



EXCESS MAINTENANCE AGREEMENT

Executed Date: _____ Agreement Number: _____ District: _____

This Excess Maintenance Agreement is between _____ (“User”), and the Commonwealth of Pennsylvania (“Commonwealth”), Department of Transportation (“PennDOT”),

The User wishes to operate vehicles or combinations, together with loads, in excess of posted weight restrictions. PennDOT, pursuant to 75 Pa. CS § 4902 and Pa. Code, Chapter 189, Hauling in Excess of Posted Weight Limit, is willing to issue Permits (as defined in Paragraph 1) allowing for 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 PennDOT, to cover the costs of Excess Maintenance (as defined in Paragraph 1), Preventative Maintenance (as defined in Paragraph 1), and restoration and related costs, in accordance with this agreement.

The parties, intending to be legally bound, agree as follows:

1. Definitions

“Appurtenance” means the property lying within the right-of-way of a Highway, together with any improvements placed within the respective 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 (PennDOT *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 or repair existing at the date of the annual 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.

“Existing State of Repair” shall be the condition of the Highways on the date upon which the initial inspection document is signed by PennDOT.

“Highway” means any highway or Bridge on PennDOT’s system of Highways and Bridges, including the entire width between right-of-way lines, over which PennDOT has assumed, or has been legislatively given, jurisdiction.

“Maintenance Plan” means a comprehensive schedule of the User’s duties relating to Excess Maintenance, Preventative Maintenance and restoration of the Highway or Appurtenance. The Maintenance Plan is attached as Exhibit A to this agreement.

“Normal Maintenance” means the usual and typical activities necessary to maintain the roadway, shoulders, drainage facilities, and other appurtenances in the Existing 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.

“Permit” means Type 1, 2, or 3 type permits defined below.

“Type 1 Permit” means a permit which 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” means a permit which authorizes use of a particular posted Highway, or portion thereof, by 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” means a permit which 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 Vehicles.

“Preventative Maintenance” means maintenance and restoration (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.

- 2. Permission to Move Vehicles.** PennDOT shall permit the User to move vehicles or combinations, together with loads, in excess of the posted weight restrictions on the portions of Highways in the district, subject to the *Vehicle Code*, 75 Pa CS § 4902 and 67 Pa Code, Chapter 189, and in accordance with Permits issued under this agreement. The Highways and security amounts must be listed on the Permits issued under the terms of this agreement titled “Authorization to Exceed Posted Weight Restrictions” and attached as Exhibit B.

3. **Multiple Users.** If more than one User seeks a Type 1 or Type 2 Permit to operate Over-Posted-Weight 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 PennDOT to be billed according to their agreed upon shares. If the Users cannot agree upon their relative responsibility, PennDOT will determine the relative shares and will enter into agreements with and accept security from any User agreeing to PennDOT's determination. The preceding will 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.
4. **Haulers Without Permits.** The User shall promptly notify PennDOT if it becomes aware of unpermitted haulers exceeding the posted weight limits on roadways subject to a Permit.
5. **Responsibility of the User.**
 - a. **Maintenance to Existing State of Repair.** The portions of posted Highways and Appurtenances must be maintained to a level consistent with the Existing State of Repair.
 - b. **Voluntary Upgrades.** 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 PennDOT may not require a User to upgrade the condition of the posted Highway beyond the Existing State of Repair without the User's consent.
 - c. **Maintenance Plan.** The User shall be required to provide an annual Maintenance Plan detailing expected maintenance procedures and related items to be employed by the User. Each annual Maintenance Plan is made a part of this agreement as though physically attached.
 - d. **No Offset.** The User is not entitled to an offset or credit against the User's Excess Maintenance, Preventative Maintenance, or restoration responsibility on the grounds that PennDOT failed to perform Normal Maintenance.
 - e. **Completion.** PennDOT shall determine whether the Excess Maintenance, Preventative Maintenance, and restoration are satisfactory.
 - f. **Failure to Maintain.** If PennDOT determines that the User is not satisfactorily maintaining or restoring the portions of the posted Highways and Appurtenances, PennDOT will notify the user, in writing, of this determination and the User shall promptly perform the required Excess Maintenance, Preventative Maintenance, or restoration.
 - g. **Costs.** The User shall be liable for all costs of Excess Maintenance, 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. PennDOT is under no obligation to prove that the User caused the damage. The User shall 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's activities.
6. **Inspections and Roadway Condition Surveys.** PennDOT shall conduct inspections to determine the condition of the portions of the posted Highways and Appurtenances. The User may jointly conduct these inspections with PennDOT. However, the absence of the User may not prevent PennDOT from conducting the inspection. PennDOT shall prepare a document describing the condition of the posted Highways and Appurtenances together with the nature and extent of repairs needed to correct existing damage for which the User may be liable. Photographs and video may also be taken. The User shall pay all costs associated with the inspections and roadway condition surveys.
 - a. **Initial Inspection** – Upon full execution of this agreement and before any hauling activity, PennDOT shall make an initial inspection. The inspection is used to determine the Existing State of Repair of the posted Highways and Appurtenances together with the nature and extent of repairs needed to correct existing damage for which the User will not be liable.
 - b. **Interim Inspection** – PennDOT may conduct periodic interim or re-inspections to determine the extent of repairs for which the User may be liable and require immediate attention and to ensure the damages do not exceed the amount of security provided.
 - c. **Final Inspection** – PennDOT shall conduct a final inspection of the posted Highways and Appurtenances to determine the extent of repairs needed to correct damages for which the User may be liable.
 - d. **Roadway Condition Survey** – PennDOT may conduct frequent, but less detailed surveys of the roadway to determine overall condition and identify areas in need of repair.

