



EXCESS MAINTENANCE AGREEMENT

AGREEMENT NUMBER _____

EXECUTED DATE _____

This Excess Maintenance Agreement ("Agreement") is made and entered into, by, and between **GREENE TOWNSHIP** and the USER including its employees, agents and/or subcontractors (hereinafter "USER"), with offices located at

WHEREAS, the Township is of the opinion, and that User acknowledges and agrees, that the subject hauling WILL DAMAGE said Township Road requiring the expenditure of substantial sums of money to keep the Township Road in repair for the safe travels of others.

DEFINITIONS

Appurtenance means the property lying within the right-of-way of a highway, 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, highway, 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 of more than eight feet between supports (Publication 100A Bridge Management System 2 Coding Manual). Bridges are not included in this agreement and shall be bonded separately with the Owner of the Bridge.

Excess Maintenance means maintenance or restoration or both that is in excess of normal maintenance (but not improvements beyond the state of repair existing at the date of the initial inspection) that is necessary to maintain the roadway, shoulders, drainage facilities, and other appurtenances because of the use of over-posted-weight-vehicles, and in accordance with the Maintenance Plan.

Execution Date is the date this Agreement has been fully executed by both the USER and GREENE TOWNSHIP.

Existing State of Repair shall be the condition of the highway(s), on the date upon which the initial inspection document is signed by the USER and/or GREENE TOWNSHIP.

Highway means any highway or bridge on **GREENE TOWNSHIP'S** system of highways and bridges, including the entire width between right-of-way lines, over which **GREENE TOWNSHIP** has assumed, or has been legislatively given, jurisdiction.

Maintenance Plan means a comprehensive schedule of USER'S duties relating to excess maintenance, preventative maintenance and restoration of the highway or appurtenance. The *Maintenance Plan* is part of this Agreement by reference as through physically attached.

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, and in accordance with the Maintenance Plan.

Over-Posted-Weight-Vehicle means a vehicle or combination having a gross weight in excess of a posted weight restriction.

GREENE TOWNSHIP means the Second-Class Township of Greene, Beaver County, Pennsylvania.

Preventative Maintenance means maintenance and restoration or both (including upgrade) of a posted highway for the purpose of maintaining the facilities in satisfactory operating condition by providing for systematic inspection, detection,



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and correction of incipient failures either before they occur or before they develop into major defects, and in accordance with the Maintenance Plan.

Type of Permits

Type 1 Permit - A Type 1 permit authorizes use of a particular posted highway or portion thereof by an over-posted-weight vehicle. It is valid only when carried in the USER'S over-posted-weight-vehicle.

Type 2 Permit - A Type 2 permit authorizes use of a particular posted highway or portion thereof by any number of over-posted-weight vehicles being driven to or from a common destination and is valid only when conspicuously displayed at the USER'S place of business.

Type 3 Permit - A Type 3 permit authorizes use of a number of specified posted highways or portion thereof by over-posted-weight vehicles and is valid only when carried in the USER'S over-posted-weight-vehicle.

BACKGROUND

The USER wishes to operate vehicles or combinations, together with loads, in excess of posted weight restrictions. **GREENE TOWNSHIP**, pursuant to 75 Pa CS § 4902 and 67 Pa. Code, Chapter 189, *Hauling in Excess of Posted Weight Limit*, is willing to permit the movement of the USER'S vehicles or combinations, together with loads, in excess of the posted weight restrictions, conditioned upon the execution of an approved form of security by the USER in favor of **GREENE TOWNSHIP**, to cover the costs of excess and preventative maintenance and restoration and all related costs, in accordance with the terms, conditions, and provisions of this Agreement.

AGREEMENT

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

Permission to Move Vehicles/Term

1. **GREENE TOWNSHIP** will permit the USER to move vehicles or combinations, together with loads, in excess of the posted weight restrictions on the portion(s) of highway(s) in _____ Geographic Location, subject to all provisions of the *Vehicle Code*, 75 Pa CS § 4902 and 67 Pa Code, Chapter 189, and in accordance with all Permits issued under this agreement. The specific highways authorized for use by over-posted-weight vehicles and the security amount(s), for the purposes of this Agreement, shall be listed on the document titled "Authorization to Exceed Posted Weight Restrictions" and made part of this Agreement by reference as though physically attached. Unless sooner terminated by Greene Township as provided herein, this Agreement shall terminate one (1) year from the above Execution Date. Expiration of this Agreement shall be _____. USER's responsibilities/obligations under this Agreement extend beyond termination and until Greene Township is satisfied, at its discretion, with the preventative maintenance and/or restoration required by Greene Township of User under this Agreement.

