- c. The Applicant shall at any time subsequent to the commencement of construction, and at Applicant's sole expense, reconstruct or replace its installation as may be necessary to conform to new grade or alignments resulting from maintenance, improvement or construction operations of the Drainage District. The Applicant agrees to do this within one hundred twenty (120) days of receipt of written request from the Board, or such longer time period as the Board 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 Board. If the Applicant fails to comply with the time period specified above or such longer period as the Board may specify, the Applicant agrees that the Board may seek injunctive or other appropriate relief against it, requiring specific performance of such reconstruction or realignment. 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.
- d. Upon determination by the Board or Board's contractors that any proposed District work area in the vicinity of an Installation poses any potential risks arising from the District's proposed work under applicable safety standards, the Applicant agrees, at its expense, to promptly take the necessary steps to provide a safe work area for District projects in the vicinity of the Installation, including de-energizing or shielding overhead transmission lines, subject to restrictions for accommodating such steps by state or federal regulating bodies or applicable law, rules, or regulations. In the event that any such work could be conducted utilizing alternate methods that would not result in a safety standard violation, the Applicant agrees to reimburse the Board for any additional costs of such alternate methods, and the Board agrees to work in good faith with Applicant to minimize such additional costs.

III. Crossing Specifications.

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

1. Construction and Repair Standards and Inspection.

- a. Inspection. The Board shall appoint a Drainage Engineer to inspect and approve all construction and repair activities by the Applicant that impact the Drainage District and District Facilities. The Applicant shall keep the Drainage Engineer informed of the work schedule on Drainage District right of way and any changes to such schedule. A Drainage Engineer shall be present on the site at all times at each phase and separate activity including the opening of the trench, the restoration of underground improvements, and backfilling. If, however, proper notice is provided to the Drainage Engineer, the work performed by the Applicant Parties shall not be halted or delayed by the failure of the Drainage Engineer or its representative to be present on the site. All reasonable compensation, wages, mileage, and other legitimate expenses for said Drainage Engineer involving work in the Drainage District right-of-way shall be incorporated into the Crossing Fee. The Drainage Engineer will be responsible for inspecting all crossings of District Facilities and shall have the authority to require the Applicant to excavate and expose the crossing of any District Facilities where the Drainage Engineer believes it prudent to visually examine same. Further, the Drainage Engineer has the authority to request that the County Inspector present pursuant to applicable statutes and regulations, including Iowa Code §§ 479.29 and 479B.20, suspend construction in the event of imminent risk to persons or property resulting from Applicant's activities. The Drainage Engineer shall specify to the Applicant the details relating to the imminent risk that the construction activity poses as well as a timeline for resuming activities. The Drainage Engineer and the Applicant 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 the Drainage District Infrastructure shall be constructed or repaired by Applicant Parties in accordance with pre-construction plans and specifications agreed to between the Applicant and the Drainage Engineer which shall not be contrary to applicable statutes and regulations. The construction and maintenance of Applicant's installation shall be carried on in such a manner as to not interfere with, nor interrupt the function of, any Drainage District Infrastructure. The Applicant 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 actions of Applicant or Applicant Parties.

2. Crossing of Open Ditches

- a. Passage of an underground Installation will be 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. It should be understood that siltation occurs in open ditches, and therefore the design grade may be several feet below the existing bottom.
 - (i) The above depth (elevation) is to extend from the toe of the spoil bank on near side and continue at that depth (elevation) to the toe of the spoil bank on the opposite side of the open ditch.
 - (ii) 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.
 - (iii) All underground crossing of open ditches shall be done by boring.
- b. If a ditch crossing for an Installation occurs at points of outlet for District Facilities 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.
- c. All overhead installation crossings of District open ditches or tiles shall be designed and maintained to minimize the placement of structures within the District right-of-way; and to provide for height clearances above the right-of-way that meet or exceed all applicable safety regulations.

3. Crossings of Tile Lines

- a. All proposed underground Installations must be placed below existing Drainage District tile lines, unless such installations can be placed above an existing Drainage District tile line while maintaining a minimum of two (2) feet of separation between the Installation and the top of the District tile line, as well as a minimum of 48 inches of cover. Said clearance must be maintained for a distance of twenty (20) feet on each side of the crossing. Said projected depths shall be provided by the District's Drainage Engineer as part of the Application review.
- b. District tiles may be crossed by underground installations by utilizing a bore. For those rare instances where open cut crossings are necessary, the Applicant shall replace the District tile with tile of at least the same quality and sized pursuant to the ISU Extension Standards and as directed by the Drainage Engineer. Plowing

in an Installation shall not be permitted.

- c. Overhead Installations that cross District tiles shall comply with 1(c) above.
 - d. If the Installation disturbs or requires replacement of any portion of a District tile less than twenty inches in diameter, and a portion of such drain will remain wholly or partially exposed after the construction 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. 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 an Installation, the following shall be observed:
- a. If the crossing involves a District tile line, the replacement of tile as specified 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.
 - b. If the crossing involves the crossing of a 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 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.
5. Compaction, Rutting and Surface Restoration. Applicant shall temporarily install sufficient cover or other measures acceptable to the Board for load distribution to avoid damage from above-ground loads when crossing any District Facilities. The Applicant shall be responsible at Applicant'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 Applicant. The Drainage Engineer and the Applicant shall work together in good faith to make an onsite inspection of the completed restoration and determine compliance.

