



**TOWNSHIP OF CENTER
BUTLER COUNTY, PENNSYLVANIA
EXCESS MAINTENANCE AGREEMENT**

THIS EXCESS MAINTENANCE AGREEMENT made this _____ day of _____, 20_____, by and between _____ with a business address of _____ (User) and the Township of Center (Township), a Second-Class Township, with a business address of 150 Henricks Road, Butler, PA 16001-8472.

DEFINITIONS:

APPURTENANCE means the property lying within the right-of-way of a Township Road, together with any improvement placed within this right-of-way.

BRIDGE means any structure including supports, erected over a depression or an obstruction, such as, but not limited to, water, road or railway and having a track or passageway for carrying traffic or other moving loads and having an opening measured along the center of the roadway or more than 8 feet between supports.

DEPARTMENT means the Commonwealth of Pennsylvania, Department of Transportation (PennDOT).

EXCESS MAINTENANCE means maintenance or restoration or both (but not betterment) of a Township Road (in excess of normal maintenance) caused by use of Township roads by User.

NORMAL MAINTENANCE means the usual and typical activities necessary to maintain the roadway, shoulders, drainage facilities, and other appurtenances in the state of repair existing at the date of the inspection.

ROAD means any road, cartway or bridge over which the Township has assumed, or has been legislatively given jurisdiction.

USER means the individual or entity executing this Agreement; any subcontractor, agent, vendor or assignee of said User; and any vendor or contractor of said User utilizing the roads, bridges and appurtenances under the control of the Township.

TOWNSHIP means the Township of Center, Butler County, Pennsylvania, acting by and through its Supervisors, or in appropriate cases, by and through its authorized representative.

BACKGROUND:

The User, in the conduct of its business, makes use of portions of roads, streets or highways which are under the jurisdiction, maintenance and control of the Municipality, as itemized on Attachment "A".

The User wishes to move vehicles or combinations, together with loads, in excess of the gross weight restrictions for highways established pursuant to the Pennsylvania Motor Vehicle Code (75 Pa. C.S.A. §4941(c)) over and across portions of Township roads, streets or highways.

The municipality is willing to permit the movement of the User's vehicles or combinations, together with loads in excess of the gross weight restrictions, conditioned upon the: (1) execution of the approved form of security by the User in favor of the Municipality to cover the cost of repairs and restoration necessitated by the movement; and (2) agreement to the terms, conditions and provisions hereinafter contained in this Agreement.

AGREEMENT:

For and in consideration of the mutual promises hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree for themselves, their successors and assigns, as follows:

Permission to Move Vehicles

- A. The Municipality will permit the User to move vehicles or combinations, together with loads, in excess of the Commonwealth gross weight restrictions on the portions of roads, streets or highways indicated below, subject to all provisions of the Vehicle Code, Act of June 17, 1976, P.L. 162, as amended and regulations promulgated thereto and this Agreement. In the event of a conflict between the Vehicle Code and this Agreement, the terms of this Agreement shall apply.
- B. This Agreement is limited to the use of Township roads for a specific activity within the Township; this Agreement does not grant user a thoroughfare through the Municipality or portions thereof, for user's vehicles not involved in such activity. By way of illustration, only, if a user is logging on Holyoke Road, it is not permitted to have its other trucks not involved in logging on Holyoke to use Holyoke as a thoroughfare from Route 38 to Route 308. User further agrees that it shall not use any Township road, street or highway or right-of-way thereto for loading, unloading, standing, and parking.

Joint Use

2. In the event that more than one User makes use of the portions of the roads, streets and highways and/or highways described in Paragraph 1, the User shall:
 - A. Permit the Municipality to assess and proportion, in its reasonable discretion, the maintenance and restoration costs among the users upon a periodic basis or termination of this Agreement.

Responsibility of User

3. The portions of roads, streets and highways, rights-of-way, and appurtenances shall be maintained to a level consistent with the condition of the roads, streets and/or highways as of the date of this Agreement.

