

RESOLUTION NO. 2012-08

RESOLUTION PERMITTING

USE OF COUNTY RIGHT-OF-WAY

WHEREAS, the Board of County Commissioners of Edwards County ("the Board") has the power under Kansas Statutes Annotated 19-101a to regulate activities within the public right-of-way and to authorize and require permits and assess fees in connection with such regulation; and

WHEREAS, the Road and Bridge Supervisor has provided to the Board a study and a recommendation regarding necessary and desirable fees for certain services; and

WHEREAS, the Board has determined that it is necessary and desirable and in the best interest of the County to require a permitting process for the general health, welfare and safety of the public and to require fees for certain services when those services are provided by the Edwards County Road and Bridge Department,

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Edwards County, Kansas, adopts the Application and Permit as kept on file in the Edwards County Clerk's Office.

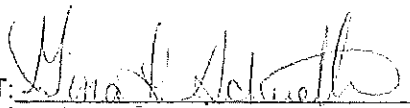
Adopted this 11th day of June, 2012.

BOARD OF COUNTY COMMISSIONERS


LaVerne Wetzel, Chairman


Mica Schnoebelen, Member


Kenneth Dupree, Member

ATTEST: 
Gina L. Schuette
Edwards County Clerk



Edwards County Highway Department
730 West 6th
Kinsley, Kansas 67547
Date Phone: 620-659-2188 FAX: 620-659-3015

Edwards County, Kansas
Application No. _____

APPLICATION FOR APPROVAL OF TEMPORARY OR PERMANENT
CONSTRUCTION
ON, UNDER OR ABOVE COUNTY RIGHT-OF-WAY

Applicant:

Name Of individual Company

Address

Telephone Number

Fax Number

Incorporated under the laws of the State of _____ with principal place of business in

City State

COUNTY BOARD OF COMMISSIONERS:

Approval is hereby requested for construction of

_____ said work is located on public right-of-way in, upon or along Edwards County road name

_____, Mile Number _____ or located along or crossing Section _____ Township _____

Range _____ and Section _____ Township _____ Range _____ in Edwards County, Kansas.

(Describe fully work contemplated. Location of proposed construction -shall be shown on a County map and attached- to each application).

AGREEMENTS The Applicant agrees that the following stipulations as adopted by the Board of County Commissioners of Edwards County, Kansas, resolution number _____ dated _____ shall govern this permit:

Section 1. Definitions. (a) "Public right-of-way" means only the area of real property in which the county has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues-,roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private Casements in platted subdivisions or tracts.

(b) "Occupant" means any person, firm, corporation, association, utility or entity, which enters upon the right-of-way of the County, or in any manner establish a physical presence on, upon, in or over the right-of-way of the County for The purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto.

Section 2. Authorization From County Required. (a)No person, firm, corporation, association, utility or entity shall enter upon the right-of-way of the County or in any manner establish a physical presence on, upon, in or over the right-of-way of the County, for the purpose of installing, construction, maintaining or operating lines, conduits, wires; fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances or related facilities or appurtenances thereto, without the express written permission of the County. The permission of the County maybe granted by a franchise agreement or by such other agreement as the governing body determines best protects the public interest in the right-of-way.

(b) Nothing in this permit shall be interpreted as granting an occupant the authority to construct, maintain or operate any facility or related appurtenance on property owned by the County outside of the public right- of-way.

(c) The County shall process each valid and administratively complete application for use of the right-of-way within 30 days.

(d) The only crossings allowed on. County roads will be by boring. Trenching is forbidden as a method of crossing County roads.

(e) Permit rules and regulations are not applicable.-to agricultural uses arid activities.

Section 3. Health, Safety and Welfare Regulations. The Authority of a provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the County.

