



VIII. AGREEMENTS

Agreements document a legally binding arrangement between parties and can affect the acquisition of land for transportation projects or the valuation of a property. This chapter is meant to provide the Practitioner with a general understanding of the types of agreements and where one may find them. Reviewing agreements and understanding the content is essential for creating an accurate set of Right-of-Way plans.

The Author of any Agreement is reminded that if an agreement is sent to DeIDOT Legal for comments, an updated version should be sent to the Legal Section before getting signatures. The final signed agreement should be forwarded to the Legal Section.

A. Town Agreements

State maintained roads that enter the municipal limits of a Town/City within Delaware require a Town Agreement to document the ownership and maintenance responsibilities between DeIDOT and the Municipality, as well as the type of construction that will be performed within the Municipality's limits. When a project is initiated within the Municipality's limits, a Town Agreement is needed before construction can commence. Team Support should be notified that a Town Agreement is needed as early as possible in the design process by the Practitioner.

The Practitioner should develop a display that can be used to illustrate the understandings between the Municipality and DeIDOT in the final document. The display should show final alignment of the roadway or general locations on a map if there are multiple project locations.

The Team Support Section will assemble the document and request signatures from DeIDOT personnel and municipality personnel. A copy of the signed agreement will be sent to the Practitioner, the Municipality, and uploaded to the Municipal Agreement website. The Municipal Agreement website can be found on the DeIDOT website under Business.

1. *Master Town Agreement*

A Master Town Agreement establishes a list of roads within the Municipality that will be maintained by DeIDOT. Typically, the construction and maintenance responsibilities for DeIDOT within a Municipality are from face of curb to face of curb. The Municipality typically has responsibility for lighting, drainage, curbs, and sidewalks within the municipal limits. Responsibility for maintaining traffic signals should be confirmed with the DeIDOT Traffic Section.

Municipal limits are to be shown on the Right-of-Way plans and on any Right-of-Way plats or exhibits when applicable. See Chapter II for more details on this.

Master Town Agreements can be found on the DelDOT website under Business>Municipality Agreements.

2. Vehicle/Bicycle/Pedestrian Detours

Even though a project may not enter a Municipality, if a vehicle, bicycle, or pedestrian detour enters the Municipality, a Town Agreement is required. The Practitioner should send a detour plan to be used as a display in the Town Agreement. Team Support will create the document, coordinate signatures, send signed copies to the Practitioner and Municipality, and upload to the Municipal Agreement website.

3. Procedures

Team Support has been authorized to prepare all Town Agreements necessary for projects that fall within incorporated City/Town limits. There are two types of agreements that are prepared by Team Support. There is the City/Town Agreement and the Letter Agreement. The following will explain the difference between the agreements, when to use each agreement format and the procedure for each agreement.

a. City/Town Agreement

This type of agreement is used for any State project that deals with the acquisition of right-of-way or the realignment of a highway or bridge. The Town Agreements are prepared when the final right-of-way has been approved for the project.

The following is the procedure taken when preparing a Town Agreement:

1. Determine if the project falls within an incorporated Town or City limits.
2. Determine who will be signing the agreements for the Town. The website Delaware League of Local Governments has an online directory indicating who the mayors and town managers are for all the incorporated cities and towns. It is suggested to call the town to see if the town is aware of the project and to confirm who the mayor or town manager is at this stage.



