

EXCESS MAINTENANCE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, _____, by and between **GLADE TOWNSHIP**, Warren County, Pennsylvania, sometimes hereinafter referred to as -----
“TOWNSHIP,”

AND

_____, sometimes hereinafter referred to as ----- **“USER.”**

WHEREAS, the User in the conduct of its business makes use of portions of highways which are under the jurisdiction, maintenance and control of the Township; and

WHEREAS, pursuant to the provisions of Section 4902 of the Pennsylvania Motor Vehicle Code, as amended, the Township has posted gross weight restrictions on highways located within the Township’s jurisdiction; and

WHEREAS, the User wishes to move vehicles or combinations, in excess of the posted gross weight restrictions, over and across portions of these posted Township highways; and

WHEREAS, the Township is willing to permit the movement of User’s vehicles or combinations in excess of the posted gross weight restrictions conditioned upon and in accordance with the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties, intending to be legally bound hereby, agree for themselves, their successors and assigns, as follows:

1. **DEFINITIONS.**

User means the user who signs and executes this Agreement.

Township means Glade Township, Warren County, Pennsylvania.

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 (8) feet between supports.

Highway means any highway or bridge on the Township's system of highways and bridges, including the entire width between right-of-way lines, 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 posted highway (in excess of normal maintenance) caused by use of over-posted-weight vehicles.

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

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

2. **PERMISSION TO MOVE VEHICLES.**

The Township will permit the User to move vehicles or combinations in excess of the posted gross weight restrictions on the portions of Township's highways

indicated below subject to all provisions of the Pennsylvania Motor Vehicle Code, regulations adopted thereunder and all applicable Township Ordinances. The Township has issued a permit to exceed the posted gross weight restrictions on the portions of Township's highways identified below:

<u>Township Highway</u>	<u>From</u>	<u>To</u>
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3. **JOINT USE.**

Because more than one (1) User may make use of the portion(s) of Township's highways described in the preceding paragraph, the User shall report to the Township the amount of tonnage transported by User over each portion of Township's highways. The User agrees to make said reports on a monthly basis. The Township may assess and proportion in its own discretion, the maintenance and restoration costs among the Users on a periodic basis or upon the termination of this Agreement. In the event that the User shall fail to submit the tonnage reports as above recited, the Township may assess all maintenance and restoration costs to the User that fails to submit tonnage reports.

4. **RESPONSIBILITY OF USER.**

The portions of the Township's highways referenced above together with the associated appurtenances shall be maintained to a level consistent with the quality existing immediately prior to the issuance of the permit to the User. The User's responsibility shall extend only to excess maintenance and restoration. However, the non-performance 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.

5. **ON-SITE INSPECTION.**

The User and the Township agree that, in order to determine the condition of the portion(s) of the Municipal highway(s) and appurtenances, an on-site field inspection shall be made jointly by the Township and the User prior to or at about the time of permit issuance. A memorandum shall be prepared describing the condition of Township highway(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, video, and other records may also be taken. The video and photographs (if taken) may be substituted for the memorandum. All costs of this inspection shall be paid by the User. The preceding sentences of this section notwithstanding, it shall be the obligation of User to arrange for and schedule the on-site field inspection. In the event that no on-site field inspection is made and that there exists a dispute between Township and User as to the condition of the highway at the time of permit issuance, the issue of the condition of the highway shall be deemed to be that asserted by the Township, and the issue shall be resolved in favor of the Township with the User being precluded from submitting any evidence (in any relevant action) as to the condition of the highway at the time of the permit issuance.

6. **MAINTENANCE NOT COVERED.**

The User shall have no obligation for maintenance to remedy damage directly resulting from acts of God, natural disasters or war or for routine removal of snow or ice.

7. **PERFORMANCE OF EXCESS MAINTENANCE AND RESTORATION.**

Excess maintenance and restoration required in accordance with the terms of this Agreement shall be performed by the Township's maintenance forces and/or a contractor(s) selected by the Township through its prescribed procedures. The Township may invoice the User for the estimated cost of repairs, and the User agrees to reimburse the Township for all estimated costs.

The User shall submit payment to the Township within ten (10) days from the date of invoice. If the User fails to make timely payment, the Township may in its discretion:

- a. Rescind the User's permission to move motor vehicles in excess of the posted weight restrictions over and across any Township highway until payment is made;
- b. Terminate this Agreement;
- c. Commence an action against the User for any available remedy including remedies at law and equity;
- d. Proceed against security (if any) provided pursuant to this Agreement;
- e. Any or all of the above.

8. **SECURITY.** *(Optional based upon the discretion of the Township.)*

To secure the performance of the User's obligations, the User shall execute and deliver to the Municipality the following type(s) of security in the amount 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. Escrow Agreement \$ _____
- h. 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) may be attached to this Agreement as an Exhibit(s).

9. **LIABILITY OF USER.**

The User shall be liable for all costs of excess maintenance and restoration and all other expenses incurred pursuant to this Agreement. The User's liability shall not be limited to the total amount of security shown in the preceding paragraph.

10. **TERMINATION.**

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 shall inspect the Township highway(s) and appurtenances. Maintenance and restoration, or the payment therefor, shall be performed as previously set forth. 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.

11. **REVOCATION OF PERMIT.**

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 highway covered by this Agreement, the Township may, in its discretion, revoke the User's permit(s) to operate on any other highway(s) under any other similar Agreement.

12. **CLOSING OF MUNICIPAL HIGHWAYS.**

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

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Agreement as of the day and year first above written.

ATTEST: (Seal)

GLADE TOWNSHIP

Secretary

By _____

By _____

By _____

WITNESS:

USER:

By _____