

**DEPARTMENT OF THE ARMY  
EASEMENT FOR FIBER OPTIC COMMUNICATION LINE  
RIGHT-OF-WAY  
LOCATED ON  
LEWISVILLE LAKE  
DENTON COUNTY, TEXAS**

This easement is made on behalf of **THE UNITED STATES OF AMERICA** (the "United States"), between **THE SECRETARY OF THE ARMY**, acting by and through the Chief, Real Estate Division, U.S. Army Engineer District, Fort Worth, hereinafter referred to as the "Grantor", under and by virtue of the authority vested in Title 10, United States Code, Section 2668, having found that the granting of this easement will not be against the public interest, and Denton Independent School District, duly organized and existing under and by virtue of the laws of the State of Texas, with its principal offices located at 1307 North Locust Street, Denton, Texas, 76201, hereinafter referred to as the "Grantee."

**NOW THEREFORE:**

The Grantor, for good and valuable consideration set forth below, the receipt and sufficiency of all of which are hereby acknowledged, upon and subject to the terms, covenants and conditions set forth in this easement, does hereby:

Grant and convey to Grantee, an easement for the construction, installation, operation, maintenance, repair, removal, upgrade, and replacement of a fiber optic cable for transmission and distribution of communication signals, and related facilities, hereinafter collectively referred to as the "Facilities", over, across, under, in and upon lands of the United States as identified in Exhibits "A", "B" and "C", having been determined not to be more land than is necessary for the easement, hereinafter referred to as the "Premises", and which is attached hereto and made a part hereof;

Make no claim of title during the term of this easement to any easement Facilities of whatever nature located, constructed, or placed on the Premises during the term of the easement by, or on behalf of, the Grantee; and title to any such Facilities and any addition or alteration to the Facilities, shall, upon completion thereof, immediately vest in the Grantee. The Facilities shall remain real property for the duration of this easement.

**THIS EASEMENT** is granted subject to the following conditions:

**1. TERM**

This easement is hereby granted for a term of 25 years, beginning February 8, 2010 and ending February 7, 2035 so long as the Grantee remains in compliance with any or all of the conditions of this easement.

## **2. CONSIDERATION, MITIGATION, AND DAMAGES**

a. The consideration for this easement is the operation and maintenance of the premises by the Grantee for the benefit of the United States and the general public in accordance with the conditions herein set forth, in addition to an administrative fee of Eight Hundred Forty Five and No/100 Dollars (\$845.00).

b. Any cash payments to the Grantor will be made to the order of the Finance and Accounting Officer, Fort Worth District, and delivered to Post Office Box 17300, ATTN: CESWF-RE-M, Fort Worth, Texas, 76102-0300.

c. Any payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, as amended (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States, an administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due.

## **3. NOTICES**

a. All correspondence and notices to be given pursuant to this easement shall be in writing and addressed, if to the Grantee, to Denton Independent School District, 1212 North Elm Street, Denton, Texas, 76201; and if to the Grantor, to the U. S. Army Engineer District, Fort Worth, Attention: Chief, Real Estate Division, Post Office Box 17300, Fort Worth, Texas, 76102-0300, or as may from time to time otherwise be directed by the parties. Both Grantor and Grantee have an obligation to ensure that the other party has their accurate address.

b. Notices shall be mailed by certified mail, postage prepaid, return receipt requested, addressed to the addresses above. The effective date of the notice shall be the earlier of the actual date of receipt or the date the addressee is notified of the attempted delivery of the certified mail, whether or not the addressee actually accepts delivery.

## **4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Grantor" or "Chief, Real Estate Division" shall include their duly authorized representatives. Any reference to "Grantee" shall include assignees, transferees and their duly authorized representatives.

## **5. SUPERVISION BY THE GRANTOR**

a. The construction, operation, maintenance, repair or replacement of said Facilities, including related facilities, culverts and other drainage facilities, and the Premises shall be performed at no cost or expense to the United States under the general supervision and subject to the approval of the Grantor's representative having immediate jurisdiction over the property,

hereinafter designated as "said officer," and in such manner as not to endanger personnel or property of the United States on the said United States land or obstruct travel on any road thereon. The Grantee shall have the right of ingress and egress for such purposes, subject to approval of access by said officer.

b. The use and occupation of the Premises incident to the exercise of the privileges and purposes hereby granted shall be subject to such rules and regulations as the said officer may from time to time prescribe.

## **6. APPLICABLE LAWS AND REGULATIONS**

a. The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located. The Grantee shall be solely responsible for obtaining at its cost and expense any permits or licenses required for its operations under this easement, independent of any existing permits or licenses held by the Grantor.

b. The Grantee shall promptly report to the Grantor any incident for which the Grantee is required to notify a Federal, State or local regulatory agency or any citation by Federal, State or local regulatory agency of non-compliance with any applicable law, ordinance or regulation.

## **7. CONDITION OF PREMISES**

The Grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the Grantor.