Multiple Users

2. If more than one **USER** seeks to obtain a Type 1 or Type 2 permit to operate overweight vehicles on weight restricted highways that are the subject of an active permit held by another **USER**, the prospective and current **USERS** may agree among themselves as to their relative responsibility for the cost of excess maintenance and each **USER** may then enter into an Agreement with **GREENE TOWNSHIP** to be billed according to their agreed upon shares. If the **USERS** cannot agree upon their relative responsibility, **GREENE TOWNSHIP** will determine the relative shares and will enter into Agreements with and accept security from any **USER** agreeing to such determination. The preceding shall apply even if one or more **USERS** have already entered into an Agreement and posted security when another **USER** expresses the desire to obtain a permit to operate on the same highway.



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Haulers Without Permits

3. The **USER** will promptly notify **GREENE TOWNSHIP** if it becomes aware of any unpermitted haulers that are exceeding the posted weight limits on the roadways that are the subject of this Agreement.

User shall not use any Township road(s) not identified in this Agreement for vehicles having a gross weight in excess of the maximum weight allowed. If User uses any township roads not identified in this Agreement for vehicles having a gross weight in excess of the maximum weight allowed, User will be responsible for the restoration of said road(s) and subject to fine(s) of up to \$1,000.00 per occurrence. Restoration of township road(s) is to be completed within five (5) days of the infraction and fine is to be paid by User within thirty (30) days of written notification by the Township.

Responsibility of USER

4. The portion(s) of posted highway(s) and appurtenances shall be maintained to a level consistent with the existing state of repair at the time of the initial inspection. This includes but is not limited to improved and unimproved driving surfaces, base, subbase, subsurface slips and landslides, shoulders, structures, underdrains, drainage ditches, storm culverts, guide rails and signage. Preventative Maintenance projects to improve the posted highway beyond the existing state of repair may be performed pursuant to the authority granted by this Agreement, but **GREENE TOWNSHIP** may not require a **USER** to upgrade the condition of the posted highway beyond the existing state of repair without the **USER's** consent. The **USER** may be required to provide a Maintenance Plan detailing expected maintenance procedures and related items to be employed by the **USER** and made a part of this agreement as though physically attached. The nonperformance of normal maintenance by **GREENE TOWNSHIP** shall under no circumstances constitute grounds for an offset or credit against any excess maintenance, preventative maintenance or restoration responsibilities of the **USER**.

GREENE TOWNSHIP shall determine, at its discretion, whether the excess and preventative maintenance and restoration is satisfactory.

Inspections and Roadway Condition Surveys

5. The **USER** and **GREENE TOWNSHIP** agree inspections shall be made in order to determine the condition of the portion(s) of the posted highway(s) and appurtenances. The inspections should be conducted jointly by **GREENE TOWNSHIP** and the **USER**; however, the absence of the **USER** shall not prevent the inspection from being conducted. **GREENE TOWNSHIP** shall prepare a document describing the condition of the posted highway(s) and appurtenances together with the nature and extent of any repairs needed to correct any existing damage for which the **USER** may be liable. Photographs and video may also be taken. The documents and photographs and video (if taken), of the initial inspection, shall be incorporated by reference as though physically attached and made a part of this Agreement. The **USER** shall pay all costs associated with the inspections and roadway condition surveys.

a) **Initial Inspection** - Upon full execution of this Agreement and prior to any hauling activity, an initial inspection shall be made. The inspection is used to determine the existing state of repair of the posted highway(s) and appurtenances together with the nature and extent of any repairs needed to correct existing damage for which the **USER** will not be liable.

b) **Interim Inspection** - **GREENE TOWNSHIP** may, at its discretion, conduct periodic interim or re-inspections to determine the extent of any repairs for which the **USER** may be liable and require immediate attention and to ensure the damages do not exceed the amount of surety provided.

c) **Final Inspection** - A final inspection of the posted highway(s) and appurtenances will be conducted to determine the extent of any repairs needed to correct damages for which the **USER** may be liable.

d) **Roadway Condition Survey** - **GREENE TOWNSHIP** may conduct frequent, but less detailed surveys of the roadway to determine overall condition and identify any areas in need of repair.

