

**ADOPTION OF REVISION #4  
TO ORDINANCE #44, CHAVES COUNTY  
RIGHT-OF-WAY USE PERMIT ORDINANCE**

BE IT ORDAINED by the County Commissioners of Chaves County:

**SECTION I – TITLE**

This ordinance will be known as the Chaves County Right-of-Way Use Permit Ordinance.

**SECTION II – GENERAL POLICY**

- A. It shall be unlawful for any person to make any excavation, pavement cut, or to remove pavement from a County street or road right-of-way without first applying for and securing a permit from Chaves County, complying fully with all provisions of this Ordinance.
- B. Should any conflict exist between the provisions of this Ordinance and other applicable laws the most stringent regulation shall apply.

**SECTION III – DEFINITIONS**

For the purpose of this Ordinance, the following terms, phrases, words and their derivations have the meaning given herein.

- A. “Applicant” means any person required to apply for a permit.
- B. “County” means that portion of the geographic limits of Chaves County lying outside the boundaries of all incorporated municipalities.
- C. “Excavation” means a hole, trench, ditch, or depression in a public place resulting from the removal or moving the pavement, dirt, or other material by a person or machine.
- D. “Facility” means any pipe, pipeline, tube, main, service, vent, vault, manhole, meter, regulator, valve, conduit, pole, pole line, anchor, cable, structure or object of any kind of character whether enumerated herein or not which is or may be lawfully constructed, left, placed or maintained upon, along, across, under, or over any public place.
- E. “Person” means an individual, estate, trust, receiver, cooperative association, club, corporation, franchised utility company, firm, partnership, joint venture, syndicate or other entity.
- F. “Permittee” means a person whose application has been approved by Chaves County.

- G. "Public Place" means all property owned or maintained by the County including but not limited to streets, highways, alleys, planes, sidewalks, plazas, parks, easements, right-of-ways, curbs, and drainage ways.
- H. "Right-of Way" means any County land or other place, property or interest therein, usually in a strip, acquired for or devoted to transportation purposes.
- I. "Substructure" means any facility located below the surface of any public place.
- J. "Substructure opening" means an opening into a lawful substructure, the top of which is flush with the adjoining surface of a public place and which is so constructed as to permit frequent openings without injury or damage to a public place and without removal of pavement, dirt, or other material.

#### **SECTION IV – PERMITS AND APPROVALS**

- A. Except as hereinafter provided in this Section, and in Section V of this Ordinance, no person may commence any excavation in any County street or road right-of-way unless a permit for such excavation is first obtained from the County. The permit will be valid for ninety (90) days, at which time it will expire. Construction commenced after the expiration date shall be in violation of this Ordinance, unless a written request for extension of the termination date has been filed and approved by the Road Operations Director. (SEE APPENDIX A)
- B. A permit shall be required for excavation of a substructure opening.
- C. A permit shall be required for aerial crossings of County right-of-ways.
- D. No permit is required for entry into an excavated substructure opening, unless the substructure is located where a traffic hazard can exist.
- E. If road surfaces, or other right-of-way areas, are not repaired as required in this ordinance, future right-of-way permits will not be issued until the permittee has made necessary corrections to existing permits. All work must be deemed acceptable by the Chaves County Road Operations Director. Written notification by Chaves County Road Operations Director will be sent prior to this action.
- F. Emergency Repairs. The permittee shall be allowed to make emergency repairs provided a more reasonable alternative does not exist. Every reasonable effort will be made to restore the roadway quickly. Local agency will be notified of emergency repairs not later than the next business day.
- G. All costs incurred for placement of utility and repairs to County Right-of-Way are the sole responsibility of the permittee.