- 7. Performance of Excess Maintenance, Preventative Maintenance, and Restoration.** Excess Maintenance, Preventative Maintenance, and restoration must be performed in accordance with maintenance option _____ described below.

OPTION A

PennDOT shall perform the Excess Maintenance, Preventative Maintenance, and restoration through PennDOT's maintenance forces or contractors selected by PennDOT through its prescribed procedures. The Excess Maintenance, Preventative Maintenance, and restoration must be performed to a level consistent with section 5 above. The work must be in conformance with PennDOT's specifications (Publication 408 and supplements) and PennDOT shall supervise and inspect the work.

PennDOT shall 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 must be computed for all damages noted on the roadway condition survey, interim inspection, or final inspection. The User shall reimburse PennDOT for the invoiced costs. PennDOT shall provide a final invoice, or reimbursement for over-payment, when maintenance or restoration work has been completed and actual costs are known.

The User shall submit full payment to PennDOT within 60 calendar days from the date of invoice. If the User fails to make full payment, PennDOT may exercise its rights under section 10 below.

OPTION B

The User or its contractors shall perform all Excess Maintenance, Preventative Maintenance, and restoration. All Excess Maintenance, Preventative Maintenance, and restoration must be performed to a level consistent with section 5 above. The work must conform to PennDOT's specifications (Publication 408 and supplements).

The User shall notify PennDOT not less than three business days before performing any Excess Maintenance, Preventative Maintenance, or restoration. PennDOT may inspect any Excess Maintenance, Preventative Maintenance, or restoration for compliance with PennDOT specifications. If inspection reveals noncompliance, PennDOT may direct the User or its contractors to repeat the work and ensure compliance with PennDOT standards. The User shall track all repairs performed and submit a Weekly Repair Log that conforms to the requirements of PennDOT's Publication 23, Chapter 15, including material quantity and location. The User shall reimburse PennDOT for any expenses so incurred by PennDOT. The User shall contact PennDOT before beginning Excess Maintenance, Preventative Maintenance, or restoration work on a Bridge. The User shall complete the work described in the Memorandum.

If performance Option B has been agreed to the User shall:

- a. Provide temporary traffic control during Excess Maintenance, Preventative Maintenance, and restoration work. Temporary traffic control must comply with PennDOT's specifications (Publication 408 and supplements and Publication 213).
- b. Provide proper environmental and erosion and sedimentation controls in accordance with PennDOT's Publication 408, Section 107.
- c. Comply with the requirements of 25 Pa. Code Chapter 102, Erosion and Sediment Control, 25 Pa. Code Chapter 92a, National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance, 25 Pa. Code Chapter 105, Dam Safety and Waterway Management, and Federal or State laws and regulations, and local ordinances.
- d. Obtain applicable Permits and comply with the conditions included in those Permits.
- e. Indemnify, save harmless, and defend (if requested) PennDOT 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 portions of the posted Highways 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 work product, neglect in safeguarding the work, 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.
- f. Provide evidence to PennDOT 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 must be occurrence based. The insurance policy must cover any loss that might occur during the performance of any Excess Maintenance, Preventative Maintenance, or restoration by the User or

its officers, agents, employees, contractors, or representatives. PennDOT shall be named as an additional insured on the certificate of insurance. A copy of the certificate of insurance is attached to this agreement as Exhibit C. This insurance may neither be changed nor cancelled without 30 calendar days' advance written notice of such change or cancellation, excepting 15 calendar days' advance written notice of cancellation for nonpayment of premium.

8. **Security.** To secure the performance of the User's obligations, the User shall execute and deliver to PennDOT the following types of security, pursuant to 67 PA Code, Chapter 189, Hauling in Excess of Posted Weight Limit:
- a. Irrevocable Letter of Credit;
 - b. Performance Bond; or
 - c. Other security acceptable to PennDOT.

This agreement, together with the types 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 PennDOT deems proper. The User shall pay filing costs. A copy of the securities agreement is attached to this agreement as an Exhibit D.

The 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 or attachment without further notice or process, in favor of PennDOT from time-to-time and in such amounts as determined by PennDOT. The User hereby releases PennDOT or any person acting on behalf of PennDOT from any liability whatsoever related to entering judgment and executing upon said judgment against the User. This clause is not to be construed to waive the User's due process rights or any rights under the Administrative Agency Law, 2 Pa. C.S. §§ 101-754.

9. **Liability of User.** The User shall be liable for all costs of Excess Maintenance, 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. PennDOT is under no obligation to prove that the User caused the damage. The User shall 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's activities.