3. Take a standard Town Agreement form and adjust the agreement to fit the scope of the project to include which town the agreement is with, the limits of the project, maintenance responsibility and right-of-way required.
4. Attached to the agreement should be an 11 x 17 copy of the Title Sheet, labeled Exhibit A, and right-of-way plan sheets. The right-of-way plan sheets should have the proposed right-of-way highlighted. For other (maintenance and pave and rehab) projects, an 8 ½ x 11 copy of the location map and scope of work is needed. **Steps 1 through 4 should take one week.**
5. When the agreement is completed, the agreement needs to be sent out within DelDOT for comments. It is suggested to give two weeks for comments to be due. **Should take two weeks.** At a minimum, the following indicates who should receive the draft town agreement for review and comment:
 - Project Manager
 - District Engineer
 - Utilities Engineer
 - Chief Traffic Engineer
 - Director of Maintenance & Operations
6. When all comments have been returned, make any necessary corrections.
7. After the cover memo is signed by the Group Engineer for Right-of-Way Engineering, the agreements are ready to be sent to the Town for their review and approval. It is suggested to give three to four weeks for the agreements to be due since most towns must go through their town meetings to approve the agreement and the meetings usually occurs at the beginning of each month. It is also helpful to add a note for the town to call to confirm receiving the agreements. If the agreements are not back by the due date, give the town a call to see if there are any questions or concerns. **Should take three to four weeks.**
8. When the agreements are returned from the town, the Deputy Attorney General, the Chief of Right-of-Way and the Director of Finance need to sign the agreements. To do this an Agreement Transfer Sheet needs to be prepared. **Should take one week.**
9. When the agreements are returned from the Deputy Attorney General, the Chief of Right-of-Way and the Director of Finance, the town agreement is considered executed. Now a letter can be prepared to the town stating the agreement is approved. Once the letter has been prepared, the agreements are ready to be distributed to the town and within the department.

10. Along with the three original signed agreements, seven copies of the signed agreement will need to be made for distribution. The following indicates who will receive the town agreements:

• Agreement to file	1 original
• Agreement to Town	1 original
• Director of Finance	1 original
• Assistant Director, Program	1 copy
• Chief Traffic Engineer	1 copy
• District Engineer	1 copy
• Chief of Right-of-Way	1 copy
• Director of Maintenance & Operations	1 copy
• Planning Administration (uploads to TA website)	1 copy
• Deputy Attorney General	1 copy

The entire town agreement process should take between 8 to 10 weeks to complete, but in cases when there is a rush for a town agreement, it is suggested to do the following:

1. Notify the town as soon as possible to see if the town can expedite their procedures quicker.
2. Email a rough copy of the agreement to the town for their review before mailing the originals.
3. UPS the agreement overnight to the town.
4. Hand carry (deliver the agreements to the city/town).

By using this expedited process, the agreements should take around **4 to 6 weeks to complete** a town agreement.

b. Letter Agreement/Electronic Agreement

This type of agreement is used for any State projects within the limits of a City/Town that deal with resurfacing of highways or bridges with construction occurring within the limits of existing public right-of-way and that no right-of-way is required for the project. The following is the procedure taken when preparing a Letter Agreement:

1. Determine if the project falls within an incorporated Town or City limits. Once it has been determined, an email is prepared to the appropriate Design Section stating whether or not a Letter Agreement is required.



2. Determine who will be signing the agreement for the town. The website Delaware League of Local Governments has an online directory indicating who the mayors and town managers are for all the incorporated cities and towns. It is suggested to call the town to see if the town is aware of the project and to confirm who the mayor or town manager is at this stage.
3. Take a standard Letter Agreement form and adjust the agreement to fit the scope of the project to include which town the agreement is with, the limits of the project and the maintenance responsibility. Attached to the Letter Agreement should be an 8 ½ x 11 copy of the location map and scope of work, labeled Exhibit A.
4. Two copies of the letter agreement need to be made when completed. The cover letter then needs to be signed by the Group Engineer for Right-of-Way Engineering.
5. When the letter is signed, the agreements are ready to be sent or emailed to the town for their review and approval. It is suggested to give the town one or two weeks (electronic), or three to four weeks (letter) to approve the agreements since most towns must go through their town meetings to approve the agreement and the meetings usually occur during the beginning of each month. It is also helpful to add a note for the town to call to confirm receiving the agreement. Both Letter Agreements are signed by the town and if the agreement is not back by the due date, give the town a call to see if there are any questions or concerns. **Should take three to four weeks.** If the due date for the electronic agreement has passed, then it is considered concurrence by the town. **Should take one week.**
6. When the agreements are sent back by the town, the Deputy Attorney General signs the two originals. A memo is prepared stating that the signed Letter Agreement by the Town is attached and is then sent to the Town. One original Letter Agreement is scanned and goes into Team Support's file.

B. Tax Ditch Agreements

A tax ditch is a system of ditches used to manage stormwater and drainage for a specific area. The tax ditch includes easements for construction and maintenance of the facility. Delaware tax ditches are established under Delaware state law (7 Del. Code, Chapter 41). A Tax Ditch Association is an organization, formed by a legal process in Superior Court, that comprises all landowners (also referred to as taxables) of a particular watershed or sub-watershed. The Tax Ditch Agreement outlines the operations of a tax ditch as overseen by Tax Ditch Managers/Chairpersons and a Secretary/Treasurer.