## **SECTION V – APPLICATION**

Every person required to obtain a permit by this Ordinance must make application therefore to the County Road Superintendent or his designated representative. (SEE APPENDIX A)

- A. The application shall state:
  - 1. The name, telephone number, address, and place of business of the applicant, name of contact person;
  - 2. A description of the location and dimensions of the proposed excavation, including a plan view and cross-section view of the proposed project;
  - 3. The method by which the proposed excavation will be accomplished;
  - 4. The purpose of the facility to be installed therein;
  - 5. The estimated length of time required to complete the work, including backfilling and removal of all obstructions, materials and debris, and the restoration of the surface. A duly issued permit shall be the authority of the applicant to excavate in the public place for which the permit is granted.
  
- B. The application shall be reviewed by the County Road Operations Director. Applications for driveways, drainage culverts, and irrigation lines, or a permit application from an entity holding a current Non-Exclusive Franchise Agreement with Chaves County shall be subject to approval by the County Road Operations Director. All other applications shall be subject to approval by the Chaves County Board of Commissioners.
  
- C. Whenever possible, all road crossings on paved roads shall be performed by jacking or boring rather than excavating. Road crossings on paved roads performed by boring or jacking rather than excavating, will not be assessed road cut fees. All crossings shall be clearly marked.

## **SECTION VI – LIABILITY**

All persons required to apply for a permit under this Ordinance shall, at the time of application, provide a certificate of insurance satisfactory to the County showing that he/she has such insurance as well as protect him/her from claims of bodily injury, including death, to his/her employees and all other; and from claims for damage to property, any and all which may arise out of or result from his/her operations, including completed operations, in connection with the making of an excavation or the entering into a substructure opening, whether such operations be by himself or any subcontractor or anyone directly or indirectly employed by him. An entity holding a current Non-Exclusive Franchise Agreement with Chaves County will only be required to provide insurance information once annually, as long as they meet the insurance requirement at all times while working in the Chaves County Right-of-Way.

## **SECTION VII – PERMIT WARRANTY AND RESTRICTIONS**

- A. The permittee is required to correct incomplete or defective materials and workmanship performed under each permit.
- B. The permittee must restore the street sub-base and surface to its original condition. Upon failure of the permittee to do so within twenty-four (24) hours after notice from the County, the County may cause to have such work done, and the cost thereof charged to the permittee.
- C. The permittee must take appropriate measures to maintain safe and adequate passage of vehicle and pedestrian traffic as required by the County.
- D. In the event that the permittee causes damage to the existing utilities (and for this purpose, pipe coating or other encasement or other devices are considered a part of the utility). The owners must be notified immediately, and the damage repaired or paid for by the permittee. Further, the permittee is responsible for the proper installation of any diversion or ponding devices necessary for protection of property and structures, and shall be responsible for repair or payment of damages caused to property or structures by permittee's failure to properly provide such devices.
- E. The permittee shall keep all roadways and right-of-ways usable and in safe condition. All traffic control plans and construction signing shall be reviewed and approved by the Road Operations Director and shall be in accordance with the MUTCD (Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration).

## **SECTION VIII – CONSTRUCTION REQUIREMENTS**

- A. The permittee prior to making any excavation or paving cut, shall adequately barricade the area to be excavated and shall comply with the Uniform Traffic Code of the State of New Mexico.
- B. All material excavated must be piled and maintained so as to not endanger the public. In order to expedite the flow of traffic or keep dirt and dust from spreading or flying the permittee must use guards or other methods and/or shall water the excavated material. The permittee shall remove all rubbish, excess earth, rock and other debris resulting from the excavation work immediately upon completion of backfilling as required by Section VII. Upon failure to do so within twenty-four (24) hours after notice from the County may do so and charge the cost to the permittee.
- C. In the event grade changes are made in the County road or the County right-of-way is widened or realigned which necessitates relocation of any installation, permittee upon receiving written notice from the County, will contact the Road Department to coordinate relocation of his/her facilities. The relocation shall be done by the permittee within a reasonable time (usually sixty (60) days) and at his/her own expense. If the permittee is unable or refuses to comply, the County may cause the work to be done with the permittee paying the cost thereof.