6. Inspection. The Drainage Engineer is authorized by the Board to inspect and approve all construction and repair activities by Applicant that impact District Facilities. All reasonable compensation, wages, mileage, and other legitimate expenses for said Engineer shall be paid by the Applicant. Said 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 that the work has caused damage to the Facilities from activities associated with the Installation. Further, 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.

7. Road Crossings. Nothing in these Procedures or the Crossing Easement shall authorize the placement of an Installation 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. If there is evidence that any portion of a Drainage District or Drainage District Infrastructure, including but not limited to drain tiles under roads utilized by construction traffic and drain tiles crossed by construction equipment, has been damaged by Applicant or its contractors, those damaged tiles or other District Facilities shall be repaired by the Applicant at the Applicant's expense at the end of the Project construction in the County in a manner acceptable to the Drainage Engineer. The Drainage Engineer and Applicant shall work together in good faith to determine the cause of any damage covered by this Paragraph. In the event the Applicant and the Drainage Engineer cannot agree as to the cause of 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 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. Paved public roadways with adjacent tiles shall have the road and tiles bored under each. No open cut shall be permitted on a public roadway with tiles, unless otherwise agreed to by the County Engineer or the Iowa Department of Transportation. Nothing in this Paragraph shall be construed to require the Applicant to take any action inconsistent with Department of Transportation ("DOT") rules and regulations. Applicant and its contractors shall temporarily install sufficient cover or other measures for load distribution to avoid damage to the District Facilities.

IV. Indemnification/Insurance

1. Indemnity. Applicant agrees to indemnify, protect, hold harmless and defend Hancock County and its employees, agents and representatives, the Hancock County Board of Supervisors, the individual Board members, and each Drainage District from and against any and all demands, liens, claims, 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, property damage or economic loss, incurred in connection with or relating to Applicant's construction,

operation, or maintenance of an Installation 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's negligence, recklessness, or willful misconduct; provided however, that Applicant's obligation of indemnification shall not extend to the percentage of a Claim that is attributable to Hancock County and its employees, agents and representatives, the individual Board members, or any Drainage District's negligence, recklessness, or willful misconduct, or that of a third-party not directly or indirectly related to Applicant. This indemnity shall be interpreted to include (i) claims by landowners along the Project routes and (ii) any damage to persons or property caused by the release of or exposure to any hazardous substance or pollutant from the Installation. Nothing in this agreement shall inure to the benefit of any third party or constitute a waiver of any statutory or common law immunity from tort liability available to Hancock County and its employees, agents and representatives or to the Drainage District.

2. Insurance. Before starting any construction activities on an installation (whether the original installation 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 for itself and for all parties performing said work, with the 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 following limits:

a. Limits.

(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 (<u>each occurrence</u>)	\$10,000,000

The CGL Insurance shall cover liability arising from premises operation, the action of Applicant, 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.

If the Project involves a pipeline as defined under Iowa Code section 479, 479A, or 479B, 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. Included in the CGL Policy or a separate Policy, Applicant 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.

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 \$10,000,000 per loss event. Any permitted successor to Applicant must provide the same certificate of insurance.

- b. Proof of Insurance: Applicant shall annually 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 Drainage District's use and enjoyment of the easement created by Iowa Code section 468.27. Unless otherwise stated, the Drainage District's easement shall be 100 feet on either side of the center line of the District's Facility. The Drainage District maintains all rights of ingress and egress to the easement and its Drainage Facilities.

2. Assignment. Unless the holder of a Crossing Easement is a state or federally-regulated public utility, any proposed transfer or assignment of a Crossing Easement shall be subject to the reasonable consent of the Board, which must be authorized in writing. In exercising this consent, the Board 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 the Crossing Easement shall be required to notify the Board 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 under paragraph IV, 2 above. Applicant may permit the use of the Easement rights granted to Applicant hereunder by any entity otherwise lawfully permitted to attach to or co-locate on Applicant's Facilities, and nothing in these Procedures shall preclude under-building, pole attachment, or other collection on an above-ground Installation; PROVIDED any such construction must observe all of these Procedures.

3. Binding Effect. These requirements contained herein shall be binding upon, and inure to

the benefit of, the Applicant, and its 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 Installation. The Applicant, 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. The Applicant 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, the individual Board members, and each Drainage District is the prevailing party in any such legal proceedings as determined by the court.

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

6. Modification. Any requirement of these Procedures 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.

7. Waiver. Any decision not to enforce any provision of these Procedures or the Crossing Easement by the Drainage 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 this Agreement. A waiver shall not be binding upon the Drainage District unless in writing.

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

9. Notices. Except as otherwise required herein, any formal notice, demand, or other material communication ("*Notice*" or "*Demand*") required by these 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 a notice, demand or material communication may be sent by facsimile transmission or electronic mail. Any party may at any time designate a different address or person to which such notice or communication shall be given. Applicant acknowledges an affirmative duty to keep its current notification information on file with the

Board. Communications which relate to non-substantive or common subject matters may be transmitted by facsimile or electronic mail.

10. Agent for Service of Process. Each Applicant shall appoint an agent for service of process in Iowa and register such address with the Board and the Iowa Secretary of State. If the Applicant designates a different agent or person who is authorized to accept service of any process or notice hereunder. Applicant shall provide written notice setting out the name, address and telephone number of said agent to Board 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 the Applicant and Board pursuant to these Procedures. This shall include, but not be limited to, Applicant 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 any Crossing Easement already issued, other than any changes to the insurance requirements under IV, 2 shall be effective upon the next annual certification of insurance by Applicant.