The Delaware Department of Natural Resources and Environmental Control (DNREC) maintains a website to search for tax ditches. The Practitioner can view the locations of Tax Ditches and easement widths by visiting DNREC's website and clicking on Division of Watershed Stewardship/Tax Ditches/Delaware Tax Ditch Map

Prior to proceeding with any proposed construction work whether it is a capital project or maintenance project, DeIDOT needs the concurrence of the Tax Ditch Manager to use the existing tax ditch easement within the LOC of a project to construct and maintain the project. The Practitioner will note the tax ditch easement on the plans. The Practitioner will identify a R/W, PE, TCE or RTE needed to construct and maintain the improvements to be built.

The existence of a tax ditch on a project parcel should be noted in the Right-of-Way Data Sheet or in the Data Table on an Acquisition Plat. The tax ditch easements are extinguished within the proposed R/W limits. It is important to note the tax ditch so that the Acquisitions, Relocations and Settlements Section can coordinate with the Tax Ditch Association for any type of acquisition of property within the tax ditch easements.

Once the plans are complete with the revised limits of the tax ditch easements, the Team Support Section will prepare the documents necessary to send to the Tax Ditch Association. Team Support will complete the following Tax Ditch Agreement Procedures for contacting the Tax Ditch Association.

1. Determine what tax ditch district the project is located via Tax Ditch Application at <http://maps.dnrec.delaware.gov/taxditch>
2. Prepare map of tax ditch boundary and obtain tax ditch limits from website above.
3. Request tax ditch manager names and addresses via email to: DNREC_Soil_TaxDitch@state.de.us
4. Prepare letter to send to tax ditch administrator and include construction plan attachment and map.
5. Send two (2) letters on DeIDOT letterhead with signature line and attachments. Include self-addressed stamp envelope for return of one original letter to DeIDOT.
6. Log in date letter was sent to the tax ditch administrator into the Agreement tracking spreadsheet/database on the shared drive.
7. Once letter is returned, make sure it is signed and attested in the appropriate location. If the letter is not attested, re-send letter to tax ditch administrator.
8. Log in date letter was returned from tax ditch administrator into the Agreement tracking spreadsheet/database.
9. Prepare internal memo to distribute signed Tax Ditch letter agreement advising that the Tax Ditch Chairman has given the State approval to use the existing tax ditch easement in order to construct the project.
10. Scan and file original tax ditch agreement under contract folder in ProjectWise.



11. The final step is performed by the Legal Team. A court order change must be made to record the new limits of the tax ditch easements, in the respective County in which the tax ditch resides.

C. Interagency Agreements

DelDOT may enter into agreements with neighboring States, or other State of Delaware Agencies and County Agencies. These agreements can describe land acquisitions, the design process, stipulations on how construction is to be performed, or financial arrangements between parties. Each agreement is different and will provide information that may affect the Construction or Right-of-Way plans. Normally these agreements would reside in the project files with the DelDOT Practitioner that is responsible for the project or with the DelDOT Legal Section.

D. Environmental Agreements

DelDOT may enter into agreements with State Agencies or private owners to satisfy environmental commitments needed for its projects. The agreements reside with the DelDOT Environmental Stewardship Section.

These agreements may involve cultural areas, wetlands, and HAZMAT areas that need to be avoided. Normally these agreements call for avoidance of the resource, but there may be times when an Environmental Agreement allows for disturbance of the area. The areas of non-disturbance are shown on the Construction Plans as a Limit of Construction (LOC) line to alert the contractor that there can be no disturbance beyond the LOC.

The Practitioner should review all Section 106 documents to understand which cultural areas must not be disturbed. The areas of avoidance will be documented in a Memorandum of Understanding (MOU) between DelDOT and the State Historic Preservation Officer. The LOC line must avoid cultural resources unless otherwise agreed to by the MOU. As part of the MOU, some archeological sites may have conservation easements recorded on the property. The conservation easements will be recorded in the respective County in which the archeological site resides.

