



8400 Noblestown Road – McDonald, PA 15057 - (724) 926-8700

**ROBINSON TOWNSHIP**  
*Excess Maintenance Agreement*

Agreement Number: \_\_\_\_\_

Executed Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

This Excess Maintenance Agreement (“Agreement”) is made and entered into, by, and between Robinson Township (the “Municipality”) and the USER, \_\_\_\_\_, FID/SS Number \_\_\_\_\_, with offices located at \_\_\_\_\_

**DEFINITIONS**

**Appurtenance** means the property lying within the right-of-way of a highway, together with any improvement placed within the 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 open measured along the center of the roadway of more than eight feet between supports Publication 100A (Bridge Management System 2 Coding Manual).

**Excess Maintenance** means maintenance and 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 of because the use of over-posted weight vehicles, and in accordance with the attached Exhibit “A.”

**Execution Date** is the date this Agreement has been fully executed by both the USER and the POSTING AUTHORITY.

**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 the POSTING AUTHORITY.

**Highway** means any highway or bridge on the POSTING AUTHORITY’S system of highways and bridges, including the entire width between right-of-way lines, over which the POSTING AUTHORITY 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.

**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 inspection, and in accordance with the attached Exhibit “A.”

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

**POSTING AUTHORITY** means the Commonwealth of PA, acting through the Department of Transportation as to state highways, and appropriate state or local authorities as to all other streets and highways.

**Preventative Maintenance** means maintenance and restoration or both (including betterment) of a posted highway beyond and above excess maintenance, and in accordance with the attached Exhibit “A.”

**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 USERS 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 restrictions. The POSTING AUTHORITY, 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 the POSTING AUTHORITY, 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**

1. **The POSTING AUTHORITY** will permit the user to move vehicles or combinations, together with loads, in excess of the posted weight restrictions on the portions of highways in \_\_\_\_\_ (geographic location), subject to all provisions of the Vehicle Code, 75 Pa CS § 4902 and 67 Pa Code, Chapter 189, in accordance with Permit Type \_\_\_\_\_. 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 for use by over-posted weight vehicles and the security amounts for the purposes of this Agreement and shall be listed on the document titled “Authorization to Exceed Posted Weight Restrictions” and made a part of this Agreement by reference as though physically attached.
2. **Multiple USERS.** 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 me agree among themselves as to their relative responsibility for the cost of excess maintenance and each USER may then enter into an Agreement with the POSTING AUTHORITY to be billed according to their agreed upon shares. If the USERS cannot agree upon on their relative responsibility, the POSTING AUTHORITY 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.
3. **Haulers without permits.** The USER will promptly notify the POSTING AUTHORITY 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.
4. **Responsibility of USER.** The portions of the posted highways and appurtenances shall be maintained to a level consistent with the existing state of repair and requirements included in the attached Exhibit “A.” The USER may be required to provide a maintenance plan detailing expected maintenance procedures and related items to be employed by the USER. The Exhibit “A” may include a maintenance plan or a reference to a maintenance plan, which if referenced shall be a part of Exhibit “A” as though physically attached. The nonperformance of normal maintenance by the POSTING AUTHORITY shall under no circumstances constitute grounds for an offset or credit against any excess maintenance, preventative maintenance or restoration responsibilities of the USER. The posting authority shall determine in its discretion whether the excess and preventative maintenance and restoration are satisfactory.
5. **Inspection and Roadway Condition Surveys.** The USER and the POSTING AUTHORITY agree inspections shall be made in order to determine the condition of the portions of the posted highway and appurtenances. The inspections should be conducted jointly by the POSTING AUTHORITY and the USER; document describing the condition of the posted highways 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.

- b. **Interim Inspection** – The POSTING AUTHORITY 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. **Road way condition survey.** The POSTING AUTHORITY may conduct frequent, but less detailed surveys of the roadway to determine overall condition and identify any areas in need of repair. The survey will be performed when the type or volume of the hauling operation possess an increased risk of roadway damage or threat to public safety.
6. **Performance of Excess and Preventive Maintenance and Restoration.** Excess and preventative maintenance and restoration shall be performed in accordance with maintenance option A/B (circle one) below.

#### **OPTION “A”**

The excess and preventative maintenance and restoration shall be performed by the POSTING AUTHORITY’S maintenance forces and/or a contractor(s) selected by the POSTING AUTHORITY 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 Pa Department of Transportation’s specifications (Publication 408 and supplements thereto) and shall be supervised and inspected by the POSTING AUTHORITY. The POSTING AUTHORITY 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 the POSTING AUTHORITY for all estimated costs. The POSTING AUTHORITY will provide a final invoice, or reimbursement for over-payment, when the actual maintenance and or restoration work have been completed and actual costs are known.