- D. The County will endeavor to give the applicants sufficient notice of any proposed construction or maintenance work on either existing or newly acquired right-of-way that is likely to expose, cover up, or disturb any cable, pipeline or any tile line belonging to the permittee, in order that the permittee may arrange to protect his lines.
- E. The permittee will comply with the New Mexico "One Call System" and will have a log number given by "One Call" for underground utilities location on a project site during all construction work resulting from this permit.
- F. The permittee agrees to give the County at least four (4) days notice of its intention to start construction on the County right-of-way. Said notice shall be in writing to the County Road Operations Director.
- G. The depth requirements for all trenching and excavating shall be as follows:
  - 1. Gas lines shall be a minimum of four (4') feet in depth from the lowest point within the County right-of-way.
  - 2. Water lines shall be a minimum of two (2') feet in depth from the lowest point within the County right-of-way.
  - 3. All other lines shall be a minimum of two (2') feet in depth from the lowest point within the County right-of-way.
  - 4. Exceptions to the minimum depths may be authorized by the Road Superintendent or his representative.
- H. All trenching and excavations under County roadways shall be sleeved.
- I. Any excavation of a paved road surface greater than six (6) inches in width will require saw cuts one foot beyond the excavated trench, in all directions beneath the road surface and over the undisturbed base. This area will be excavated with hand tools to nine (9) inches depth to allow a minimum of six (6) inches of flowable fill and be capped by three (3) inches of asphalt surface course to be installed and mechanically compacted to match surrounding road surface.  
(SEE APPENDIX B)
- J. Only parallel and perpendicular pavement cuts made by saw cutting or approved grinding device will be allowed. No jagged, broken, rolled or undermined edges.
- K. Final pavement patches should not hold water and should be level with surrounding road surface.

#### **SECTION IX – BACKFILLING**

Unless specifically exempted in writing, any person who trenches or excavates within a public place for any purpose whatsoever is required to backfill a trench or excavation as follows (SEE APPENDIX B):

- A. All excess water and mud must be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times where excess water cannot be prevented from entering the trench shall be considered temporary and must be removed as soon as weather permits.

- B. Following removal of any excess water and mud from the trench, the utility can be installed and bedded with granular material per utility requirements. The trench shall then be backfilled with selected materials from the excavation or with flowable backfill material. Excavated material used in backfilling shall be an earth free of all hard rock, stones, or boulders, having dimensions greater than six (6) inches and frozen earth, debris and roots larger than two (2) inches. Excavated material may not be used if it is water saturated. If trench excavation materials are not acceptable, then appropriate backfill materials or flowable fill material shall be used.
- C. All backfilling of trenches under the road surface shall be mechanically compacted in layers of six inches (6") or less in depth to a ninety-five percent (95%) maximum density verified by a Certified Third-Party Materials Testing Lab. Instead of backfilling with excavated material as provided above, the contractor may, at his option, backfill the trench with flowable fill as detailed in this ordinance. Compaction testing will not be required where flowable fill is used and accepted for the trench backfill. In any event a minimum of six (6) inches of flowable fill must be installed at the top of the backfilled trench. The only requirement for the permittee when flowable fill is used, in lieu of earthen fill, is to provide copies of haul ticket showing the specified flowable fill was obtained.
- D. Where the earthen fill method of backfill is used, the fill material shall be placed nine (9) inches below the base of the pavement allowing a minimum of six (6) inches of flowable fill and three (3) inches for an asphalt surface course to be installed.
- E. Backfilling of trenches within the right-of-way but not under the travelled road, shall be of dry backfill, not flowable fill, compacted sufficiently to avoid settlement. All work shall be done in a workman-like manner and the ground left in neat condition. The use of flooding as a means of obtaining compaction of backfill shall not be allowed. All work must be satisfactory to the County Road Operations Director or his designated representative.
- F. Backfill and compaction inspections shall, to the extent practical, be made by the County with soil densities verified by a Certified Third-Party Materials Testing Lab. The County Road Operations Director shall have the authority to direct any entity or contractor to use flowable fill to backfill a trench or excavation in the public right-of-way in the interest of preserving the public convenience or safety.
- G. Flowable Backfill material shall meet the following requirements. Flowable Backfill material, also called unshrinkable fill and slurry concrete, shall be a controlled density material consisting of cement and/or fly ash, sand and water meeting the requirements of high strength fast fix flowable fill or low strength fast fix flowable fill.
  - 1) High strength fast fix flowable fill (H.S. Four F) shall consist of an appropriate amount of cement (locally known as 1 ½ sack) mixed wet with mortar sand to flow and fill all voids in the excavation. This fill shall develop a minimum compressive strength of 2,160 pounds per square foot (15 psi) one hour after placement, and a 28-day compressive strength within the range of 300 psi to 500 psi. The material must be such that it can be capped in one and one-half (1.5) to two (2) hours.