The Practitioner should review all permits issued by the Army Corps of Engineers or the Delaware Department of Natural Resources and Environmental Control. The permit for a project will have the areas of avoidance that must be documented by a wetland symbol on the Construction Plans and the Environmental Compliance plans. The LOC line must avoid wetlands unless the permit allows for disturbance. It is important to note areas that cannot be encroached upon to avoid penalties for noncompliance with the Environmental Agency permit. In some instances,

conservation easements may be used to protect sensitive habitats. The conservation easements are recorded in the respective County in which the property resides.

To view mapping of HAZMAT sites in Delaware, DNREC has a database to search for HAZMAT areas and property owner/DNREC agreements. This information would be used at the project scoping stage to initiate a Hazardous Materials (HAZMAT) Report for the project that is typically prepared through DelDOT's Hazardous Materials Section. The Practitioner should review the Hazardous Materials (HAZMAT) Report for a project to determine if there are specific areas that must be avoided or remediated before construction can begin in the area. The Practitioner should coordinate with the DelDOT HAZMAT Coordinator.

E. Railroad Agreements

Before any DelDOT project can commence within Railroad property, the DelDOT Railroad Section must obtain a formal written agreement between the railroad company and DelDOT, to allow access to the Railroad property. The DelDOT Railroad Section maintains its own Maintenance Agreements and Master Agreements with most railroad companies. Master Agreements provide the framework for individual project agreements and streamline coordination between DelDOT and the railroad companies, as they have already been approved by the engineering and legal sections of both parties.

The Practitioner must coordinate with the DelDOT Railroad Coordinator to start the process of obtaining a Railroad Agreement as early in the design process as possible. All work within the Railroad property must be coordinated with DelDOT's Railroad Section. There are no acquisitions within the Railroad property, it will be coordinated within the railroad agreement. More information on railroad coordination can be found in the DelDOT Railroad Coordination Manual.

The Practitioner should note that the property line for a Railroad should be shown on the plans as a property line and not a Railroad Right-of-Way line as discussed in Chapter II.

F. Shared Stormwater Agreements

DelDOT may enter into agreements with property owners to share stormwater facilities for roadway and development use. The agreements outline who is responsible for construction and maintenance of stormwater facilities.

The Practitioner should work with the property owner, DelDOT Water Resources Engineer, DelDOT NPDES Engineer, Team Support Section, Acquisitions, Relocations and Settlements Section, DelDOT Legal Section, and the property owner's Engineer when developing a Shared



Stormwater Agreement for the project. For the latest guidance, the Practitioner should contact the DelDOT NPDES Engineer at npdes@delaware.gov.

A notation of the Shared Stormwater Agreement is made for the parcel in the Data Sheet of the Right-of-Way plans. Shared Stormwater Agreements are recorded in the respective County in which the development resides.

G. Deed Restrictions

Restrictions on a property are often documented in the current deed, a separate recorded deed, or on the subdivision record plan for the property. The Practitioner should review the deeds and record plans for the project parcels to determine if there are any conditions that could affect the construction or Right-of-Way on the parcel. Examples of restrictions could be environmental covenants, cultural resource covenants, or agricultural preservation covenants. These restrictions can be with governmental agencies or private entities or a combination of public and private.

If it is impossible for the Practitioner to avoid acquiring the deed restricted areas, early coordination is needed with the Environmental Stewardship Section. For cultural resources, the Practitioner will work with the Environmental Stewardship Section to prepare a 4(f) document. 4(f) documents and other preservation covenants should be noted in the Remarks box in the Data Sheet, with square footage of the covenant within the proposed acquisition noted. Any deed restrictions should be noted in the Parcel Information Form.

H. Developer Agreements

Developer Agreements between DelDOT and the property owner(s) are common when large developments are to be built. The agreement may describe the project in stages and give milestones as to what infrastructure shall be complete along with assigning maintenance responsibilities. Installation of traffic signals also require an agreement. Information on traffic signals can be found in Section J, Traffic Signal Agreements, of this Chapter.

Traffic Mitigation Agreements (TMA) are needed if a Developer is not able to meet specific level of service or adequate facility requirements adopted by a Land Use Agency. TMAs are recorded in the respective County in which they reside.

