

**West Mead Township
Excess Maintenance Agreement
Relating to Excess Weight Permit
Under Ordinance No. 99-1**

Permit # _____

Date _____

Agreement between, West Mead Township, Crawford County, Pennsylvania, a Municipal Corporation, (hereafter Township)

A N D

Excess Weight Permit holder identified below (hereafter referred to as Permittee).

(type the name and address of permittee in spaces above)

Permittee has been issued a Type _____ Excess Weight Permit by the Township.

Background

Permittee in the conduct of its business makes use of portions of Township Roads which are under the jurisdiction, maintenance and control of the Township.

Pursuant to the provisions of Section 4902 of the Pennsylvania Vehicle Code, as amended, and Township Ordinance No. 99-1, the Township has posted gross weight restrictions on portions of these Township Roads.

Permittee desires to move vehicles or combinations, together with loads, in excess of the posted gross weight restrictions over and across portions of these posted Township Roads.

The Township, pursuant to Chapter 189 of the Pennsylvania Department of Transportation regulations, is willing to permit the movement of Permittee'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 Permittee in favor of the Township to cover the cost of repairs and restoration necessitated use of over-posted-weight vehicles in accordance with the terms, conditions, and provisions hereinafter contained in this Agreement.

For purposes of this Agreement, appurtenance means the property lying within the right of way of a Township Road such as shoulders and drainage facilities, together with any improvement placed within this right of way.

Agreement

For and in consideration of the mutual promises hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree for themselves, their successors and assigns, as follows:

1. **Permission to Move Vehicles.** Permittee shall be allowed to move vehicles or combinations, together with loads, in excess of the posted gross weight restrictions on the portion(s) of Township Roads indicated below, subject to all provisions of the Pennsylvania Vehicle Code, as amended, the applicable Pennsylvania Department of Transportation regulations and Township Ordinance No. 99-1.

Twp Road#	Name	From	To
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2. **Responsibility and Liability of Permittee.** Permittee shall be responsible for excess maintenance which is maintenance or restoration or both (but not betterment) of a posted road in excess of normal maintenance and caused by the use of over-posted-weight vehicles on such road. Permittee shall be liable for all costs of excess maintenance and restoration and all other expenses incurred pursuant to this Agreement. Permittee shall not be responsible for normal maintenance or costs associated therewith. Permittee shall have no obligation for maintenance to remedy damage resulting from washout, landslide, or act of God, or for removal of snow or ice.

3. **Joint Use.** In the event more than one over-posted-weight permittee makes use of the Township roads described in Paragraph 1 above, Permittee shall either (A) execute an amendment to this Agreement wherein Permittee shall agree to participate in maintenance and restoration and costs associated therewith in some proportion as may be agreed upon by the various permittees, or (B) upon failing to agree to a proration of such responsibility within a reasonable time, shall be liable to the Township for excess maintenance costs as the Township shall determine and assess on a proportional basis among the various permittees, from time to time.

4. **On-Site Inspection.** In order to determine the condition of the portion(s) of Township Road(s) and appurtenances, an on-site field inspection shall be made jointly by the Township and Permittee. Photographs shall be taken and a memorandum prepared describing the condition of the Township Road(s) and appurtenances together with the nature and extent of any repairs needed to correct any existing damage for which Permittee will not be liable. The memorandum and photographs shall be incorporated as an exhibit as part of this Agreement. All costs of this inspection shall be paid by Permittee.

5. **Performance of Maintenance and Restoration.** Maintenance and restoration shall be performed in accordance with Paragraph B below.

- a. By the Township and/or a contractor selected by the Township through its prescribed procedures. The maintenance and restoration shall be performed to a level consistent with that agreed to in Paragraph 6. The work shall be in conformance with Township's Requirements and shall be supervised and inspected by Township personnel. Permittee agrees to reimburse the Township for all costs incurred.
- b. By Permittee and/or its contractor. The maintenance and restoration shall be performed to a level consistent with that agreed to in Paragraph 6. The work shall be in conformance with Township Requirements. Any maintenance or restoration associated with bridges shall be specifically developed in a memorandum by the Township and directed to Permittee for completion. The Township shall determine, in its sole discretion, whether the maintenance and restoration are satisfactory. The Township reserves the right to monitor or direct any maintenance

or restoration. Permittee shall reimburse the Township for any expenses so incurred.

