

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**  
**APPLICATION FOR USE AND OCCUPANCY WITHIN PUBLIC**  
**RIGHT OF WAY**



TO: NEW MEXICO DEPARTMENT OF TRANSPORTATION  
P.O. Box 1149  
SANTA FE, NEW MEXICO 87504-1149

Permit No. \_\_\_\_\_  
Renewal Permit \_\_\_\_\_  
Relocation \_\_\_\_\_  
Remain in Place \_\_\_\_\_  
New Installation \_\_\_\_\_

1. Pursuant to New Mexico Statutes Annotated, 1978 Compilation, Sections 67-8-13 and 55-2-7, and 17.4.2 NMAC the undersigned

Address: \_\_\_\_\_

herein makes application to use highway rights of way to install:

Size and Type of Facility \_\_\_\_\_

in the following location: N.M. Project No. \_\_\_\_\_ S.R. No. \_\_\_\_\_

Highway Station/and or MP/GPS \_\_\_\_\_ to Highway Station and/or MP/GPS \_\_\_\_\_

\_\_\_\_\_ County, Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_

2. For the purpose of this application "within" shall be construed as meaning "on, upon, over, under, across or along."
- a. "Engineer" shall be construed as meaning the District Engineer of the New Mexico Department of Transportation or the District Engineer's Representative.
  - b. "Applicant shall be construed as meaning the individual, firm, corporation, association, governmental subdivision, or other organization making application, or the successors of any of the above.
  - c. "Facility" shall be construed as meaning, but not limited to any publicly, privately, cooperatively, municipally or governmentally owned facility used for carriage, distribution or transmission of water, gas or electricity, oil and products derived therefrom, sewage, stream or other projects carried by means of pipelines, conduits, wires, culverts, ditches, conveyors or other methods.
  - d. If application is for a parallel installation, justification as to why private right may be utilized must be furnished.

3. Applicant proposes to  relocate  install  leave facility \_\_\_\_\_ feet within the \_\_\_\_\_ right of way line. The Proposed installation shall be:

\_\_\_\_\_ (Crossing or Parallel)

\_\_\_\_\_ (Subsurface or Overhead)

\_\_\_\_\_ (Boring, Jacking, or Pavemet Cuts)

- a. If applicant requests installation by pavement cut, complete justification therefore shall be submitted by attachment.
- b. Where application for pavement cut is justified, the application may be held in abeyance pending receipt of cash bond in an amount to be fixed by the Engineer.

4. There is attached hereto a diagrammatic dimensioned drawing showing the location of existing and/or proposed installation referenced to roadway and right of way, right of way lines, any access control lines, distance of proposed installation above, or below grade, highway stationing, identification of materials to be used and any other pertinent data. If application is for parallel installation, nature of adjacent land use must be shown. Proposed installations on or in bridges or other structures, or for the installation of any structures, shall require detailed structural drawings.

5. Applicant desired this permit to be in affect for \_\_\_\_\_ years. Permit shall not be issued for a period longer than 25 years, and must be renewed upon expiration. The burden of timely renewal is on the Applicant. The Applicant shall formally notify the engineer of actual commencement and completion of construction of the installation. The Applicant shall also formally notify the Engineer of removal or abandonment of the facility, or relinquishment of the permit.

