

APPENDIX C

**EXCESS MAINTENANCE AGREEMENT**

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

Permit Type: \_\_\_\_\_

FID/SS Number: \_\_\_\_\_

Municipality: Keating Township \_\_\_\_\_

EXCESS MAINTENANCE AGREEMENT (SINGLE USER) \_\_\_\_\_, 2020

\_\_\_\_\_ Of

Phone Number(s): \_\_\_\_\_ Email: \_\_\_\_\_

**DEFINITION**

**USER** means that user who signs and executes this Agreement.

**Municipality** means KEATING TOWNSHIP acting through their Municipal Officials.

**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 8 feet between supports.

**Highway** means any highway or bridge on the Municipality's system of highways and bridges, including the entire width between right-of-way lines, over which the Municipality 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, shoulders, 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 have a gross weight in excess of a posted weight limit.

**Type 1 Permit** ~ A Type 1 permit is valid only when carried in over-posted-weight-vehicle.

**Type 2 Permit** ~ A Type 2 permit is valid only when conspicuously displayed at the USER'S place of business.

**Type 3 Permit** ~ A Type 3 permit is valid only when carried in the over-posted-weight-vehicle.

APPENDIX C

**BACKGROUND**

The USER in the conduct of its business makes use of portions of Municipal highways which are under the jurisdiction, maintenance, and control of the Municipality.

Pursuant to the provisions of Section 4902 of the Vehicle Code, Act of June 17, 1976, P.L. 162, as amended, 75 PaCS 4902, the Municipality has posted gross weight restrictions on portions of these Municipal highways.

The USER wishes to move vehicles or combinations, together with loads, in excess of the posted gross weight restrictions over and across portions of these posted Municipal highways.

The Municipality, pursuant to 67 Pa. Code, Chapter 189, is willing to permit the movement of USER'S vehicles or combinations, together with loads, in excess of the posted gross weight restrictions, conditioned upon the execution of an approved form of security by the USER in favor of the Municipality 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 assign as follows:

**Permission to Move Vehicles**

1. The Municipality will permit the USER to move vehicles or combinations, together with loads, in excess, of the posted gross weight restrictions on the portion (s) of Municipal highway(s) indicated below, subject to all provisions of the Vehicle Code, Act of June 17, 1976 P.L. 162 as amended, (75 PaCS) and 67 PA code, Chapter 189.

The Municipality has issued the USER a Type 1 permit to exceed the posted gross weight restrictions on the portions of Municipal highway identified below.

COUNTY	MUNICIPALITY	MUNICIPAL HIGHWAY	FROM	TO	Mile
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Total from Mileage Paved = 0 miles X \$12,500.00 is a total road bond of \$0.00  
 Total from Mileage Dirt = 0 X \$6,250.00 is a total road bond of \$0.00  
 Total \$0.00

## APPENDIX C

### **Joint Use**

2. In the event that more than one USER make use of the portion(s) of Municipal highways(s) described in Paragraph 1, (above) the USER shall report to the Municipality the amount of tonnage and or trips. The Municipality may assess and proportion, in its discretion, the maintenance and restoration costs among the USERS on a periodic basis or upon termination of this Agreement.

### **Responsibility of USER**

3. The portion(s) of Municipal highway(s) and appurtenances shall be maintained to a level consistent with the attached cross-section identified as "Type\_\_40\_\_", and the portion(s) of Municipal highway(s) and appurtenance shall be restored to a level consistent with the attached cross-section identified as "Type\_\_40\_\_". A copy of the cross-section(s) shall be attached to this Agreement as a Schedule and made a part hereof.

The USER's responsibility shall only extend to excess maintenance and restoration. The nonperformance of normal maintenance by the Municipality 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 6, Option B, (below) the Municipality shall determine, in its discretion, whether the excess maintenance and restoration are satisfactory.

### ***On-Site-Inspection***

4. The USER and the Municipality 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 Municipality and the USER. A memorandum shall be prepared describing the condition of Municipal highways (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 exhibit as part of this Agreement. All costs of this inspection shall be paid by the USER.

### ***Maintenance Not Covered***

5. The USER shall have no obligation for maintenance to remedy damage directly resulting from acts of God or war or for routine removal of snow or ice.

### ***Performance of Excess Maintenance and Restoration***

6. Excess maintenance and restoration shall be performed in accordance with option           **B**           below.

## APPENDIX C

**OPTION A.**

The Municipality's maintenance forces and/or a contractor (s) selected by the Municipality through its prescribed procedures. The excess maintenance and restoration shall be performed to a level consistent with that agreed to in Paragraph 3 (above). The works shall be in conformance with Municipality Specifications and shall be supervised and inspected by Municipality personnel.

