

EXCESS MAINTENANCE AGREEMENT

PLEASE TYPE OR PRINT ALL INFORMATION IN BLUE OR BLACK INK

Agreement Number _____ Executed Date _____

This Excess Maintenance Agreement ("Agreement") is made and entered into, by, and between the **POSTING AUTHORITY** 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 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).

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 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/or 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. 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.

POSTING AUTHORITY means the Commonwealth of Pennsylvania, 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 upgrade) of a posted highway for the purpose of maintaining the facilities in satisfactory operating condition by providing for systematic inspection, detection, 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. 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 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.

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 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.

Haulers Without Permits

3. 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.

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. 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 the **POSTING AUTHORITY** 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 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, at its discretion, whether the excess and preventative maintenance and restoration are satisfactory.

Inspections and Roadway Condition Surveys

5. The **USER** and the **POSTING AUTHORITY** 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 the **POSTING AUTHORITY** and the **USER**; however, the absence of the **USER** shall not prevent the inspection from being conducted. The **POSTING AUTHORITY** 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** - 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) **Roadway 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.

Performance of Excess and Preventative Maintenance and Restoration

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 **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 Pennsylvania Department of Transportations' 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 maintenance and/or restoration work have been completed and actual costs are known.

The **USER** shall submit full payment to the **POSTING AUTHORITY** within 60 calendar days from the date of invoice. If the **USER** fails to make full payment, the **POSTING AUTHORITY** 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 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 track all repairs performed and submit a "Weekly Repair Log", including material quantity and location. 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 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) 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 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 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 "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 the **POSTING AUTHORITY'S** office located at _____.
- g) Promptly perform excess and preventative maintenance and restoration as needed pursuant to the requirements included in paragraph 4 above. 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, 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 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 the **POSTING AUTHORITY**.

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 **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 "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 the **POSTING AUTHORITY**, from time to time and in 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 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 the **POSTING AUTHORITY** 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.

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 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 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) 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) 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 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 a 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% 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 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*, 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.

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 the **POSTING AUTHORITY** with written notice within one working day of any such notification.

Non-waiver

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

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.

COMMONWEALTH OF PENNSYLVANIA
POSTING AUTHORITY
EXCESS MAINTENANCE AGREEMENT

▼ 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 Phone Number: _____ USER Fax Number: _____

ATTEST:

Signature Date BY _____
Signature Date

Attest Title Authorized Signatory Title

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.

▼ DO NOT WRITE BELOW THIS LINE--FOR POSTING AUTHORITY USE ONLY ▼

Name of POSTING AUTHORITY By: _____
Signature Date

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

APPROVED AS TO LEGALITY AND FORM

BY _____
For Chief Counsel Date

Preapproved Form:
OGC No. 18-FA-6.0
Approved OAG May 1, 2013