2) Low strength fast fix flowable fill (L.S. Four F) shall consist of an appropriate amount of cement (locally known as ½ sack) mixed with mortar sand to flow and fill all voids in the excavation. This fill shall develop a compressive strength of 1120 pounds per square foot (7.8 psi) one hour after placement, and a 28-day compressive strength within the range of 25 to 100 psi. The material must be such that it can be capped in one and one-half (1.5) to two (2) hours.

- H. The results from compaction tests shall be supplied to the County within three days of the backfill work completion. In the event the compacted backfill fails to meet the density requirements of this Section or otherwise fails as evidenced by settlement of the trench or excavation the County may order the faulty backfill material removed, replaced and recompacted to the required density specified herein; and the County may also order the replacement of all pavement destroyed or damaged as a result of the backfill failure settlement. The cost incurred by the County shall be paid by the permittee.

#### **SECTION X – INSPECTIONS**

- A. The County may make such inspections as are reasonably necessary in the enforcement of this Ordinance.
- B. Acceptance or approval of ditching, excavation, backfilling, and restoration of surface by the County does not prevent the County from asserting claim against the permittee for incomplete or defective workmanship or materials. The presence of a representative of the County during the performance of the work does not relieve the permittee of his responsibilities hereunder.
- C. The permittee or his/her representative, subcontractor, shall have a copy of the permit on site at all times during construction for review by the Road Superintendent or his representative.

#### **SECTION XI – FEES**

- A. The fees will cover the permit, plan checking, and inspection.
- B. The amount of the permit fee will be computed as follows:
1. There shall be a minimum fee for each permit in the amount of \$50.00. This includes one installation up to ten feet long, off of the traveled roadway.
  2. Each additional foot of underground installation in a County maintained right-of-way shall be calculated as follows (based on project total feet):
    - a. 0 feet to 1,000 feet maximum at \$0.50 per foot.
    - b. 0 feet to 2,000 feet maximum at \$0.40 per foot.
    - c. 0 feet to 5,000 feet maximum at \$0.30 per foot.
    - d. 0 feet to 10,000 feet maximum at \$0.20 per foot.
    - e. Over 10,000 feet at \$0.10 per foot.
    - f. Installations in a non-maintained right-of-way shall not be assessed an additional fee in excess of the minimum permit fee.

3. Each additional foot of aerial installation at \$0.10 per foot.
  4. Each excavation of a non-paved, maintained roadway at \$120.00 each.
  5. Each jacking and boring under a maintained roadway at \$50.00 each.
  6. Any excavation of a paved roadway at \$1,100.00 each.
  7. Excavations over Six (6) inches up to eighteen (18) inches \$1500.00 each.
  8. Excavations over Eighteen (18) inches to twenty-four (24) inches \$1800.00 each.
  9. Excavations over twenty-four (24) inches by Board of Commissioners approval only.
- C. Payment shall be made in the form of a check, money order, or draft made payable to Chaves County.
- D. The County reserves the right to waive the fees on aerial crossing provided the crossing does not effect the right-of-way.
- E. The County reserves the right to waive fees for entry into a substructure opening.
- F. A request for waiver of fees must take place prior to commencing work, except in the case of emergency repairs where it must be requested at the next meeting of the Chaves County Board of Commissioners.