The User specifically agrees that it shall limit its use of Township roads, streets and highways to those portions of Township roads, streets and highways described in Section 1, above, and further agrees that exceeding such license by its agents, servants, employees or contractors shall constitute a breach of this Agreement and that the User shall be responsible for securing additional permission, furnishing additional security and assuming responsibility for the damage to any portions of such additional Township roads, streets or highways.

The Municipality shall determine, in its reasonable discretion, whether the maintenance and restoration are satisfactory.

On-Site Inspection

4. The User and the Municipality agree that, in order to determine the condition of the portions of roads, streets and/or highways and appurtenances, an on-site field inspection shall be made jointly by the Municipality and the User. Photographs and videos shall be taken and a memorandum prepared describing the condition of the roads, streets and/or highways and appurtenances together with the nature and extent of any repairs needed to correct any existing damage for which the User will not be liable. At the sole discretion of the Township, core boring may also be undertaken. The memorandum, photographs and core boring results shall be incorporated as an exhibit as part of this Agreement. All costs of this inspection and compilation shall be paid by the User.

Maintenance Not Covered

1. The User shall have no obligation for maintenance to remedy damage directly resulting from acts of God or war or for the routine removal of snow or ice. Performance of Excess Maintenance and Restoration
2. Excess maintenance and restoration shall be performed in accordance with Option _____ below.

Option A

The Township maintenance forces and/or a contractor(s) selected by the Township through its prescribed procedures. The excess maintenance and restoration shall be performed to a level consistent with that agreed to in Paragraph 4 (above). The work shall be in conformance with Township Specifications and shall be supervised and inspected by Township personnel.

The Township may invoice the User for the estimated cost of repairs using either the latest maintenance contract prices or the county's latest average monthly maintenance unit prices. These estimated costs shall be computed for all damages noted on the on-site inspection form. The User agrees to reimburse the Department for all estimated costs.

The User shall submit payment to the Township within thirty (30) days from the date of the invoice. If the User fails to make the payment, the Township may in its discretion:

- 1) Rescind the User's permission to move vehicles or combinations, together with loads, in excess of the posted weight restriction over and across any Township Road(s) until payment is made.
- 2) Terminate this Agreement.
- 3) Proceed against security provided pursuant to Paragraph 8 and 14 below.
- 4) Any or all of the above.

Option B

The User and/or is contractor(s). The excess maintenance and restoration shall be performed to a level consistent with that agreed to in Paragraph 4 (above). The work shall be in conformance with Township specifications. If the User does work, he should notify the Township three days in advance of doing the work. Any excess maintenance or restoration associated with bridges shall be specifically developed in a memorandum by the Township and directed to the

User for completion. The Township reserves the right to monitor or direct any excess maintenance or restoration. The User shall reimburse the Township for any expenses incurred by the Township.

If performance Option B has been agreed to, the User shall:

- 1) Provide proper traffic protection at all times during excess maintenance and restoration. This protection shall comply with the Township's work area traffic control requirements as contained in Specification 408 and supplements thereto and Pennsylvania Department of Transportation Publication 213.
- 2) Indemnify, save harmless, and defend (if requested) the Township and its officers, agents, and employees, from all suits, actions or claims of any character, name, or description brought for or on account of any injuries, death, or damages received or sustained by any person, persons, or property, during the performance of the work on portion(s) of Township road(s) and appurtenances to be repaired, by or for the User or its officers, agents, employees, contractors, or representatives, whether the same be due to the use of defective materials, defective workmanship, neglect in safeguarding the work or by or on account of any act, omission, neglect, or misconduct of the User or its officers, agents, employees, contractors, or representatives, during the performance of the work.
- 3) Provide evidence to the Township of public liability insurance for bodily injury and property damage in the minimum amounts of \$250,000 each person, \$1,000,000 each occurrence. The insurance policy shall cover any loss that might occur during the performance of any excess maintenance or restoration by the User, or its officers, agents, employees, contractors, or representatives. The Township shall be named as an additional insured on the certificate of insurance. A copy of the certificate of insurance shall be attached to this Agreement as an Exhibit. The insurance shall neither be changed nor cancelled without forty-five (45) days advance written notice of such change or cancellation. This advance written notice of change or cancellation shall be forwarded to the Township office located at 150 Henricks Road, Butler, PA 16001-8472.
- 4) Promptly perform excess maintenance or restoration as needed. If the Township determines that the User is not maintaining or restoring the portion(s) of the Township Road(s) and appurtenances to the level agreed to in Paragraph 4 (above), the Township will notify the User, in writing, of this determination and the User shall promptly perform the required excess maintenance.
- 5) If the User fails to perform the excess maintenance and restoration promptly after receipt of notice, the Township may, in its discretion:
 - a) Rescind the User's permission to perform excess maintenance and restoration, and to move vehicles or combinations, together with loads, in excess of the posted weight restriction over and across

