1994-2

1045432

AN ORDINANCE REGULATING PROCEDURES FOR DISTURBING AND REPAIRING COUNTY PROPERTY AND RIGHTS OF WAY

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE, NEW MEXICO:

SECTION 1. SHORT TITLE.

This Ordinance may be referred to as the County Road Cut Ordinance.

SECTION 2. PURPOSE.

The purpose of this Ordinance is to establish and define responsibilities and standards for the use of public property and rights of way, especially regarding excavations and restorations thereof.

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SECTION 4. DEFINITIONS.

A. "Applicant" means any person required by this Ordinance to apply for a permit to make a road cut.

B. "County" means the County of Santa Fe, New Mexico as represented by it Board of County Commissioners.

C. "County facilities project" means any road cut undertaken as a part of a project initiated by the County and includes related action taken by the utility company to further the County facilities project.

D. "Emergency" means any situation or condition existing in which there is an interruption or disruption of gas, electric, water, or telecommunications service to one or more customers being served by a utility company, or any situation or condition in which there is a danger of serious bodily injury, serious property damage, or prolonged disruption of service.

E. "Excavation" means the act of making a hole, trench, or ditch which penetrates through or under the surface in a public right of way or other public property, resulting in the removal of dirt or other material.

F. "Facilities" are and include, but are not limited to, plants, works, systems, improvements and equipment of the utility company such as pipes, electric substations, mains, conduits, transformers, wires, cables, poles, underground links and meters.

G. "Permit" means the written form provided by the County in which a person describes the road cut which will be performed on public property and in which are contained any special conditions required of the person by the County in the execution of the work.

H. "Permittee" means a person that has received a road cut permit from the County.

I. "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, utility company, firm, partnership, joint venture, syndicate or other entity.

J. "Public facility" means any designed, engineered, or constructed road structures or engineered drainage facilities owned or maintained by the County located on public rights of ways.

K. "Public right of way" or "public property" means those properties or sites within the County for which the County possesses a real property estate or interest, such as fee simple title, prescriptive easement or dedicated easement, and includes easements, rights of ways, highways or roads, paved or unpaved, curbs, gutters, sidewalks, or other paved, unpaved, unsurfaced or concrete property which the County owns or maintains.

L. "Public Works Director" means the person employed by the County who is designated by the Board of County Commissioners to hold this position, and/or his designee.

M. "Road cut" means:

1. The act of cutting a hole, trench, ditch or tunnel in, on, under, or through the surface of a public facility; or

2. The act of drilling, boring or tunneling under or jacking up the surface of a public right of way.

N. "Utility company" means any person, entity, or corporation which provides water, sewer, electric, gas, telephone, or cable television services to five (5) or more hookups in the County. It also includes an independent contractor that has entered into a contract with the utility company to perform the road cut or excavation when the independent contractor is performing services for the utility company. Such an independent contractor must file a notarized affidavit with the County, executed by the utility company, setting forth the name, business address, and business telephone number of the independent contractor as an authorized agent of the utility company.

SECTION 5. PERMIT.

A. Permit Application.

1. Every person desiring to make a road cut is required to obtain a permit, and must be licensed and bonded, or must be a utility company. The person shall make written application on forms provided and approved by the Public Works Director prior to the performance of any road cut work or activity on public property.

2. No person shall make any road cut on public property until the person or designated agent obtains an appropriate permit from the County, except in an emergency. In the event of an emergency, the person may proceed with such activity immediately and

thereafter file an application within two (2) business days. The application must state the description of the emergency and a summary of the repairs. The applicant must comply with any reasonable repair directions set forth by the County.

3. Faxing permit applications; billing

A utility company may file its application for a road cut permit and all supporting information through the use of a telecopy machine located in the County Public Works Office, in accordance with procedures established by the Public Works Director. An approved permit may be sent to the applicant in accordance with similar procedures. The Public Works Director, in his discretion, may allow a person to be billed for fees due and payable under the terms of this Ordinance on a monthly basis, provided the person is not more than sixty (60) days delinquent in payments due under this Ordinance. No further permits will be issued if payments are more than 60 days delinquent.

B. Permit Fees.

The permit fees are set forth in Section 10.

C. Length of Cut; Number of Cuts.

By issuance of a road cut permit, the County authorizes the cutting or excavation of a road or right of way only for the single cut specified on the permit. When the project involves the excavation of the road or right of

way in a manner that runs roughly parallel to the roadway, the permit shall authorize up to six hundred (600) lineal feet of excavation.

SECTION 6. EXCAVATIONS AND CUTS.

A. Clearance of Vital Structures.

Work under these provisions must be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, bridges, traffic control devices, and all other vital structures or equipment.

B. Maintenance of Traffic and Pedestrian Flow.

The permittee must maintain safe and adequate passage of vehicle and pedestrian traffic on all public property on which the permittee is conducting its activities under its permit. When a public facility has been closed or detoured because of the permittee's work, the Public Works Director must be notified by the permittee prior to removal of barricades and other traffic control devices.