#### **SECTION XII – DOUBLE FEES**

Where work for which a permit is required is started prior to obtaining a permit, the fees specified above shall be doubled, but the payment of such doubled fees shall not relieve any persons from full compliance with the requirements of this Ordinance in the execution of the work nor from any other penalties provided by law.

#### **SECTION XIII – PENALTY**

In addition to any liability imposed by law, any person who shall violate the provisions of this Ordinance may, upon conviction, be punished by a fine of not more than \$300.00 or by imprisonment in the County jail not to exceed ninety (90) days, or to both such fine and imprisonment in the discretion of the judge. Each day of violation shall be considered a separate offense.

#### **SECTION XIV – REGULATIONS**

The County may promulgate such rules and regulations as may be required to implement this Ordinance.

#### **SECTION XV – SEVERABILITY**

If any part of application of this Ordinance is held invalid, the remainder of its provisions applicable to other situations or persons shall not be affected.

#### **SECTION XVI -SUSPENSION OR CANCELLATION OF PERMIT**

The County is authorized or empowered to suspend, cancel, or withdraw any permit issued by the County for the performance of any work not being done in compliance with this Ordinance.

#### **SECTION XVII – VARIANCES AND WAIVER OF FEES**

- A. A variance will be considered should problems arise concerning compliance by the Permittee with this Ordinance. A request for a variance must be submitted to the Road Department in writing, and set forth the problems encountered and justification for granting the request.
- B. The request for a variance or waiver of fees shall be reviewed by the County Road Operations Director, subject to approval by the Chaves County Board of Commissioners.

#### **SECTION XVIII – APPEALS**

In the event any applicant is aggrieved by the refusal of the County to grant any permit, the denial of a request for time extension or the suspension, cancellation or withdrawal of any permit pursuant to Section XVI, the applicant may, within ten (10) calendar days of the aggrieved action, submit to the County Road Operations Director a request for hearing in front of the Chaves County Road Committee. In the event the applicant is aggrieved by the Road Committee's decision, the applicant may file a written notice of appeal to the Chaves County Board of Commissioners. The Notice of Appeal must be filed in the office of the County Clerk within ten (10) calendar days of the Road Committee's decision. The Chaves County Board of Commissioners shall consider the appeal within thirty (30) calendar days of its filing at the County Clerk's office.

Done this 19<sup>th</sup> day of September, 2019

# APPENDIX A

## PERMIT FOR INSTALLATION OF UTILITIES ALONG PUBLIC ROADS

**TO: CHAVES COUNTY BOARD OF COMMISSIONERS**

**Permit No. \_\_\_\_\_**

**c/o Chaves County Road Department – Attn: Joe West**

**1505 E. Brasher Rd.**

**Roswell, NM 88203**

**APPLICATION** is hereby made by \_\_\_\_\_

(Name of Responsible Party)

**ADDRESS** \_\_\_\_\_

**COMPANY NAME** \_\_\_\_\_ **PHONE** \_\_\_\_\_

for permission to locate, install and maintain a \_\_\_\_\_

for the purpose of \_\_\_\_\_

along or across the following described public road: \_\_\_\_\_

length and width of proposed excavation: \_\_\_\_\_

Will road surface be cut? \_\_\_\_\_ What excavation method? \_\_\_\_\_

When will work commence? \_\_\_\_\_ Is plan view attached? \_\_\_\_\_

What is the estimated time for completion? \_\_\_\_\_

Has work already begun? \_\_\_\_\_ Franchise Agreement with Chaves County? \_\_\_\_\_