Performance of Excess and Preventative Maintenance and Restoration



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6. Excess and preventative maintenance and restoration shall be performed in accordance with maintenance option

OPTION "A"

The excess and preventative maintenance and restoration shall be performed by the **GREENE TOWNSHIP'S** maintenance forces and/or a contractor(s) selected by **GREENE TOWNSHIP** through its prescribed procedures. The excess and preventative 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 Pennsylvania Department of Transportations' specifications (*Publication 408* and supplements thereto) and shall be supervised and inspected by **GREENE TOWNSHIP**.

GREENE TOWNSHIP may invoice the **USER** for the estimated cost of repairs using either the latest maintenance contract prices or the latest average monthly maintenance unit prices. These estimated costs shall be computed for all damages noted on the roadway condition survey, interim inspection and/or final inspection. The **USER** agrees to reimburse **GREENE TOWNSHIP** for all estimated costs. **GREENE TOWNSHIP** will provide a final invoice, or reimbursement for over-payment, when maintenance and/or restoration work have been completed and actual costs are known.

The **USER** shall submit full payment to **GREENE TOWNSHIP** within 60 calendar days from the date of invoice. If the **USER** fails to make full payment, **GREENE TOWNSHIP** may at its discretion exercise its right under paragraph 10 below.

OPTION "B"

All excess and preventative maintenance and restoration shall be performed by the **USER** and/or its contractor(s). All excess and preventative 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 Pennsylvania Department of Transportation Specifications (*Publication 408* and supplements thereto).

The **USER** shall notify **GREENE TOWNSHIP** not less than three working days in advance of performing any excess and preventative maintenance and restoration. **GREENE TOWNSHIP** reserves the right to monitor or direct any excess and preventative maintenance or restoration. The **USER** shall track all repairs performed and submit a "Weekly Repair Log", including material quantity and location. The **USER** shall reimburse **GREENE TOWNSHIP** for any expenses so incurred by **GREENE TOWNSHIP**. All excess, preventative maintenance, and restoration associated with bridges, shall be specifically developed in a memorandum by **GREENE TOWNSHIP** and directed to the **USER** for completion.

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

- a) Provide proper traffic protection at all times during excess and preventative maintenance and restoration. This protection shall comply with the work area traffic control requirements as contained in the Pennsylvania Department of Transportation's specifications (*Publication 408* and supplements thereto and the Pennsylvania Department of Transportation's *Publication 213*).
- b) Provide proper environmental and erosion and sedimentation controls in accordance with Publication 408, Section 107.
- c) Comply with the requirements of 25 Pa Code Chapter 102, *Erosion and Sediment Control and Stormwater Management*, 25 Pa Code Chapter 92a, *National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance*, 25 Pa. Code Chapter 105, *Water Obstruction and Encroachment Permitting*; and any other applicable Federal, State, or local laws, ordinances or regulations.
- d) Obtain all applicable permits and comply with the conditions included in said permits.
- e) Indemnify, save harmless, and defend (if requested) **GREENE TOWNSHIP** and its officers, agents, and employees, from all suits, actions, civil penalties, or claims of any character, name, or description brought for or on account of any violation of law/permit, injuries, death, or damages received or sustained by any person, persons, or property, during the performance of the work on portion(s) of the posted highway(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. In addition to any notice provided by a third-party insurance company, the **USER** shall also notify **GREENE TOWNSHIP** of any change in insurance coverage, including but not limited to the **USER's** cancellation of its policy. In no event shall any



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maintenance or restoration activities be performed by the **USER**, or its officers, agents, employees, contractors, or representatives, without the requisite level of insurance and there shall be no lapse in coverage at any time during the duration of this Agreement.

f) Provide evidence to **GREENE TOWNSHIP** of public liability insurance for bodily injury and property damage in the minimum amounts of \$250,000 per each person and \$1,000,000 each occurrence. This insurance shall be occurrence based. The insurance policy shall cover any loss that might occur during the performance of any excess and preventative maintenance or restoration by the **USER**, or its officers, agents, employees, contractors, or representatives. **GREENE 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 Exhibit "F". This insurance shall neither be changed nor cancelled without thirty (30) calendar days' advance written notice of such change or cancellation, excepting fifteen (15) days' advance written notice of cancellation for nonpayment of premium. This advance written notice of change or cancellation shall be forwarded to **GREENE TOWNSHIP'S** office located at 262 Pittsburgh Grade Road, Hookstown, PA 15050.

g) Promptly perform excess and preventative maintenance and restoration as needed pursuant to the requirements included in paragraph 4 above. If **GREENE TOWNSHIP** determines that the **USER** is not maintaining or restoring the portion(s) of the posted highway(s) and appurtenances to the level agreed to in Paragraph 4, **GREENE TOWNSHIP** will notify the **USER**, in writing, of this determination and the **USER** shall promptly perform the required excess maintenance, preventative maintenance or restoration.