C. Permittee's Obligation to Protect Property.

The permittee must, at his own expense, support and protect all utilities which may be in any way affected by the road cut and other permitted work, and do everything necessary to support, sustain and protect them under, over, along or across said work. Before commencing a road cut, the permittee shall ascertain the location of all utilities in or near the area of the proposed cut.

In the event said utilities are damaged, including damage to pipe coating or other encasement devices, the permittee must immediately notify the utility company of the damage. The permittee shall pay the other utility company for all costs associated with the repair if the permittee was negligent and the facilities were properly marked and located. The permittee must also protect the road cut from surface water flows by appropriate diversions or ponding devices. The permittee must repair asphalt or other road surfaces and other public facilities and public property to reasonable construction and engineering standards to approximate the condition that existed before the work.

D. Protection of Adjoining Property.

The permittee must at all times and at his own expense preserve and protect from injury any property adjoining the property on which the road cut work is being performed by taking suitable measures for that purpose. Where in the protection of such property, it is necessary to enter upon private property for the purposes of taking appropriate protection measures, the permittee must, unless otherwise provided by law, obtain appropriate permission from the owner of such private property to enter thereupon. The permittee must at his own expense shore up and protect all structures, facilities, walls, fences or other property that may be affected or damaged during the progress of the road cut

work and be responsible for all damages on other property resulting from his failure to properly protect and carry out such work.

E. Care of Excavated Material.

All materials excavated and piled adjacent to the road cut or in any public place by the permittee must be piled and maintained so as to not endanger the public and those working in the excavation, and so as to cause as little inconvenience as possible to those persons using the public place and adjoining property. All material excavated must be laid completely along the side of the cut and kept trimmed so as to cause as little inconvenience as is reasonably possible to vehicle and pedestrian traffic. In order to expedite flow of traffic and to keep dirt and dust from spreading or flying, the permittee shall use guards or other methods and/or shall water the excavated material. Traffic markings removed as a part of the road cut shall be replaced by the permittee with materials similar to those originally displaced, in a place and in a manner satisfactory to the County.

F. Cleanup.

Each permittee must thoroughly clean up from the public place all rubbish, excess earth, rock and other debris resulting from road cut work. All cleanup operations at the location of such cuts are to be accomplished at the expense of the permittee. During the progress of work

or immediately after completion of such work, the permittee shall clean up and remove all refuse, dirt and unused materials of any kind resulting from said work. Upon failure to do so, the County may cause to have such work done, and the permittee shall pay for such reasonable cost.

G. Protection of Water Course.

The permittee must maintain all gutters, easement crossings and related drainage structures free-flowing and unobstructed for the full depth and width of the water course, or provide adequate substitutes for any such water course that are blocked by the road cut.

SECTION 7. RESTORATION OF ROAD CUTS.

A. Compaction.

Any person holding a road cut permit shall undertake to restore each road cut, in accordance with the reasonable compaction and restoration standards required by the County. This shall include both the backfilling of the cut and the restoration of the surface. All backfill must be compacted to 95% proctor under the road surface, and 90% proctor outside the road surface. Certified density test results must be submitted to the Public Works Director within five (5) working days of completion of said work. Flow capacity and/or existing flow capacity shall not be altered without the written approval of the Public Works Director. For any person who does not submit compaction test results to the

County in a form and with results acceptable to the County, such person shall not be issued any further permits under this Ordinance until the person complies with this Ordinance, and the County may take such other actions as it deems necessary to assure compliance with this Section. The Public Works Director may waive the compaction tests for plow trenching only, provided the utility company demonstrates a method and operation of compaction acceptable to the Public Works Director.

B. Resurfacing.

In those instances when a permittee cannot resurface a public place with concrete or asphalt because the air temperature or moisture content is below the minimum standards contained in the compaction and restoration standards or the weather conditions are such that the permittee is unable to resurface the public place within a reasonable time after the County's acceptance of any density tests, the permittee shall immediately check with Public Works Director concerning how and when the public facility shall be resurfaced. The County may require that the permittee cold patch the road cut on a temporary basis. The permittee shall restore the surface of the cut in accordance with reasonable compaction and restoration standards.

C. Cost.

The cost for restoration of the road surface shall be borne by the permittee.

D. County Performance.

If a permittee makes a road cut that is not resurfaced by the permittee within a reasonable time, and the County has not granted an extension of time, the County may, upon giving notice to the permittee, resurface the road cut and bill the permittee for the reasonable cost.

E. Safety.

It shall be the responsibility of the permittee restoring the public place to keep the road cut safe for pedestrian and vehicular traffic until the pavement surface has been restored.

F. Extension of Time.

Any time periods may be extended by the County due to weather conditions or other circumstances beyond the control of the permittee, with written permission of the Public Works Director.

G. State Standards.

The permittee shall comply at all times with the appropriate construction standards set forth in New Mexico state statutes.

H. Reclamation.

The permittee shall restore as practicably as possible, the affected property to the condition it was immediately prior to excavation or development.

SECTION 8. LIABILITY INSURANCE OR SELF INSURANCE.