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6. Applicants requesting use of highway rights of way for the installation of broadband infrastructure hereby acknowledge and agree they will be subject to such fees and terms for use of highway rights of way as will be set forth in the NMDOT Broadband and Telecommunications Manual to be incorporated by reference and made a part of 17.4.2 NMAC. The terms and fees, if any, shall be applied as of the date of publication of the final rule in the New Mexico Register.
7. This application shall be validated as a permit upon the signing of the application by the Engineer and returning it to the applicant. The granting of this permit shall not be construed as granting any easement or property right.
8. Servicing of facilities shall not be permitted within the access control lines on any controlled access project. Should an emergency occur, the Applicant shall notify the Engineer and shall provide such flagmen, flashers, warning or other safety devices as required by the Engineer. All routine maintenance shall be performed from outside any access control lines.
9. The relocation or installation of facilities within public right of way shall be in strict conformance with all **applicable provisions of regulations of the New Mexico Department of Transportation 17.4.2 NMAC**, all provisions of this application, drawing and the Instructions for Utility Permits, as they may be modified by the Engineer, and no departure therefrom may be made without the written consent of the Engineer. All facilities shall be so placed that they will not interfere with or endanger any roadway features or other existing facilities. All construction of facilities shall be subject to the inspection and approval of the Engineer. All such work shall be performed so that danger, inconvenience and delay to the traveling public will be held to a minimum. Protection and handling of traffic during the installation are the responsibility of the Applicant and must be approved by the Engineer.
10. The Applicant shall, except as otherwise ordered by the Engineer, restore the right of way, and all bridges or other structures thereon or adjacent thereto which have been altered or affected by facility installation performed hereunder, in accordance with sound construction practices and the Engineer's specifications, and shall cause the work to be done in a workmanlike manner, if any damage is caused to the highway right of way or to any bridge, structure or improvement thereon or adjacent thereto by reason of the design installation, maintenance alteration or removal of such facilities or other appurtenances, the Applicant shall reimburse the Engineer the full amount thereof promptly upon demand by the Engineer provided, however, that the obligation imposed under this paragraph shall not apply in the event the damage resulted from causes beyond the control of the Applicant or its contractors or its consultants. All such facilities located with the right of way shall at all times be kept in such repair so as not to damage the highway, inconvenience or endanger the traveling public and shall be kept free advertisement, posters and the like.
11. Should the Applicant at the time fail to promptly and fully perform any of the obligations imposed hereby and after thirty (30) days written notice thereof, the Engineer may, at his option (a) cause the obligations to be fully carried out and performed, and the Applicant shall promptly reimburse the Engineer for all costs and expenses incident thereto, or (b) summarily order the removal of such facility and if the Applicant fails to comply with that removal order within a reasonable time, the Engineer may direct the removal of the facility with all costs and expenses thereto to be borne by Applicant.
12. If by reason of any change in the location, construction, grade or by any other matter affecting the highway upon which any facility is located because of changing traffic conditions or otherwise, it shall become advisable in the opinion of the Engineer that said facility be removed, relocated or otherwise modified, the applicant, upon written notice from the Engineer, shall provide all horizontal and vertical data including pothole information, size and type of material, and condition of material. If necessary the applicant shall remove, relocate or modify such facility without undue delay in such manner as the Engineer may direct or approve, at the applicant's expense and at no cost to the Engineer. All facilities located on public right-of-way under the dual jurisdiction of the state and a subordinate governmental entity shall comply with all applicable rules and regulations of such entity properly and lawfully in force and including but not limited to provisions of local franchises not in conflict with the rules and regulations of the New Mexico Department of Transportation. The Engineer makes no warranty, either expressed or implied, as to the continued existence of any highway in any particular location and expressly assumes no obligation with regard to the facility upon change, vacation or abandonment of any highway or portions thereof nor shall anything herein contained in any way prejudice or impair any right.
13. Neither the making of this application nor anything herein contained shall constitute a waiver on the part of the Applicant of any rights or claims had or made by some with respect to the occupancy of the streets and highways under the Constitution and Laws of the State of New Mexico, nor shall anything herein contained in any prejudice or impair any rights or claims existing independent of this application with respect to the construction, operation, and maintenance of the Applicant's facilities in the State of New Mexico nor shall anything herein contained in any way prejudice or impair any right.
14. The Applicant must indemnify and hold harmless the New Mexico Department of Transportation from loss due to any negligent act of the Applicant or the Applicant's employees, any agent acting on the Applicant's behalf, and anyone else engaged by the Applicant to work on the installations, maintenance or relocations of the Applicant's facilities. Any contractor or subcontractor engaged by the Applicant to perform installations or relocations in conjunction with or prior to highway construction must also indemnify and hold harmless the New Mexico Department of Transportation from loss due to any negligent act of the Applicant's contractor or subcontractor.

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- 15. Each copy of the application shall be signed by the Applicant as an individual owner or by any official designated to execute such Documents.
- 16. Applicant shall carry insurance in amounts not less than those below specified and as outlined in 17.4.2 NMAC and the Standard Specifications for Highway and Bridge Construction, 2019 Edition, (hereinafter, "Specifications"), as may be updated from time to time. In the event of conflict between the specifications, and the regulations, owner shall carry the larger amount of insurance. If and Applicant is self-insured, the Applicant shall provide an Owner's Protective Liability Insurance Policy, in favor of the Department, in the amounts below specified. **Department as additional named insured:** The utility, its contractor or subcontractor shall have the New Mexico Department of Transportation added as an additional named insured on the Comprehensive General Liability Form or Commercial General Liability Form furnished by the Applicant.

This application is hereby granted subject to all provisions herein and including the following special provisions, changes or amendments:

The Applicant shall provide "as-built" horizontal and vertical location information in hard copy and electronic file (AutoCAD DWG (3D) or Microstation DGN (3D) format. The standard horizontal datum shall be North American Datum 1983 ( NAD83) and the standard projections shall be the New Mexico State Plane Coordinate System 1983 ( NMSPCS83). The standard vertical datum shall be North American Vertical Datum 1988 ( NAVD 1988). The preferred media in which this data must be submitted is CD ROM. The facilities location information shall be tied to Department monuments and referenced to highway mileposts and/or to highway project construction stationing and certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each Applicant's as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include: **1.** District Permit Number. **2.** Name, address and phone number of the responsible land surveyor. **3.** Date of completion of survey. **4.** Equipment used to conduct the Survey. **5.** Horizontal and vertical control marks used to tie the survey to the NMSPC83 and NAVD88. **6.** Ground to Grid combined scale factor used. **7.** Elevations shall be provided every 500 feet and at all survey break points, including all high and low points.

**Note: Highway projects are time sensitive therefore, permit information requested from Authorization to Engineer Letters must be returned by the date indicated within the Authorization to Engineer letter.**

- 17. Pursuant to: MAP-21; <http://www.fhwa.dot.gov/construction/contracts/buyam-qa.cfm> and (23U.S.C313) Applicant certifies it is in compliance with Buy America for said facility described in Section 1 of this permit document. Applicant agrees and understands nonadherence will void said permit.

Applicant: \_\_\_\_\_

By: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approval of this permit is hereby given this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_