

Tax Parcel No.: N/ADRAFT

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Prepared by/ Return to:
State of Delaware
Department of Transportation
800 S. Bay Road
Dover, DE 19901

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2nd SUPPLEMENT TO

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TOWN OF DEWEY BEACH

STREET AND BEACH MAINTENANCE AGREEMENT

This 2nd SUPPLEMENTAL AGREEMENT made this _____ day of _____, 20____, by and between the State of Delaware, Department of Transportation, ~~Division of Highways~~ (hereinafter "State", party of the first part, and the Town of Dewey Beach (hereinafter "Town", } party of the second part);

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WHEREAS State and Town entered into that certain Street and Beach Maintenance Agreement hereinafter "Agreement"), dated May 6, 1983, subject to a Supplement dated _____; and

Commented [FK(1)]: Please insert the date of the first supplement to the agreement

WHEREAS State and Town desire to supplement and amend said Agreement.

NOW, THEREFORE, State and Town agree as follows:

A.) STATE and TOWN agree that a new paragraph 4A shall be inserted into said Agreement, directly following the existing Paragraph 4. Said paragraph 4A shall read as follows:

4A. WIRELESS SERVICES AND WIRELESS INFRASTRUCTURE.

For purposes of this Agreement, and as noted in Title 17 Del. C. §1602(4), wireless services providers and wireless infrastructure providers are not public utilities under §102(2) of Title 26. With regard to permitting required in connection with Wireless Services Providers and Wireless Infrastructure Providers, as contemplated by Title 17 Del. C. Chapter 16, the TOWN shall have

sole authority over such permitting along and within any roadways subject to the terms of this Agreement that are within the jurisdictional limits of the TOWN, EXCEPT all rights-of-way along and directly adjacent to Routes 1 and 1A. For clarification, any Wireless Services Provider or Wireless Infrastructure Provider, as contemplated by Title 17 Del. C. Chapter 16, desirous of working within the right-of-way of State Routes 1 and 1A shall be required to obtain a permit from the STATE. Any Wireless Services Provider or Wireless Infrastructure Provider desirous of working within the right-of-way of any other streets within the jurisdictional limits of the TOWN, shall be required to obtain a permit from the TOWN, subject to the TOWN's jurisdictional requirements, and further subject to the provisions of paragraph 9 of this AGREEMENT.

The TOWN and/or STATE, as the case may be, shall notify all involved Wireless Services Providers or Wireless Infrastructure Providers in writing of this AGREEMENT.

B.) State and Town agree to strike paragraph 9 of said Agreement and substitute said paragraph 9 with the following:

9. ROAD SURFACE AND SUBSTRUCTURE DISTURBANCES.

It is agreed that whenever the TOWN, its contractors, agents, successors in interest, wireless services providers and/or wireless infrastructure providers to be permitted by the TOWN in accordance with the terms of paragraph 4A of this AGREEMENT, and the like propose to make or allow any disturbances to any road surface or substructure of a STATE MAINTAINED STREET, the prior written permission of the STATE must be obtained, except in the case of emergencies. In the case of emergencies, the party making such disturbance will verbally notify the STATE as soon as practicable. Any and all restorations after such disturbances are made must conform to the STATE's current "Standard Specifications", must be subject to STATE inspection, and shall be paid for by the party making such disturbances.

C.) State and Town agree to strike paragraph 11 of said Agreement and substitute said paragraph 11 with the following:

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11. BEACH LANDS

For purposes of this Agreement, “Beach lands” shall be defined as areas bounded to the East by the Atlantic Ocean and bounded to the West by a line established eight feet (8’) beyond the easternmost edge of the paved travel ways of the streets identified on Exhibit “A.” For further clarification, the edge of the pavement shall be identified where it actually lies, regardless of whether said edge is above the surface of the land or buried by sand and/or soil. Beach lands, currently within the control and jurisdiction of the State of Delaware, Department of Transportation, ~~Division of Highways~~ shall from this date forward [May 6, 1983] be under the ~~jurisdiction~~JURISDICTION of the TOWN, except as otherwise provided herein.

The TOWN agrees that such areas shall forever remain subject to the public use, and enjoyment and the ~~TOWN~~TOWN agrees not to permit any unreasonable interference therewith. For further clarification, such public use and enjoyment shall include beach access and, therefore, the TOWN shall not interfere with public access to the beach in any manner without the written consent of the STATE. The TOWN agrees to keep such areas open for the use and enjoyment of the public within all reasonable means. In the event the ~~TOWN~~TOWN should determine to divest itself of such jurisdiction or should the ~~TOWN~~TOWN fail to comply with provisions herein, such jurisdiction shall revert to the STATE~~STATE~~.

D.)-The terms and conditions of the Agreement are incorporated herein by this reference, and capitalized terms used in this 2nd Supplement shall have the same meaning such terms and given in the Agreement and/or 1st Supplement to the Agreement. Except as specifically set forth herein, this Supplement shall in no way modify, alter or amend the remaining terms of the Agreement, all of which are ratified by the parties and shall remain in full force.

IN WITNESS WHEREOF, the parties hereto have duly executed this SUPPLEMENTAL AGREEMENT, in duplicate, under their respective seals, the day and year first written above.

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**STATE OF DELAWARE, DEPARTMENT OF
TRANSPORTATION**

By: _____ (SEAL)

Attest: _____

[Corporate Seal]

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STATE OF DELAWARE, COUNTY OF KENT: to-wit

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BE IT REMEMBERED, that on this _____ day of _____, 2021, _____ personally appeared before me, the Subscriber, a Notary Public in and for the State and County aforesaid, _____ of Department of Transportation, an agency of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed and the act and deed of said state agency.

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GIVEN under my Hand and Seal of Office the day and year aforesaid.

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Notary Public

My Commission Expires:

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APPROVED AS TO FORM:

Deputy Attorney General for Department of Transportation

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TOWN OF DEWEY BEACH

By: _____ (SEAL)

Attest: _____

[Corporate Seal]

STATE OF DELAWARE, COUNTY OF SUSSEX: to-wit

BE IT REMEMBERED, that on this _____ day of _____, 2021, personally appeared before me, the Subscriber, a Notary Public in and for the State and County aforesaid, _____ of Town of Dewey Beach, a political subdivision of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his/her act and deed and the act and deed of the Town of Dewey Beach.

GIVEN under my Hand and Seal of Office the day and year aforesaid.

Notary Public

My Commission Expires: _____

ATTEST: _____ STATE OF DELAWARE
_____ DEPARTMENT OF TRANSPORTATION

ATTEST: _____
_____ MAYOR OF TOWN OF DEWEY BEACH

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