any Township Road(s) until necessary excess maintenance and restoration are satisfactorily performed or costs thereof are paid.

- b) Maintain or restore the portion(s) of Township(s) and appurtenances with the User reimbursing the Township for all costs so incurred.
- c) Proceed against security provided pursuant to Paragraphs 8 and 14 (below).
- d) Terminate this Agreement.
- e) Any or all of the above.

Security

3. To secure the performance of the User's obligations, the User shall execute and deliver to the Township the following type(s) of security in the amounts as indicated:

- A. Irrevocable Letter of Credit \$ _____
- B. Certified Check \$ _____
- C. Cashier's Check \$ _____
- D. Bank Account \$ _____
- E. Certificate of Deposit (Cash Value) \$ _____
- F. Security Agreement \$ _____
- G. Performance Bond \$ _____
- I. Other \$ _____

Security option(s) in the total amount of \$ _____ has (have) been agreed to.

This Agreement, together with the type(s) of security provided, may be filed in the appropriate prothonotary's office or other registry in a manner and at such time and frequency as the Township deems proper. The User shall pay the costs of such filings.

A copy of the security(ies) shall be attached to this Agreement.

Liability of User

4. The User shall be liable for all costs of excess maintenance and restoration and all other expenses incurred pursuant to this Agreement. The User understands that the Township is under no obligation to prove that the damage was caused by

User. The User's liability shall not be limited to the total amount of security shown in Paragraph 8 (above).

Termination

5. The User and the Township retain the right to terminate their future obligations under this Agreement at any time by submitting a written notice of intent to terminate. As soon as possible after receiving such notice, the Township and the User's representatives shall inspect the Township Road(s) and appurtenances. The Township roads and appurtenances if Paragraph 7 Option B was elected shall be restored to a level consistent with that agreed to in Paragraph 4 (above). Restoration shall be performed by the party(ies) agreed to in Paragraph 7 (above). Thereupon this Agreement shall be terminated and of no further force or effect and all security delivered to the Township by the User shall be *released*.

Revocation of Permit

6. The Township may revoke the User's permit and may pursue whatever legal remedies it deems proper, if it determines, in its discretion, that the User is not in compliance with any provision of this Agreement. In the event the User has concluded its operations on any or all portions of road covered by this Agreement, the Township may, in its discretion, revoke the User's permit to operate on any other road(s) under any other similar Agreement.

Closing of Township Roads

7. This Agreement shall not prohibit the Township from closing a road or bridge to any vehicle or combination in excess of a specific weight if such closing is authorized by law and is necessary for safety or is a temporary closing due to climatic conditions or any act of God or war.

Existing State of Repair

8. The existing state or repair shall be the condition on the date upon which the on-site inspection memorandum is signed by the User and the Township. The effective date of this agreement shall be the date when the agreement has been fully executed by both the User and Township and this Agreement shall continue from its effective date until the date of its termination as provided for herein.

Additional Security and Termination

9. In addition to the Township's right of termination set forth above, the Township shall have the right to require additional security upon that date the Township determines, in its discretion, that the aggregate amount of damage to the Township Road(s) exceeds 75% of the face amount of the security furnished. If additional security is required, it shall be retained by the Township until all excess maintenance and restorations have been completed. Failure to provide such additional security as is required shall constitute a breach of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement first above written.

ATTEST:

USER:

_____ By: _____

Title:

Title:

ATTEST:

TOWNSHIP:

_____ By: _____

KAYLA R. MOSEY
Township Secretary/Treasurer

PHILIP B. WULFF
Chairman

(SEAL)