Check here if this was an emergency repair

### THE UNDERSIGNED APPLICANT RESPECTFULLY SHOWS:

1. That the applicant will at all times indemnify and save harmless the County of Chaves and all governmental subdivisions and all boards, officers, and employees thereof from any and all claims of every kind or character caused by or incident to the construction, location, maintenance, or condition of said \_\_\_\_\_ and will promptly reimburse the County and all such subdivisions, boards, officers, and employees for any and all cost and expenses incurred by them or any of them in resisting any such claim or claims. Copy of insurance declarations attached (unless franchise agreement exists).

2. That if by reason of any change in the location, construction or grade of the public road upon which any portion of said \_\_\_\_\_ is constructed, or by reason of changing traffic conditions or otherwise, it shall become advisable in the opinion of the Board of County Commissioners that said \_\_\_\_\_ should be removed or relocated, the Applicant, upon receipt of written instructions from the Board of County Commissioners, will remove said \_\_\_\_\_ or change its location in such a manner as the Board of County Commissioners may approve, without expense to the County.

3. That said \_\_\_\_\_ will at all times be kept in good repair, free from leaks or breaks of any kind, which may injure the public road or inconvenience the traveling public.
4. That Chaves County Ordinance No. 44 (by reference) shall be incorporated in this agreement and that the Applicant shall fully comply with said Ordinance while performing any and all work associated with this permit.
5. That following completion of any and all work involved in the installation and maintenance of utilities along the public road, Applicant stipulates and agrees that the property shall be returned to its original condition or better.
6. That the approval of the proposed construction of said \_\_\_\_\_ as applied for and aforesaid shall not be construed as granting any title or easement to any property of the County of Chaves.
7. That if the Applicant should at any time fail to promptly and fully perform all of the obligations imposed upon him, the Board of County Commissioners may, at their option, cause the same to be fully carried out and performed, and the Applicant will promptly reimburse the Board of County Commissioners for all costs and expenses incident thereto.
8. That the Board of County Commissioners of Chaves County, or their designee or employee, shall have the right to inspect all work performed by Applicant in the installation and maintenance of the utility along the public road. Said right of inspection shall include the right to approve or disapprove of the work being performed, the authority to order that all work involving the installation or maintenance of utilities along a public road ceases until such time as the Applicant shall bring the installation or maintenance into compliance with the reasonable request of the County, and shall further include the right to order additional work to be performed to return the property affected by the installation or maintenance of utilities to its original condition.
9. This agreement shall be binding upon any contractors, subcontractors, the successors and assigns of the Applicant.
10. The granting of approval of the proposed construction so applied for, either in accordance with said application or pursuant to any modification thereof which is accepted by the Applicant, shall constitute an acceptance of this agreement by the Board of County Commissioners, and order the same as a binding contract.
11. The Applicant proposes to commence the work applied for with this permit on or about \_\_\_\_\_ and estimates the work to be fully completed in \_\_\_\_\_ calendar days after commencement.
12. The authority to perform any work in any County street or road right-of-way shall terminate ninety (90) calendar days after the date of approval of this permit, unless a written request for extension of the termination date has been filed with and approved by the Chaves County Road Operations Director.
13. Witness whereof said Applicant has caused these presents to be executed by its duly authorized officers on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**SUBMITTED BY:**

\_\_\_\_\_

\_\_\_\_\_

**TITLE:**

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APPROVAL OF THIS PERMIT IS HEREBY GRANTED (OR DENIED) THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

RECOMMENDED FOR APPROVAL BY

\_\_\_\_\_

PROJECT SUPERVISOR

APPROVED BY:

\_\_\_\_\_

ROAD OPERATIONS DIRECTOR

APPROVED BY:

\_\_\_\_\_

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

ATTEST:

\_\_\_\_\_

CHAVES COUNTY CLERK

# APPENDIX B