The Municipality may invoice the USER for the estimated cost of repairs using either the latest maintenance contract price or the Municipality'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 Municipality for all estimated costs.

The USER shall submit payment to the Municipality within 30 days from the date of invoice. If the USER fails to make the payment, the Municipality may in its discretion:

- 1.) Rescind the USER's permission to move vehicles or combinations, together with loads, in excess of posted weight restriction over and across any Municipality highway (s) until payment is made
- 2.) Terminate this Agreement.
- 3.) Proceed against security provided pursuant to Paragraphs 7 and 13 below.
- 4.) Any and all of the above.

**OPTION B.**

The USER and/or its contractor(s). The excess maintenance and restoration shall be performed to a level consistent with that agreed to in Paragraph 3 (above). The work shall be in conformance with Municipality Specifications. If USER does work he should notify the Municipality 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 Municipality and directed to the USER for completion. The Municipality reserves the right to monitor or direct any excess maintenance or restoration. The USER shall reimburse the Municipality for any expenses so incurred by the Municipality.

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 Municipality work area traffic control requirements as contained in Pennsylvania Department of Transportation (PennDOT) Specification Publication 408 and supplements thereto and PennDOT Publication 203.

## APPENDIX C

- 2.) Indemnify, save harmless, and defend (if requested) the Municipality 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 Municipal 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.
  
- 3.) Provide evidence to the Municipality 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 Municipality 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. This insurance shall neither be changed or cancelled without forty-fives days advance written notice of such change or cancellation. This advance written notice of change or cancellation shall be forward to the **KEATING TOWNSHIP** located at **7160 ROUTE 46, SMETHPORT, PA 16749.**
  
- 4.) Promptly perform excess maintenance or restoration as needed. If the Municipality determines that the USER is not maintaining or restoring the portion(s) of Municipal highway(s) and appurtenances to the level agreed to in Paragraph 3, (above) the Municipality will notify the USER, in writing, of this determination and the USER shall promptly perform the required excess maintenance or restoration.
  
- 5.) If the USER fails to perform the excess maintenance or restoration promptly after receipt of notice, the Municipality 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 Municipal highway(s) until satisfactorily performed or costs thereof are paid.
  - b) Maintain or restore the portion(s) of Municipal highway(s) and appurtenances with the USER reimbursing the Municipality for all costs so incurred.
  - c) Proceed against security provided pursuant to Paragraph 7 and 13 below.
  - d) Terminate this Agreement.
  - e) Any or all of the above.

"The limits of coverage set forth in this agreement, as well as the sample insurance certificate, apply to the limits of PennDOT liability. These amounts are different under the municipal tort law and should be set forth as limitations to a municipality's liability.

APPENDIX C

**SECURITY**

7. 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 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. 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 filled in the appropriate prothonotary's office or other registry in a manner and at such time and frequency as the Municipality deems proper. The USER shall pay costs of such filings.

A copy of the security(ies) shall be attached to this Agreement as an Exhibit(s).

**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. The USER's liability shall not be limited to the total amount of security shown in Paragraph 7 (above)

**Termination**

9. The USER and the Municipality 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 Municipality and the USER's representatives shall inspect the Municipal highway(s) and appurtenances. The Municipal highway(s) and appurtenances if Paragraph 6 Option B was selected, shall be restored to a level consistent with that agreed to in Paragraph 3 (above). Restoration shall be performed by the party(ies) agreed to in Paragraph 6 (above). Thereupon this Agreement shall be terminated and of no further force or effect and all security delivered to the Municipality by the USER shall be released.

APPENDIX C

**Revocation of Permit**

10. The Municipality 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 and or all portions of highway covered by this Agreement, the Municipality may, in its discretion, revoke the USER’s permit(s) to operate on any other highway(s) under any other similar Agreement.

**Closing of Municipal Highways**

11. This Agreement shall not prohibit the Municipality 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.

**Effective Date**

12. The effective date of this Agreement shall be the date upon which the on-site inspection memorandum is signed by the USER and the Municipality. The effective period of this Agreement shall continue from its effective date until the date of its termination as provided for herein.

**Additional security and Termination**

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

Attest:

KEATING TOWNSHP

\_\_\_\_\_  
(SEAL)

By \_\_\_\_\_  
Municipal Official Title

Attest:

User:

\_\_\_\_\_  
Title: \_\_\_\_\_ Date \_\_\_\_\_  
(SEAL)

By \_\_\_\_\_  
Date \_\_\_\_\_