

**PIPELINE CONSTRUCTION
AND
INDEMNITY CONTRACT**

**State of Texas
County of Winkler**

Comes now Winkler County Commissioners' Court, by and through **The Honorable Charles M. Wolf**, County Judge, and **(Pipeline Company Name)**, Applicant, which makes this a contract governing the installation of a **(type of line)** pipeline, and in consideration of the \$500.00 application fee, the undersigned Company agrees that such use shall be subject to the following terms, covenants and conditions, to-wit:

1. The parties to this Agreement are **Winkler County, Texas** and **(Pipeline Company Name)**. Winkler County agrees to grant **(Pipeline Company Name)** at their expense, the right to construct (i.e. road crossing for 30" pipeline) at County Road _____
33°28'57.72"N
97°27'2.03"W (example)

2. CONDITIONS

When Applicant installs a Facility in the crossing area, the following terms and conditions shall apply:

- a. Applicant shall comply with all requirements of the Texas Underground Facility Damage and Safety Act, Section 251, et seq. Texas Utilities Code, and assumes all risks and liabilities pursuant to that Section.
- b. **Applicant shall employ the method of directional boring, also known as horizontal directional drilling or HDD, rather than trenching or cutting.**
- c. **Applicant shall use only bore pipe or cased pipe. All polyethylene pipe shall be cased.**
- d. **The bore shall be no less than twenty feet (20') from the road on each side.**
- e. Applicant shall bury said pipeline to a depth consistent with the Odessa District of the Texas Department of Transportation requirements from easement to easement.
- f. Applicant shall install and maintain suitable buried markers indicating the location of Applicant's Facility in the crossing area.
- g. Applicant shall carry out all work in the crossing area in a proper and diligent manner and in accordance with good engineering and construction practices.
- h. Applicant shall notify Winkler County 48 hours prior to the commencement of any ground disturbance within 30 feet of Winkler County's easement to enable a field representative to locate and identify the limits of Winkler County's road easements.
- i. During its operations pursuant to the Agreement, Applicant shall have available at the crossing area a copy of this Agreement approved by Winkler County Commissioners' Court.
- j. Applicant shall ensure that the work is carried out in accordance with the technical details that are set out in its request for permission that have been accepted by Winkler County and in accordance with the Location Plan and Profile.
- k. The Applicant shall inform its contractors of their responsibilities regarding any construction or installation of a facility subject to this Agreement.
- l. **Prior to commencement of any work, Applicant shall provide to Winkler County the required 1-800-DIG-TESS form.**
- m. When necessary to protect the public, the Applicant shall fence or barricade the area around the excavation and shall erect such warning signs as required.
- n. Applicant shall ensure that the weight of any equipment crossing over Winkler County roads will not cause any damage to said roads. Applicant shall, if requested by Winkler County field representative, ramp the crossing area during any such crossing of equipment.

- o. Applicant shall physically support Winkler County bridges, culvert crossings and road easements as required, or as directed by Winkler County, while any work is being carried out hereunder.
- p. Applicant shall cover any Winkler County road or easement damage with such quantity and quality of backfill material as is specified by Winkler County field representative prior to the Applicant commencing backfilling operations.
- q. Applicant shall, as soon as it is reasonably practical after the completion of Applicant's work in the crossing area, restore the surface of the crossing of the area as closely as is practical to the condition in which it existed immediately prior to the work being commenced.
- r. In the case of damage to Applicant's Facility in the crossing area or other emergency, Applicant shall commence the necessary work and shall forthwith give to Winkler County's field representative verbal notice of such damage or other emergency and of the necessary work to be conducted, and shall forthwith give written notice to Winkler County.
- s. The whole of the cost of the work with respect to Applicant's facility in the crossing area shall be borne by Applicant.
- t. Applicant shall be liable for and shall pay all taxes, rates and assessments of every description whatsoever that may be imposed by any lawful authority by reason of the presence of Applicant's facility in the crossing area, or by reason of this Agreement or of anything done by Applicant pursuant to this Agreement. Applicant shall indemnify Winkler County from and against all such taxes, rates and assessments.
- u. The costs associated with the location and identification of (**Pipeline Company Name**)'s pipelines or the supervision or monitoring of work in the crossing area shall not be charged to the Applicant for short term work. However, if Applicant's work extends past three (3) working days, these extended costs, including the first three (3) days, will be charged to the Applicant.
- v. Applicant shall, except in cases of emergency, provide three (3) working days' notice to Winkler County prior to commencement of construction or installation of the facility.

3. REMEDY ON DEFAULT

In the case of default by Applicant in carrying out any of the provisions of this Agreement, Winkler County may give notice thereof to Applicant. If Applicant fails to commence to remedy such default with fifteen (15) days after receipt of such notice and diligently complete such remedy thereafter, Winkler County may take such steps as are appropriate to remedy such default and Applicant shall be liable for and shall pay all reasonable costs and expenses incurred by Winkler County in remedying the default.