The USER shall submit full payment to the POSTING AUTHORITY within 15 calendar days from the date of invoice. If the USER fails to make full payment, the POSTING AUTHORITY may in 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 paragraph4 (above). The work shall be in conformance with Pennsylvania Department of Transportation Specifications. (Publication 408 and supplements thereto).

The USER shall notify the POSTING AUTHORITY not less than three working days in advance of performing any excess and preventative maintenance and restoration. The POSTING AUTHORITY reserves the right to monitor or direct any excess and preventative maintenance or restoration. The USER shall reimburse the POSTING AUTHORITY for any expenses so incurred by the POSTING AUTHORITY.

All excess, preventative maintenance, and restoration associated with bridges, shall be specifically developed in a memorandum by the POSTING AUTHORITY 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 controls requirements as contained in the Pennsylvania Department of Transportation’s specifications) Publication 408 and supplements thereto and the Pa Department of Transportation’s Publication 213).
- b) Provide proper environmental and erosion and sedimentation controls in accordance with Publication 408, §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 the said permits.
- e) Indemnify, save harmless, and defend (if requested) the POSTING AUTHORITY 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 officer, agents, employees, contractors, or representatives, whether the same be due to the use of effective 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 the POSTING AUTHORITY of any change in insurance coverage, including but not limited to the USER'S cancellation of its policy. In no event shall any 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 the POSTING AUTHORITY 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. The POSTING AUTHORITY 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 "H." 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 the POSTING AUTHORITY'S office located at 238 Pike Run Drive, Daisytown, PA 15427.
- g) Promptly perform excess and preventative maintenance and restoration as needed pursuant to the requirements included in Exhibit "A." If the POSTING AUTHORITY 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 (above), the POSTING AUTHORITY 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 the POSTING AUTHORITY the following types of security, pursuant to 67PA Code, Chapter 189, *Hauling in Excess of Posted Weight Limit*.
  - a. Irrevocable Letter of Credit
  - b. Certified Check
  - c. Performance bond
  - d. Other Security Acceptable to the POSTING AUTHORITY

This Agreement, together with the type(s) of security provided, may be filed in the appropriate Prothonotary office or other registry in a manner and at such time and frequency as the POSTING AUTHORITY 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 "G." 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 the POSTING AUTHORITY, from time to time and ins such amounts as determined by the POSTING authority. USER hereby releases POSTING AUTHORITY or any person acting on behalf of POSTING AUTHORITY from any liability what so ever related to entering judgment and executing upon said judgment against USER.

## **LIABILITY OF USER**

- 8. The USER shall be liable for all costs of excess maintenance and restoration and all other expenses incurred pursuant to this Agreement, including but not limited to costs related inspections, roadway condition surveys and administration costs.
  - a. The USER agrees to post an escrow in the amount of \$ \_\_\_\_\_ for expenses incurred for this Agreement.
  - b. The USER agrees to pay all invoices promptly.
  - c. The USER'S liability shall not be limited to the total amount of security provided.
  - d. The USER shall be responsible for third party vehicle and property claims that arise as a result of the USER activities.
  - e. For maintenance and restoration costs, the USER agrees that the POSTING AUTHORITY is under no obligation to prove that the USER caused the damage.

## **TERMINATION**

- 9. The USER and the POSTING AUTHORITY 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 POSTING AUTHORITY and 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 the POSTING AUTHORITY, this Agreement shall be terminated and of no further force or effect and all security delivered to the POSTING AUTHORITY by the USER shall be released.

## **REMEDIES**

10. If the USER fails to comply with any provisions of the Agreement, the POSTING AUTHORITY 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) The POSTING AUTHORITY may elect to maintain or restore the portion(s) of the posted highway(s) and appurtenances with the USER reimbursing the POSTING AUTHORITY for all costs so incurred.
  - G) Proceed against security provided pursuant to Paragraphs 7 and 12 (below)
  - H) Any other remedies allowed by law.
  - I) Any or all of the above.

## **CLOSING OF HIGHWAYS**

11. This Agreement shall not prohibit the POSTING AUTHORITY 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 in temporary closing due to climatic conditions or an Act of God or war.

## **ADDITIONAL SECURITY**

12. The POSTING AUTHORITY shall have the right to require additional security upon that date the POSTING AUTHORITY determines in its discretion, that the aggregate amount of damage to the posted highway(s) exceeds 75 percent 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 of the POSTING AUTHORITY requires the additional security. If additional security is required, it shall be retained by the POSTING AUTHORITY 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.

## **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, the contractor Integrity Provisions, current version, which is attached as Exhibit "E" and made a part of this agreement at the Commonwealth Nondiscrimination/Sexual Harassment Clause, current version, which is attached as Exhibit "F" and made a part of this Agreement.

## **COMPLIANCE WITH ALL FEDERAL, STATE, AND LOCAL LAWS**

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

## **NONWAIVER**

16. The failure by the POSTING AUTHORITY to require performance by the USER of any provision of this Agreement shall not affect the POSTING AUTHORITY'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**

