

# DELMAR TOWNSHIP

Agreement Number: \_\_\_\_\_  
PERMIT TYPE: TEMPORARY  
Duration \_\_\_\_\_ to \_\_\_\_\_  
Date \_\_\_\_\_

## Excess Maintenance and Use Agreement

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, of \_\_\_\_\_, ("USER")

-AND-

**DELMAR TOWNSHIP** with administrative offices located at 610 North Lawton Road, Wellsboro, PA 16901 ("Township")

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

### Section 1. DEFINITION

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

**Municipality** means Delmar 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 eight (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, reconstruction or restoration of a posted highway (in excess of normal maintenance) caused by use of over posted weight vehicles or excess of traffic (as in the case of a road rally, bike race, etc.)

**Excess Traffic** means the amount of traffic over and above that which would on any given day normally traverse on that roadway.

**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.

**Operator** any company or contractor, who is employed or contracts with the USER and is intended to be covered by the USER'S bond and permit and is intended to be bound by this Agreement.

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

## **Section 2. BACKGROUND**

- A. 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.
- B. Pursuant to the provisions of Section 4902 of the Vehicle Code, Act of June 17, 1976, P.L. 162, as amended, 75 Pa.C.S. 4902, the Municipality has posted gross weight restrictions on portions of these Municipal highways.
- C. The USER wishes to move vehicles or combinations, together with loads, in excess of the posted grow weight restrictions over and across portions of these posted Municipal highways.
- D. The USER wishes to have an excess of vehicles over and across portions of these Municipal highways that exceed the normal traffic commuting on, over and across these Municipal highways.
- E. The Municipality, pursuant to 67 Pa. Code, Chapter 189, is willing to permit the movement of USER'S vehicles or combination, together with loads, in excess of the posted grow weight restrictions, and or excess traffic conditioned upon execution of an approved form of security by the USER in favor of the Municipality and conditioned upon the USER complying with all laws, regulations and ordinances, and conditioned in the USER designing and maintaining the subject roads in a manner acceptable to the Township and its engineers, in a manner consistent with this agreement.

## **Section 3. PERMISSION TO MOVE VEHICLES**

- A. The Municipality will permit the USER to move vehicles or combination, together with loads, in excess, of the posted gross weight restrictions or excess traffic 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 and supplemented.
- B. The Municipality has issued the USER a Temporary Permit to exceed the posted gross weight restrictions or excessive traffic use on the portions of Municipal highways identified below.

COUNTY	MUNICIPALITY	MUNICIPAL HIGHWAY	FROM	TO
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<u>Joint Use</u>	<u>DELMAR</u>	<hr/>		
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- C. In the event that more than one USER makes use of the portion(s) of Municipal highway(s) described herein, the USER shall report to the Municipality the name and address of all USERS, the amount of tonnage and number of 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.



#### **Section 4. ON-SITE INSPECTION**

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.

#### **Section 5. RESPONSIBILITY OF THE USER**

- A. The USER and/or its contractor(s). The excess maintenance and restoration shall be performed to a level consistent with that agreed herein. The work shall be in conformance with Municipality Specifications. If USER does work he should notify the Municipality three days in advance of doing 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.
- B. USER shall provide Township with a list of trucking companies and contractors (referred to as "Operators") that USER would like to have covered under this Agreement. The list of Operators must include the trucking company/contractor's mailing address and phone number. The Township may waive this requirement based on past compliance.
- C. 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.
  - 2. Indemnify, save harmless, and defend 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 highways(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 amount of \$250,000 (see instructions below) 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-five days advance written notice of such change or cancellation. This advance written notice of change or cancellation shall be forwarded to the Municipality located at 610 North Lawton Road, Wellsboro, PA 16901.



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 Municipality's specifications, 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 maintenances, restoration or violated this Agreement and/or law, regulation or any ordinance, after receipt of notice, the Municipality may at 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 or the excess traffic over and across Municipal highways(s) until necessary excess maintenance and restoration are 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 herein.
  - d. Terminate this Agreement.
  - e. Terminate the Permit or Temporary Permit.
  - f. Any or all of the above.

#### **Section 6. SECURITY**

To secure the performance of the USER'S obligation, the USER shall execute and deliver to the Municipality the following type(s) of security in the amounts as indicated:

- |  |          |
|--|----------|
| 1. Irrevocable Letter of Credit        | \$ _____ |
| 2. Certified Check                     | \$ _____ |
| 3. Cashier's Check                     | \$ _____ |
| 4. Bank Account                        | \$ _____ |
| 5. Certificate of Deposit (Cash Value) | \$ _____ |
| 6. Security Agreement                  | \$ _____ |
| 7. Escrow Agreement                    | \$ _____ |
| 8. Performance Bond                    | \$ _____ |
| 9. Other                               | \$ _____ |

Security Option(s) \_\_\_\_\_ in the total amount of \$ \_\_\_\_\_  
 Has (have) been agreed to.

#### **Section 7. LIABILITY OF USER**

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 Municipality deems proper. The USER shall pay the costs of such filings.

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

#### **Section 8. TERMINATION**

The USER and the Municipality retain the right to terminate their future obligations under this Agreement for any reason and 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, shall be restored to a level acceptable to the Municipality, Restoration shall be performed in a timely manner. 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.

#### **Section 9. REVOCATION OF PERMIT**

The Municipality may revoke the USER'S permit and this Agreement, and may pursue whatever legal remedies it deem proper, in its discretion, that the USER is not in compliance with any provision of this Agreement, or is in violation of Pennsylvania law, Pennsylvania regulations, Township Ordinances, or any permit required by the Township. In the event the USER has concluded its operations on any 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.

#### **Section 10. CLOSING OF MUNICIPAL HIGHWAYS**

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.

#### **Section 11. ADDITIONAL SECURITY AND TERMINATION**

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 dace amount of the security furnished. If additional security is required, it shall be retained by the Municipality until all excess maintenance and restorations have been completed. Failure to provide such additional security as required shall constitute a breach of this Agreement.

#### **Section 12.**

It is understood by the USER that this is a temporary permit and it must be ratified by the Supervisors at a duly authorized meeting.

Attest:

DELMAR TOWNSHIP

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

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

Attest:

USER:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title: \_\_\_\_\_ Date