Section 4. Specific Portions of Right-of-Way Restricted. (a) The County hereby prohibits the use or occupation of the following specific portions of public right-of-way: None

(b) If the County denies a request to use or occupy a specific portion of the public right-of-way, the requester shall be served a notice of such denial by first class mail. The notice shall indicate that the requester shall have 10 days from the date of receipt of the notice to request a public hearing by the County governing body concerning the denial. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the denial before the governing body. The hearing shall be held by the governing body within 30 days after the filing of the request therefore, and the potential Occupant shall be advised by the County of the time and place of the hearing. Following the public hearing, if the County governing body denies a potential occupant's request to use or occupy a specific portion of the public right- of-way, such determination may be appealed to district court.

Section 5. Compliance with Manual on Uniform Traffic Control Devices. Any occupant of the public right-of-way shall comply with the provisions of Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operations Part VI of the Manual on Uniform Traffic Control Devices (MUTCD), PUBLISHED BY THE U.S. Department of Transportation, Federal Highway Administration, 1988 Edition, Revision 3, dated September 3, 1993, which is incorporated herein by reference as if fully set forth herein.

Section 6. Emergencies. If there is an emergency necessitating response work or repair, any person, firm, corporation, association, utility or entity which has been granted permission to occupy the public right-of-way may begin that repair or emergency response work or take any action required under the circumstances, provided that the person, arm corporation, association, utility or entity notifies the County promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

Section 7. Repair. Any occupant of the public fight-of-way is hereby required to repair all damage to a public right-of-way caused by the activities, of that occupant, or of any agent affiliate, employee, or subcontractor of that occupant, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way to its functional equivalent before the damage pursuant to the reasonable requirements and specifications of the County. If the occupant fails to make the repairs required by the County, the County may affect those repairs and charge the occupant the cost of those repairs.

Section 8. Relocation. Whenever requested by the County, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, an occupant promptly shall remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the County. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the County for such relocation or adjustment. Any damages suffered by the County or its contractors as a result of such occupants failure to timely relocate or adjust its facilities shall be borne by such occupant. **It is the goal to restore the road to its original condition or better.**

Section 9. Fees. The following fees shall be assessed against occupants of the public right-of-way.

- (a) A permit fee of \$100.00
- (b) An excavation fee of \$100.00 for each street or pavement done by boring
- (c) An inspection fee of \$100.00
- (d) A permit fee of \$100.00 for any Equipment in the right-of-way
- (e) Repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by the provider, its assigns, contractors and/or subcontractors in the right-of-way.
- (f) A performance bond, in a form acceptable to the County, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

(g) Special Events Permits, Permit for commercial use, Laydown Yard, Cement Plants, etc.
Fees: \$500 per location, renewal yearly time to acquire permit: One to two days.

(h) All applicants must provide a designated route to be approved by the County Road Supervisor.

Section. 10. Indemnity. (a) Occupants shall indemnify and hold the County and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses,, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to 'b caused by the negligence of the occupant, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way.

(b) The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the County, its officers, employees, contractors or subcontractors. If an occupant and the County are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the state without, however, waiving any governmental immunity available to the County under state law and without waiving any defenses of the parties under state or federal law.

(c) This section is solely for the benefit of the County and occupant and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Section 11. Claim Notification. An occupant shall promptly advise the other in writing of any known claim or demand against the provider or the County related to or arising out of the occupant's activities in a public right-of-way.

Section 12. Penalty Provision. Any person, firm, corporation, association, utility, entity, agent, contractor or subcontractor or subcontractor thereof, violating any provision of this resolution shall be guilty of a County Resolution offense, and shall: upon conviction be subject to a maximum fine of \$500.00. Each day of violation shall constitute a separate and distinct offense.

Section 13. This resolution incorporates and adopts herein the construction requirements and procedures for installation of utilities and pipelines in the public rights-of-way of Edwards County, Kansas. Such construction requirements shall be available during regular business hours from the office of the Edwards County Highway Department and the Edwards County Clerk.

Further agreements.