Without restricting or limiting any other remedy which Winkler County may have against Applicant at law or in equity or pursuant to the terms of this Agreement, in the event the Applicant fails to comply with the terms of this Agreement, the Applicant shall pay to Winkler County forthwith upon demand the sum of **One Thousand and no/100 Dollars per foot (\$1,000.00/ft.) of county road measured from right-of-way to right-of-way** as liquidated damages for breach of the aforesaid covenant, it being agreed between Applicant and Winkler County that the actual damages to Winkler County in the event of such breach are impractical to ascertain and that the aforesaid amount is a reasonable estimate thereof.

4. FURTHER WORK

- a. If, subsequent to the initial work to be undertaken by Applicant for its facility, either Winkler County or Applicant desires to undertake any work in the crossing area, this Agreement shall be deemed to grant consent to that party, and the provisions of this Agreement shall apply mutatis mutandis to all subsequent work undertaken by either party.
- b. Notwithstanding the foregoing, installation of any facility other than those covered by this Agreement, shall require a separate crossing agreement.

- c. Notwithstanding the foregoing, if emergency work is required by either party, that party shall commence the necessary work and shall forthwith give the other party's field representative verbal notice of the emergency and necessary work, and shall forthwith give written notice hereof.

5. LIABILITY AND INDEMNITY

Applicant shall

- a. be liable to Winkler County for all loss, damages and expenses which Winkler County may suffer, sustain, pay or incur by reason of any matter or thing arising out of or attributable to any act or omission of Applicant, its servants, agents, contractors or employees in respect of Applicant's use of the crossing area or by reason of this Agreement, and in addition,
- b. indemnify Winkler County against all actions, proceedings, claims, demands and costs which may be brought against or suffered by Winkler County or which it may sustain, pay or incur by reason of any matter or thing arising out of or attributable to any act or omission of Applicant, its servants, agents, contractors or employees in respect of Applicant's construction, use and maintenance of the crossing area or by reason of this Agreement.

6. ASSIGNMENT

Neither party shall assign or transfer this Agreement or the rights and privileges hereby granted without the written consent of the other party first had and obtained and such consent shall not be unreasonably withheld. Together with any request for such consent, the Assignor shall provide the other party with the Assignee's written confirmation that the Assignee is familiar with the terms of this Agreement and agrees to be bound by the terms of this Agreement.

7. Winkler County does not presume to permit the placement of said line on private land or State highway, and its permission granted hereunder only extends to that portion of said line which travels within the easement of the County Road in Exhibit A.
8. **(Pipeline Company Name)** hereby certifies that they hold superior title to either the mineral or fee simple estate in the properties across which said pipeline shall travel, or are beneficiaries of contract with the property owners entitling the Applicant to construct and place said line. Upon request, the Applicant will provide proof of such contractual agreement or other legal right to place the pipeline upon ground adjacent to the County right of way.
9. **(Pipeline Company Name)** hereby agrees to indemnify and save harmless Winkler County, from any liability or damages the County may suffer as the result of the construction, use, maintenance, placement or failure of the pipeline which is the claims, demands, costs or judgments against the County arising out of subject of this Agreement. The indemnity herein provided shall extend from the date of this Agreement until such date as the line is removed and the site is inspected and approved by the County after said removal.
10. If the County, in the enforcement of any part of this Agreement, shall incur necessary expenses, or become obligated to pay attorneys' fees or court costs, **(Pipeline Company Name)** agrees to reimburse the County for such expenses, attorneys' fees, or costs within sixty (60) days after receiving written notice from the County of the incurring of such expenses, attorneys' fees, costs or obligations.
11. Should **(Pipeline Company Name)** fail to pay the County within the sixty (60) day period referred to in the foregoing paragraph, **(Pipeline Company Name)** agrees to pay interest at the rate of eighteen (18) percent per annum or the maximum legal rate permitted by law on the necessary expenses or costs incurred by the County in the enforcement of this contract or on any sums. **(Pipeline Company Name)** is obliged to pay with respect to the matter to which indemnity is given by this contract, from the date such expenses or costs are incurred, or such sums are paid by the County.

County Road Number

Precinct Number

12. The parties agree that the venue for any cause of action filed to enforce or involve the subject matter of this contract shall be in Winkler County, Texas.

Entry into this contract by the County was authorized by official act of the Winkler County Commissioners' Court taken during a meeting which occurred on the ___ day of _____, 20____, the minutes of which duly reflect the same.

SIGNED AND ENTERED INTO on this the _____ day of _____, 20____.

WINKLER COUNTY

By _____
Charles M. Wolf
Winkler County Judge

(Pipeline Company Name)

By _____
Printed Name _____
Title _____
Address _____

Telephone _____
Cellular Telephone _____
Fax _____