



**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:**

**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 appurtenance's 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.

**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.

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

**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.

**BACKGROUND:**

THE AMOUNT TO BE BONDED FOR \_\_\_\_\_ (T-\_\_\_\_\_) IS \$12,500 PER MILE TIMES \_\_\_\_\_ MILES = \_\_\_\_\_ TOTAL

The User in the conduct of its business desires to make use of portions of roads which are under the jurisdiction, maintenance, and control of the Township.

The Township is willing to permit the movement of the User's vehicles or combinations, together with loads, which may be in excess of the gross weight capability of the Township's roads, conditioned upon the execution of an approved form of security by the User in favor of the Township to cover the cost of excess maintenance and restoration necessitated by the movement in accordance with 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 and their successors and assigns as follows:

### **Permission to Move Vehicles**

1. The execution of this Agreement by the Township and User will serve as a permit for the User to move vehicles or combinations, together with loads, on the Township road(s) or portion(s) thereof listed in Attachment "A".

### **Joint Use**

2. If the User is obtaining a permit to operate vehicles on roads that are the Subject of a permit held by another User, the respective Users may agree among themselves as to their relative responsibility for the cost of excess maintenance and enter into an agreement with the Township to be billed according to their agreed upon shares. If the Users cannot agree upon their relative responsibility, the Township will determine the relative shares and will enter into agreements with and accept security from any User agreeing to such determination. Users that do not agree to said determination will have their permits revoked as described in the Paragraph 11 (below).

### **Haulers without Permits**

3. The User will promptly notify the Township if it becomes aware of any party hauling loads which User believes may be in excess of the gross weight capability of or may damage the roadways that are the subject of this Agreement.

### **Responsibility of User**

4. The portion(s) of Township road(s) and appurtenances shall be maintained to a level equal to or better than the existing state or repair of said road(s).

The User's responsibility shall only extend to excess maintenance and restoration. The nonperformance of normal maintenance by the Township shall under no circumstances constitute grounds for an offset or credit against any excess maintenance or restoration responsibilities of the User.

If the User selects Paragraph 7, Option B (below), the Township shall determine, in its discretion, whether the excess maintenance and restoration are satisfactory.

## On-Site Inspection

5. The User and the Township agree that, in order to determine the existing state or repair of the portion(s) of the Township road(s) 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. Photographs may also be taken. The memorandum and photographs (if taken) shall be incorporated as an attachment as part of this Agreement. All costs of this inspection shall be paid by User.

## Maintenance Not Covered

6. 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
7. 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 with 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 so 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**

8. 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**

9. 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**

10. 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 receipt of 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**

11. 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**

12. 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**

13. 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**

14. 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: \_\_\_\_\_

ANTHONY A. AMENDOLEA  
Township Secretary/Treasurer

EDWARD G. LATUSKA  
Chairman

(SEAL)