10. **Remedies.** If the User fails to comply with this agreement, PennDOT may:
- a. Notify the User of noncompliance with the agreement;
 - b. Require additional security pursuant to section 13 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 Highways;
 - e. Elect to maintain or restore the portions of the posted Highways and Appurtenances with the User reimbursing PennDOT for all costs so incurred;
 - f. Proceed against security provided pursuant to sections 8 above and 13 below;
 - g. Terminate this agreement; and
 - h. Pursue any other remedies allowed by law.
11. **Closing of Highways.** This agreement does not prohibit PennDOT from closing a Highway or Bridge to any vehicle or combination in excess of a specific weight if the closing is authorized by law and necessary for safety.
12. **Permitting.** PennDOT may add or subtract state routes under this agreement by issuance of a Permit. PennDOT may also allow for an increase or decrease of the security amount without amending this agreement.
13. **Additional Security.** PennDOT may require additional security upon a date PennDOT determines that the aggregate amount of damage to the posted Highways exceeds 75% of the face amount of the security furnished, or the amount published in 67 Pa. Code Chapter 189, as amended, as of the date PennDOT requires the additional security. If additional security is required, PennDOT shall retain the additional security until all Excess Maintenance, Preventative Maintenance, and restorations have been completed. Failure to provide additional security as required will constitute a breach of this agreement.

14. **Commonwealth Standard Provisions.** The User shall comply with the Commonwealth provisions attached as Exhibit E.
15. **Compliance with all Federal, State, and Local Law.** The User shall comply with all federal, state, and local laws and regulations. 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 the Excess Maintenance, Preventative Maintenance, and restoration, the User shall immediately correct the violation or deficiency and shall cease all Excess Maintenance, Preventative Maintenance, and restoration until the User is in full compliance. The User will provide PennDOT with written notice within one business day after receiving the notification.
16. **Effective Date.** The Effective Date is the date that this agreement is fully executed by the Grantee and PennDOT and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature.
17. **Termination.** The User and PennDOT 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 the notice, PennDOT and the User shall conduct a final inspection of the posted Highways and Appurtenances. The posted Highways and Appurtenances shall be restored to a level consistent with that agreed to in section 5 above. Restoration shall be performed by the parties agreed to in section 7 above. Upon notice of completion of all required work and reimbursement of all costs incurred by PennDOT, this agreement shall be terminated, and no further force or effect and all security delivered to PennDOT by the User shall be released.
18. **Amendments and Modifications.** No alterations or variations to this agreement will be valid unless made in writing and signed by the parties. Amendments to this agreement must be accomplished through a formal written document signed by the parties with the same formality as the original agreement.
19. **Severability.** The provisions of this agreement are severable. If any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth and its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and its applicability to any government, agency, person, or circumstance will not be affected.
20. **No Waiver.** Either party may elect not to enforce its rights and remedies under this agreement in the event of a breach by other parties of any term or condition of this agreement. In any event, the failure by either party to enforce its rights and remedies under this agreement may not be construed as a waiver of any subsequent breach of the same or any other term or condition of this agreement.
21. **Independence of the Parties.** Nothing contained in this agreement is intended or may be construed to, in any respect, create or establish the relationship of partners between the User and PennDOT, or as constituting PennDOT as the representative or general agent of the User.
22. **Assignment.** This agreement may not be assigned, either in whole or in part, without PennDOT's written consent.
23. **Third Party Beneficiary Rights.** This agreement does not create or confer any rights in or on persons or entities not a party to this agreement.
24. **Notices.** All notices and reports arising out of, or from, the provisions of this agreement must be in writing and given to the parties at the address provided under this agreement, either by regular mail, e-mail, or delivery in person:

If to PennDOT:

Address: _____

Email: _____

If to the User:

Address: _____

Email: _____

or to such other person or address as the parties may provide to each other in writing.

25. **Force Majeure.** Neither party will be liable for failure to perform under this agreement if a failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision will become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision will not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.
26. **Integration and Merger.** The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing. In entering this agreement, the parties did not rely upon oral or written statements or representations not contained within the document itself.
27. **Counterparts.** This agreement may be executed in counterparts, each of which is deemed an original and has the full force and effect as an original, but all of which constitute one and the same instrument.

[The remainder of this page is intentionally left blank.]

The parties have executed this agreement to be effective as of the date of the last signature affixed below.

USER:

BY _____
Signature DATE

Title

If a Corporation, the President, or Vice President must sign; if a Sole Proprietorship, only the owner must sign; if a Partnership, only one partner needs to 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 PennDOT USE ONLY ▼

PennDOT

BY _____
District Executive or Designee DATE

▼ DO NOT WRITE BELOW THIS LINE – FOR COMMONWEALTH USE ONLY ▼
APPROVED AS TO LEGALITY AND FORM

APPROVED AS TO LEGALITY AND FORM

BY _____
Office of Chief Counsel DATE

PRE-APPROVED FORM
OGC Form No. 18-FA-6.1
Approved OAG 7/8/2024