A. Certificate of Insurance.

No person other than a utility company shall make a road cut or enter a substructure opening or perform road cut work until filing with the County a certificate of insurance establishing that such person is adequately insured against bodily injury or personal injury to any person, and against liability for damages, other than the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom. Each insurance certificate shall provide that the County be given at least thirty (30) calendar days notice of cancellation in writing by the insurance company.

B. Form and Type.

A utility company shall at all times maintain insurance or may self insure against all risks and perils set forth above for the reasonable limits of liability set by the County, in a form and type acceptable to the County, which approval will not be unreasonably withheld.

SECTION 9. LOCATION AND RELOCATION OF FACILITIES

The County expressly reserves the right to change the grade, install, relocate, or widen the public right of ways within the County and subject to all regulatory approvals, the utility company shall relocate, at its own expense, its facilities and appurtenances in order to accommodate the paving, installation, relocation, widening, or changing of the grade or location of any such public right of way, including if necessary, relocating facilities to a sufficient distance within the right of way and to permit a

reasonable work area for machinery and individuals engaged in such work, or to protect the health, safety, or welfare of the public.

SECTION 10. FEES.

A road cut permit fee of fifty dollars ($50.00) shall be charged and collected for each proposed activity and for each road cut permit issued, except the County is not required to obtain a permit for any of its projects.

SECTION 11. ROAD CUT WARRANTY.

Any person, including a utility company making a road cut is required to correct defective materials and workmanship performed under each road cut permit for a period of two (2) years from the date the work performed under such permit is completed.

SECTION 12. ROUTING OF TRAFFIC.

A. When road cut work is being performed, the person making the road cut must take appropriate measures to maintain traffic conditions as near normal as practicable at all times so as to cause as little inconvenience as possible to the occupants of the abutting properties and to the public.

B. The County may require the permittee to notify various public agencies and the public of proposed work prior to issuance of a permit or prior to commencement of the proposed work.

C. Warning signs must be placed by the permittee near each road cut or substructure opening being entered so as to

give adequate warning to vehicular and pedestrian traffic both night and day, and cones or other approved devices must be placed to channel traffic. The traffic controls, including but not limited to the number, type, size and location of the signs shall be done in accordance with reasonable traffic standards as directed by the Public Works Director.

D. The County may require the permittee to place a visible sign at each end of the construction area which is visible from a distance and sets forth the name of the person making the street cut, or in the case of a utility company, the name of the company together with a business telephone number to handle calls from the motoring public.

SECTION 13. NOISE, DEBRIS AND WORKING HOURS.

Each permittee must conduct and carry out road cut work in such manner as to avoid unnecessary inconvenience and annoyance to the public and occupants of neighborhood property and in compliance with the County noise standards.

SECTION 14. PRESERVATION OF SURVEY MONUMENTS.

Any survey monument set for the purpose of locating or preserving the lines of the road, property, subdivision, or a permanent survey, or a permanent survey bench mark within the County may not be removed or disturbed without first obtaining permission in writing from the County. Permission to remove or disturb such monuments, reference points or bench marks will be granted only upon condition that the person

applying for such permission pay all expenses incident to the proper replacement of the monument.

SECTION 15. NON-COMPLIANCE BY PERMITTEE.

In the event a permittee fails to comply with the requirements of this Ordinance, the Public Works Director may issue written notice of non-compliance and conduct a hearing. Based on the findings of the hearing, the Public Works Director is authorized and empowered to suspend, cancel or withdraw any license or permit issued by him to the permittee. Within ten business days of the Public Works Director's written decision, the permittee may appeal the director's decision to the Board of County Commissioners by filing written notice with the County Manager.

SECTION 16. AMENDMENT TO ORDINANCE 1993-8.

Sections 7 A, 7 E, 7 F, 8 B, and 9 of Santa Fe County Ordinance 1993-8 are hereby repealed.

SECTION 17. PENALTY.

Any person violating the provisions of the County Road Cut Ordinance shall, upon conviction, be punished by a fine of up to $300.00 per day for each day of violation.

SECTION 18. SAVINGS CLAUSE.

If any of the sections, subsections, sentences, clauses, or phrases, of this Ordinance are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not be hereby affected since it is the express intent of the County Commission to pass each section, phrase, paragraph and word separately.

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SECTION 19. EFFECTIVE DATE.

This Ordinance shall become effective on this 14th day of April, 1994.

PASSED, APPROVED AND ADOPTED, THIS 12th DAY OF April, 1994.

SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

NANCY RODRIGUEZ, CHAIRPERSON

ATTEST:

JONA G. ARMIJO, COUNTY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
TERRENCE P. BRENNAN,

SANTA FE COUNTY ATTORNEY

COUNTY CLERK
JONA G. ARMIJO
SANTA FE COUNTY NEW MEXICO

858437

COUNTY OF SANTA FE
STATE OF NEW MEXICO)ss.
I hereby certify that this instrument was filed for record on the 14 day of April A.D. 19 94 at 1:17 o'clock P.m. and was duly recorded in book 1045 page 432 of the records of Santa Fe County.
Witness my Hand and Seal of Office
Jona G. Armijo
County Clerk, Santa Fe County, NM
By: Deputy