Security

7. To secure the performance of the **USER'S** obligations, the **USER** shall execute and deliver to **GREENE TOWNSHIP** the following type(s) of security, pursuant to 67 PA Code, Chapter 189, *Hauling in Excess of Posted Weight Limit*.

- A. Irrevocable Letter of Credit
- B. Performance Bond
- C. Other Security Acceptable to **GREENE TOWNSHIP**.

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 **GREENE TOWNSHIP** deems proper. The **USER** shall pay the costs of such filings.

A copy of the security(s) and any supplemental security Agreement shall be attached to this Agreement as an Exhibit "E".

USER irrevocably authorizes any prothonotary, clerk of court, or attorney, in any action commenced for recovery of any amounts due and payable under this Agreement, to assess damages, confess a judgment, and issue writs of execution and/or attachment, without further notice or process, in favor of **GREENE TOWNSHIP**, from time to time and in such amounts as determined by **GREENE TOWNSHIP**. **USER** hereby releases **GREENE TOWNSHIP** or any person acting on behalf of **GREENE TOWNSHIP** from any liability whatsoever related to entering judgment and executing upon said judgment against **USER**. This clause shall not be construed to waive the **USER'S** due process rights or any rights under the Administrative Agency Law, 2 Pa. C.S §§ 101-754.

Liability of USER

8. The **USER** shall be liable for all costs of excess and preventative maintenance and restoration and all other expenses incurred pursuant to this Agreement, including but not limited to costs related to inspections, roadway condition surveys and administration costs. The **USER** agrees that **GREENE TOWNSHIP** is under no obligation to prove that the **USER** caused the damage.

The **USER** agrees to pay all invoices promptly.

The **USER'S** liability shall not be limited to the total amount of security provided.

The **USER** shall be responsible for third party vehicle and property claims that arise as a result of the **USER** activities.



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Termination

9. The **USER** and **GREENE 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, **GREENE TOWNSHIP** and the **USER** shall conduct a final inspection of the posted highway(s) and appurtenances.

The posted highway(s) and appurtenances shall be restored to a level consistent with that agreed to in Paragraph 4 (above). Restoration shall be performed by the party(s) agreed to in Paragraph 6 (above).

Upon notice of completion of all required work and reimbursement of all costs incurred by **GREENE TOWNSHIP**, this Agreement shall be terminated and of no further force or effect and all security delivered to **GREENE TOWNSHIP** by the **USER** shall be released.

Remedies

10. If the **USER** fails to comply with any provisions of the Agreement, **GREENE TOWNSHIP** may at its discretion:

- a) Notify the **USER** of noncompliance with the Agreement;
- b) Require additional security pursuant to Paragraph 12, below;
- c) Require additional plans or details to show how the **USER** will restore compliance with this Agreement;
- d) Suspend the **USER'S** permission to move vehicles or combinations, together with loads, in excess of the posted weight restriction over and across any posted highway(s) until the **USER** is in compliance with this Agreement;
- e) Revoke the **USER's** permission to move vehicles or combinations, together with loads, in excess of the posted weight restriction over and across any posted highway(s);
- f) Elect to maintain or restore the portion(s) of the posted highway(s) and appurtenances with the **USER** reimbursing **Greene Township** for all costs so incurred;
- g) Proceed against security provided pursuant to Paragraphs 7 and 12 (below);
- h) Terminate this Agreement pursuant to Paragraph 9;
- i) Any other remedies allowed by law;
- j) Any or all of the above.

Closing of Highways

11. This Agreement shall not prohibit **GREENE TOWNSHIP** from closing a highway 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 an Act of God or war.

Additional Security

12. **GREENE TOWNSHIP** shall have the right to require additional security upon that date **GREENE TOWNSHIP** determines, in its discretion, that the aggregate amount of damage to the posted highway(s) exceeds 75% of the face amount of the security furnished, or the amount published in 67 PA Code Chapter 189(d)(4), as amended, as of the date **GREENE TOWNSHIP** requires the additional security. If additional security is required, it shall be retained by **GREENE TOWNSHIP** until all excess maintenance and/or restorations have been completed. Failure to provide such additional security as is required shall constitute a breach of this Agreement.