Transportation Improvement Districts (TID) are areas identified in local comprehensive plans where development is encouraged, and transportation investments are focused to complement the comprehensive plans. TID Agreements are recorded in the respective County in which they reside. The DelDOT TID Program Manager can be reached at 302-760-2236. More information

about Transportation Improvement Districts can be found on the DeIDOT website under the Business/Program tab.

The DeIDOT Development Coordination Section is involved with Developer Agreements and should be contacted for information. The Development Coordination Section can be reached at 302-760-2122. The Development Coordination Portal can be found on the DeIDOT website under the Business>Doing Business tab. Executed agreements, or those in process, should be reviewed to determine if there are any conditions that would affect the proposed acquisitions, such as commitments for the developer to dedicate lands to DeIDOT for a future signal. These conditions should then be noted on the Right-of-Way plans and/or in the Data Sheet, as appropriate.

I. Corridor Capacity Preservation Program

The Corridor Capacity Preservation Program focuses on managing access to identified road corridors to increase the capacity of the existing highway. The capacity of the corridor can be increased simply by eliminating features that interfere with the flow of traffic, such as entrances and at-grade crossings. The overall approach being developed for the corridor considers the locations of existing and future intersections or interchanges, driveways, service roads, environmental constraints, and county land use plans. The Practitioner can find more information about the program and its impact on Construction and Right-of-Way plans by visiting the DeIDOT website and choosing Business/Programs.

J. Traffic Signal Agreements

DeIDOT's Traffic Section may initiate an Agreement with a Municipality for a particular traffic control device or system placed along State-maintained roadways to document approval and/or ownership and maintenance responsibilities between DeIDOT and a municipality. Typical examples may include, but are not limited to, roadway lighting, signals, signage, pedestrian crossing systems, colored pavement markings, etc.

When coordinating with Developers, DeIDOT may determine that a traffic signal may be required in the future or that an existing traffic signal requires modification. The developer enters into a Traffic Signal Agreement (TSA) with DeIDOT prior to obtaining entrance approval. Traffic Signal Agreements fall into three categories:

- Agreement Type "A" – Off-Site Developer Agreement. This agreement is typically used when a developer is required to contribute to the cost of a new or upgraded traffic signal or ITS device that is not located directly on the development's property.



- Agreement Type “B” – On-Site Developer Agreement. This agreement is typically used when a developer is required to contribute to the cost of a new or upgraded traffic signal or ITS device that is located on or directly adjacent to the development’s property.
- Agreement Type “C” – Right of Entry Agreement. There is no cost component to this agreement. It simply allows DelDOT right of entry onto the property to install, operate and maintain signal and ITS devices. Property owners must willingly enter into this agreement without compensation.

Under certain circumstances, described in the Development Coordination Manual, a Developer has the option of voluntarily contributing to a Traffic Signal Revolving Fund (TSRF) in lieu of entering into a signal agreement. Concurrent with payment into the TSRF, the developer will enter into a Traffic Signal Revolving Fund Agreement, which will document that the Developer has no further financial obligations associated with a particular development to fund existing or future traffic signals at the intersection or intersections in question. They will also be informed that there is no guarantee a signal will be installed when and where they may want it.

The Development Coordination Manual can be found on the DelDOT website under Business>Doing Business. Traffic Signal Agreement information can be found in the former Appendix I of the DelDOT Development Coordination Manual. More information on Traffic Signal Agreements and Traffic Signal Revolving Fund Agreements can be found in Section 2.5 of the Development Coordination Manual. Traffic Signal Agreements and Traffic Signal Revolving Fund Agreements are recorded in the respective County of the development and then input on DelDOT’s OnBase system. A notation of any Traffic Signal Agreement should be noted in the Data Sheet of the Right-of-Way plans.

K. Utility Franchise, Permits and Agreements

DelDOT uses three different types of documents to manage the installation and/or occupancy of utility facilities on, under or across State right-of-way. These documents include franchises, permits, and agreements. Public Utility Annual Master Franchises, Use and Occupancy Agreements, Utility Construction Permits, and Letter Agreements are further described in the Utility Manual, Chapter 4. The Utility Manual can be found on the DelDOT website under Business/Publications. The DelDOT Utility Section can be contacted at 302-760-2515 for more information.