## **8. INSPECTION AND REPAIRS**

a. Upon completion of any phase of the easement activities which causes damage to the Premises, the Grantee shall restore said damage immediately, at the Grantee's own expense, to the same condition in which they existed prior to the commencement of such work, to the satisfaction of the said officer.

b. The Grantee shall supervise the said Premises and Facilities and cause it to be inspected at reasonable intervals, and shall immediately repair any defects found by such inspection, or when requested by the Grantor to repair any defects.

## **9. PROTECTION OF GOVERNMENT PROPERTY**

The Grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the Grantee under this easement, and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by

the Grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefore by the Grantee in an amount to reimburse for the loss satisfactory to the Grantor.

#### **10. RIGHT TO ENTER AND FLOOD**

The right is reserved to the Grantor, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Grantee, to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

#### **11. REQUIRED SERVICES**

The Grantee shall furnish through said facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the Grantor at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the Grantee for similar service.

#### **12. TRANSFERS AND ASSIGNMENTS**

Without prior written approval by said District Engineer, the Grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the Grantee.

#### **13. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

#### **14. SUBJECT TO EASEMENTS**

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the Grantee.

## **15. OTHER AGENCY AGREEMENTS**

It is understood that the provisions of this easement shall not abrogate or interfere with any agreements or commitments made or entered into between the Grantee and any other agency of the United States with regard to financial aid to the Grantee in connection with the installation, construction, operations, maintenance, or repair of the facilities herein authorized.

## **16. RELOCATION OF FACILITIES**

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the Grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the Grantee.

## **17. TERMINATION**

This easement may be terminated by the Grantor upon 30 days written notice to the Grantee if the Grantor shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Grantor for failure of the Grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

## **18. SOIL AND WATER CONSERVATION**

The Grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Grantee during the term of this easement, and the Grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the Grantee shall be corrected by the Grantee as directed by said officer.

## **19. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground and water. The Grantee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The

Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state, interstate, and local laws and regulations. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

## **20. HISTORIC PRESERVATION**

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

## **21. NON-DISCRIMINATION**

The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the premises.

## **22. RESTORATION**

On or before the termination or revocation of this easement, the Grantee shall, without expense to the United States and within such time as said officer may indicate, restore the premises to the satisfaction of said officer. In the event the Grantee shall fail to restore the premises, at the option of said officer, said improvements shall either become the property of the United States without compensation therefore, or said officer shall have the option to perform the restoration at the expense of the Grantee, and the Grantee shall have no claim for damages against the United States or its officers or agents for such action.

## **23. DISCLAIMER**

This instrument is effective only insofar as the rights of the United States in the premises are concerned; and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity for obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or

license which may be required by Federal, state, interstate or local laws in connection with the use of the premises.

**24. SPECIAL CONDITIONS**

a. The fiber optic line shall be installed by directional boring on land and within steel conduit on the underside of the railroad bridge where it crosses the lake.

b. Exhibits A and B show a total length of 21,369.72 linear feet, which includes the railroad bridge. Since the Government does not hold a fee estate over the bridge, it was determined that the length of the bridge should be excluded from the easement. The revised length is 16,850 linear feet.

**THIS EASEMENT** is not subject to Title 10, United States Code, Section 2662, as amended.

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

HYLA J. HEAD  
Chief, Real Estate Division

**ACKNOWLEDGMENT**

STATE OF TEXAS

COUNTY OF TARRANT

**PERSONALLY APPEARED BEFORE ME**, the undersigned authority in and for said County and State, within my jurisdiction, the within named Hyla J. Head, who acknowledged that she is the Chief of Real Estate Division, U.S. Army Engineer District, Fort Worth, and that in said capacity she executed the above and foregoing **Easement for Fiber Optic Communication Line Right-Of-Way** by authority of the Secretary of the Army for the purposes therein expressed and as the act and deed of the United States of America.

**GIVEN UNDER MY HAND AND SEAL**, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_



The foregoing Department of the Army Easement For Fiber Optic Communication Line Right-Of-Way Located on Lewisville Lake Denton County, Texas was offered for approval on motion made by \_\_\_\_\_, seconded by \_\_\_\_\_, and after discussion was adopted by the Board of Trustees of the Denton Independent School District at a regularly scheduled meeting called, posted, and held in Denton, Denton County, Texas, on June 14, 2011, at which \_\_\_\_\_ Trustees were present, by the following vote: \_\_\_\_ For, \_\_\_\_Against, and \_\_\_\_\_ Abstaining.

DENTON INDEPENDENT SCHOOL DISTRICT

\_\_\_\_\_  
Mia Price, President  
Board of Trustees

ATTEST:

\_\_\_\_\_  
Rudy Rodriquez, Secretary

ACKNOWLEDGEMENT

THE STATE OF TEXAS     §  
  §  
COUNTY OF DENTON     §

This instrument was acknowledged before me on June \_\_\_\_\_, 2011 by Mia Price, in her capacity as President of the Board of Trustees, Denton Independent School District, on behalf of the School District.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires: \_\_\_\_\_