

Return To: DeIDOT
P.O. Box 778
Dover, DE 19903

Attn: Mike Callahan
Real Estate

PERMANENT EASEMENT AGREEMENT

THIS AGREEMENT made this 20th day of Sept, 2001 by and between the State of Delaware, Department of Transportation ("DeIDOT"), and the Delaware River and Bay Authority, a government agency of the State of Delaware and the State of New Jersey ("DRBA")

Whereas; DeIDOT is part of a consortium of toll authorities who are constructing a fiber optic network ("Network") consisting of ducts, optic fingers and related fixtures, attachments and appurtenances in conjunction with the consortium's electronic toll system (E-Z Pass).

DRBA has installed ductwork on approaches to and crossing the twin-spans of the Delaware Memorial Bridge.

DeIDOT has commenced a project to connect the "Network" with New Jersey by installing ductwork to connect with the DRBA installed ductwork, and leasing conduits from DRBA over the Delaware Memorial Bridge.

As part of the project, DeIDOT will construct a portion of the "Network", on lands owned by DRBA ("Parcels") and identified within the following route:

Starting at the Delaware River and Bay Authority's property line just north of the western abutment of Bridge 8W, the route extends eastwardly outside but along the right shoulder of I-295 South until it exits Authority property at its intersection with Baylor Boulevard.

This agreement shall be recorded in the Office of the Recorder of Deeds for New Castle County whereby DRBA does by these presents, grants, bargain, convey and confirm unto DeIDOT or its successors a gratis Permanent Easement as more fully described on above for the following purposes:

1. To enter upon the Parcels to construct that portion of the "Network" necessary to connect to DRBA's installed ductwork as described and located above.
2. DRBA agrees to allow DeIDOT to enter upon the Parcels to operate and maintain said "Network".
3. DRBA acknowledges DeIDOT as the owner of said "Network" in the area this easement covers.
4. DRBA agrees that in connection with that certain Agreement for Right of Use of Duct System dated of even date herewith (the "Duct" Agreement") by and between the DRBA and the New Jersey Turnpike Authority, acting for and on behalf of the New Jersey Highway Authority the South Jersey Transportation Authority and the Delaware Department of Transportation (collectively referred to herein as "User"), DeIDOT have the right to assign its rights hereunder to User for use by User, User's Contractor (as defined in the Duct Agreement) and third parties who are parties to Fiber Leases (as defined in the Duct Agreement).

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Now therefore in consideration of the foregoing and the mutual promises set forth below it is hereby agreed as follows:

- A) The granting of this easement shall not be deemed a conveyance in fee simple of the "Parcels" in any part of them to DelDOT. Final easement area shall be verified by DelDOT upon preparation of their "as built" plans of the area actually used for constructing the Project.
- B) All work on the Project will be done at the expense of DelDOT
- C) DRBA shall continue to have access to the Parcels. Any proposed denial of use shall be coordinated between DelDOT and DRBA.
- D) DelDOT, for the State of Delaware, shall cause to have its contractors indemnify and save harmless DelDOT and DRBA from and against any and all claims, demands and causes of action of every kind and character arising in favor of contractor employees or any third party on account of any breach of or on account of personal injuries, death or damages to property which may arise out of DelDOT's exercise of the easement, and also provide appropriate public liability insurance with respect to such risks naming DelDOT and DRBA, as additional insureds.
- E) Should this Easement ever be abandoned by DelDOT or by mutual agreement, then this Easement shall terminate be null and void and will no longer encumber said land and such action shall be evidenced by a recorded release of easement.
- F) DelDOT covenants that, to the best of its knowledge, DelDOT's work on the Network and the exercise of the Easement will not knowingly involve the use, generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of, or the conduct or performance of any activity in connection with any hazardous substance or hazardous waste, as such terms are defined in the Delaware General Waste Management Act, 7 Del. C. Chapter 60 and the regulations promulgated under the Act, as well as the provisions of any other similar or successor federal, state, or local legislation, including, without limitations, that which, would subject the property or any of the parties hereto to any liability, including damages, penalties, or fines, or any lien on any such property under such Act or under the federal common law or the common law of the State of Delaware.
- G) Following any land disturbing activity in connection with its exercise of any right granted hereunder, DelDOT shall, at its own cost and expense, promptly and fully restore the land that has been disturbed to substantially the same condition that existed prior to such land disturbing activity
- H) DRBA shall not use the easement area in any way, which will interfere with or be detrimental to the present or future use of the easement area by DelDOT.
- I) DRBA hereby warrants, as to itself and the Parcels that:
 - 1) **Authority.** It has the full right, power, and authority to execute, deliver and carry out the terms of this Easement.
 - 2) **Marketable Title.** DRBA has good fee simple and marketable title to the Parcels.
 - 3) **Compliance with Laws.** To the best of DRBA's knowledge, it has complied with all applicable laws, ordinances, regulations, statues, rules and regulations pertaining to and affecting the Parcels. Not with standing the foregoing this warranty shall not be deemed to include, and DRBA makes no warranty or representatives with respect to any laws, ordinances, regulations, statues, rules and/or restrictions which may govern any polluting, toxic, or hazardous substances or other environmental condition related to the Parcels.

Attest

Delaware River and Bay Authority

MA Proud
Witness

[Signature]
Michael Harkins (SEAL)
Executive Director

State of Delaware)
) SS
New Castle County)

BE IT REMEMBERED that on this 16th day of April, 2001 personally appeared before me, Michael E. Harkins, to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed

SWORN TO AND SUBSCRIBED before me the day and year aforesaid.

[Signature]
Notary Public Signature

Danielle S. Messina
Notary Name – Printed or Typed

My Commission Expires: 11/6/04