Right-to-Know

13. The *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, as amended, applies to this Agreement. This Agreement is subject to, and the **USER** shall comply with, the clause entitled *Contract Provisions-Right to Know Law 8-K-1532*, as amended, which is attached as Exhibit "B" and made part of this Agreement.



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Contractor Provisions

14. The **USER** agrees to comply with the *Contractor Responsibility Provisions*, current version, which is attached as Exhibit "C" and made part of this Agreement, the *Provisions Concerning the Americans with Disabilities Act*, current version, which is attached as Exhibit "D" and made a part of this Agreement.

Compliance with all Federal, State, and Local Law

15. If the **USER** is notified by any federal, state, or local agency that it is not in full compliance with any federal, state, or local law, regulation, or ordinance associated with excess and preventative maintenance and restoration, the **USER** shall immediately correct any such violation or deficiency and shall cease all excess and preventative maintenance and restoration until the **USER** is in full compliance. The **USER** shall provide **GREENE TOWNSHIP** with written notice within one working day of any such notification.

Non-waiver

16. The failure by **GREENE TOWNSHIP** to require performance by the **USER** of any provision of this Agreement shall not affect **GREENE TOWNSHIP'S** right to require performance at a time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default, or a waiver of the provision itself.

Severability

17. If any provisions of this Agreement are held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

Choice of Law and Forum

18. This Agreement shall be interpreted under the laws of the Commonwealth of Pennsylvania. Venue for any dispute arising under this Agreement shall be in the Commonwealth of Pennsylvania.

Agreement Supplementation

19. This Agreement and the exhibits attached hereto constitute the entire Agreement between the parties and may not be transferred or assigned without the prior written consent of the parties hereto. This Agreement may be modified or amended by letter amendment to add or subtract routes, increase or decrease the security amount or type, or amend any maintenance plan submitted pursuant to this Agreement or its exhibits. For Commonwealth parties, letter amendments may be signed solely by the District Executive or his or her authorized designee.

Miscellaneous Provisions

20. Tracked equipment is prohibited from traveling directly on Township Road(s). Temporary road protection, i.e. rubber tires, rubber mats or any material approved by the Township, may be used to transport tracked equipment across Township Road(s). Approved material is to be removed immediately after tracked equipment crosses said Township Road(s). User will be responsible for the restoration of Township Road(s) and subject to fine(s) of up to \$1,000.00 per occurrence if found not to be in compliance by the Township. Restorations(s) of Township Road(s) is to be completed within five (5) days of the infraction and any fine is to be paid by User within thirty (30) days of written notification by Township.

21. A twenty-five mile per hour (25 m.p.h.) speed limit shall be observed by USER for vehicles on Township Roads with weight in excess of the allowed limit unless the posted speed limit on the subject road is lower than twenty-five miles per hour (25 m.p.h.).



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22. User acknowledges and agrees that the subject Township Road(s) is/are not a staging, parking and/or loading/unloading area and is not permitted in the Township roadway right of way.
23. User shall provide and maintain directional signage on the subject Township Road(s) to direct User's vehicles to and from the work area.
24. Failure to renew the subject permit does not constitute a release of the performance bond or this Agreement if road issues are not resolved at such time.
25. User shall supply each and every one of its drivers/operators with a paper map to directly communicate the approved travel route permitted under the permit. The route shall be approved by the Township and made part of this Agreement.
26. User shall provide escort vehicles for all traffic over 9' in width.
27. User shall provide dust control, at all times, to protect adjacent property owners.
28. User shall not be permitted to shut down the subject Township Road(s) to all traffic unless written permission is requested and prior written approval is granted by the Township.



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DO NOT WRITE BELOW THIS LINE--FOR USER USE ONLY ▼

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

USER / Company Name: _____

Individual Representative Name: _____

USER Phone Number: _____

USER Email

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a Sole Proprietorship, only the owner must sign; if a Partnership, only one partner need sign; if a Limited Partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

ATTEST:

_____		BY	_____	
Signature	Date		Signature	Date

Attest Title

Authorized Signatory Title

DO NOT WRITE BELOW THIS LINE--FOR GREENE TOWNSHIP USE ONLY ▼

Greene Township Secretary

Date

Road Master

Date



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----- To be completed by GREENE TOWNSHIP only -----

AUTHORIZATION TO HAUL

This vehicle has been authorized, by Greene Township, for overweight hauling on the following roads and must carry this permit during hauling.

APPROVED ROADS

APPROVED USER

USER PHONE NUMBER

INDIVIDUAL REPRESENTATIVE

Application Date

Expiration Date

Greene Township Representative