1. FUTURE ADJUSTMENTS- The Applicant will at any time subsequent to construction and, at his own expense, relay, reconstruct or encase his lines as may become necessary to conform to new grades, alignment or widening right-of-way, resulting from maintenance or construction operations by the County irrespective of whether or not additional right-of-way is acquired in connection With such highway improvement The Applicant agrees to do this promptly on order by the County, and without cost to the County. If the Applicant is unable to comply promptly, the County may cause the work to be done, and the Applicant will pay the cost thereof upon receipt of statement.

The County will endeavor to give the Applicant 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 cables or pipe line belonging to the Applicant, in order that the Applicant may arrange to protect his lines. The County will inform contractors, and others working on the job, of the location of the lines so that reasonable care may be taken to avoid damaging the lines. The County assumes no responsibility, however for failure to give such notice.

2. NOTICE OF INTENT- The Applicant agrees to give the County at least 2 (two) working days' notice of its intention to begin construction on public road right-of-way.

3. MATERIALS AND METHODS- Cables, pipelines and casing pipes in County right-of-way shall be installed with a minimum forty-eight inches of cover material at all locations. Cables or pipelines crossing paved roads shall be constructed as follows: Pipelines having an inside diameter of more than 2" which cross under the roadway shall be placed in casings so that the pipe may be removed for repair without disturbing the sub grade. The casing shall be of adequate strength and of sufficient length to extend 2' beyond each edge of the surfaced roadway. Cable casings may be placed through the sub grade by jacking or by boring a hole just large enough to take the line; or, if the county Road Supervisor approves, a tunnel may be dug through, and the cable placed therein. Marker posts or delineators shall be installed over cables, pipelines and casing pipes where they enter or leave County right-of-way and at a maximum, interval of 1/4 mile where cable or pipelines are located within County right-of-way,

4. PLANS- The Applicant shall furnish two (2) sets of comprehensive plans or sketches, 8 ½ x 11" or larger, of the proposed work. Plans must include a description of the size, type, and method of installation for the proposed facilities to be located within County right-of-way, and adequate sketches to indicate the location of the proposed installation with respect to, the traveled way of public roads and right-of-way lines. Applicant shall notify 1-800-DIG-SAFE before beginning construction and shall endeavor to locate all existing underground utilities within the limits of construction activities pursuant to this application.

5. INDEMNITY- The Applicant shall hold the County harmless from any damages done to its underground cables, pipelines and appurtenance in the course of constructing, repairing and maintaining the public road or the County right-of-way.

6. INSURANCE- The Applicant shall provide insurance and shall furnish a Certificate of insurance indicating the following coverage:

- a. Comprehensive Liability: Bodily injury and property damage for which the Contractor is responsible with limits of \$250,000 per person and \$300,000 per occurrence
- b. Workman's Compensations: \$ 100,000 to cover claims of the Contractor and the contractor's employees.

7. INITIATION AND COMPLETION OF WORK- The Applicant shall notify the County Road Supervisor at 620-659-2188 before work is initiated and again when the work is completed. An approved signed copy of this Permit shall be on the premises before and during the period any work is performed. All work, including restoration of right-of-way, shall be completed within ___ calendar days of APPROVAL DATE, otherwise this Permit is rescinded; If work has not been started within the completion time, this Permit becomes null and void,

8. PENALTY FOR NON-COMPLIANCE Should the Applicant not comply with all terms, conditions and stipulations of this Permit, the Permit becomes null and, void and the Applicant shall cease activity in County right-of-way and a \$500 fine, per incident, shall apply.

The provisions of this application are hereby accepted and its provisions agreed to.

Company Name of Applicant

Applicants Address

Agents Signature

Dated

Agent's Printed Name

Agent's Phone Number

Please make check out for appropriate amount see box checked on page (3) made payable to: Edwards County Road Dept. and return with your completed application.

RECOMMENDED FOR APPROVAL:

By: _____
Edwards County Road Supervisor Dated

APPROVAL OF BOARD OF COUNTY COMMISSIONERS

By: _____
Chairman Dated