If performance option B has been agreed to, Permittee shall:

- i. Provide proper traffic protection at all times during maintenance and restoration. This protection shall comply with Township and other applicable work area and traffic control requirements. The Township shall approve all traffic control and warning devices.
- ii. Indemnify, save harmless and defend (if requested) the Township, 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 sustained by any person, persons or property, as a result of the performance of the work on a Township Road and appurtenances, by or for Permittee, its officers, servants, 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 Permittee, its officers, servants, agents, employees, contractors or representatives, relating to the performance of the work.
- iii. Provide evidence to the Township of liability insurance for bodily injury and property damage in the minimum amounts of \$300,000 each person, \$1,000,000 each occurrence. The insurance policies shall cover any claim that may arise out of the performance of any maintenance or restoration by Permittee, its officers, servants, agents, employees, contractors or representatives. The Township shall be named as an additional insured. A copy of the certificate of insurance shall be attached to this Agreement as an Exhibit. This insurance shall neither be changed nor canceled without thirty (30) days advance written notice to the Township of such change or cancellation.

iv. Promptly perform maintenance or restoration as needed. If the Township determines that Permittee is not maintaining or restoring the portion(s) of Township Road(s) and appurtenances to the level agreed to in Paragraph 6, the Township will notify Permittee, in writing, of this determination and Permittee shall promptly perform the required maintenance or restoration. If Permittee fails to perform the maintenance and restoration promptly after receipt of notice, the Township may, in its discretion:

- a) Rescind Permittee's permission to perform maintenance and restoration, and to move vehicles or combinations, together with loads, in excess of the posted weight restriction over and across the Township Road(s).
- b) Maintain or restore the portion(s) of Township Road(s) and appurtenances in which event Permittee shall reimburse the Township for all costs so incurred.
- c) Terminate this Agreement.

6. **Standard for Road Maintenance.** The Township Roads described in Paragraph 1 above and appurtenances shall be maintained and restored to a level consistent with the cross-section identified as "Type 30". A copy of the cross-section(s) shall be attached to this Agreement as a schedule.

7. **Security.** To secure the performance of Permittee's obligations, Permittee shall execute and deliver to the Township the following type(s) of security in the amounts as indicated:

- | | | |
|----|------------------------------|-----------|
| A. | Performance Bond | \$ _____. |
| B. | Certified Check | \$ _____. |
| C. | Cashier's Check | \$ _____. |
| D. | Bank Account | \$ _____. |
| E. | Irrevocable Letter of Credit | \$ _____. |
| F. | Escrow Agreement | \$ _____. |
| G. | Other | \$ _____. |

Security option(s) _____ in the total amount \$ _____ has (have) been agreed to.

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

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 the Township deems proper. Permittee shall pay the cost of such filings.

8. Liability of Permittee. Permittee shall be liable for all costs of excess maintenance and restoration and all other expenses incurred pursuant to this Agreement and Permittee's liability shall not be limited to the total amount of security shown in Paragraph 7.

9. Termination. Permittee 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's and Permittee's representatives shall inspect the Township Roads and appurtenances. Restoration shall be performed by the responsible party as designated in this Agreement. Upon completion of the maintenance and restoration responsibilities and payment of costs, this Agreement shall be terminated and of no further force or effect, all security delivered to the Township by Permittee shall be released, and the Permit shall be terminated.

10. Revocation of Permit. The Township may revoke Permittee's Excess Weight Permit and may pursue whatever legal remedies it deems proper, if it determines, in its discretion, that Permittee is not in compliance with any provision of this Agreement or Permit.

11. Closing of Township Roads. This Agreement shall not prohibit the Township from closing a road 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 act of God.

12. Effective Date. The effective date of this Agreement shall be the date upon which the on-site inspection memorandum is signed by Permittee and the Township. The effective period of this Agreement shall continue from its effective date until the date of its termination as provided in the Permit or as otherwise provided herein.

13. **Additional Rights of Termination.** In addition to the Township's right of termination set forth above, the Township shall have the right to terminate this Agreement upon that date the Township determines, in its discretion, that the aggregate amount of damage to the subject Township Roads and appurtenances exceeds 75% of the face amount of the security furnished.

West Mead Township

By: _____

Attest:

Secretary

Permittee

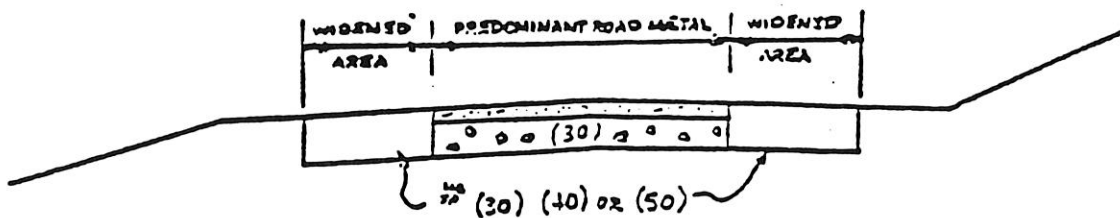
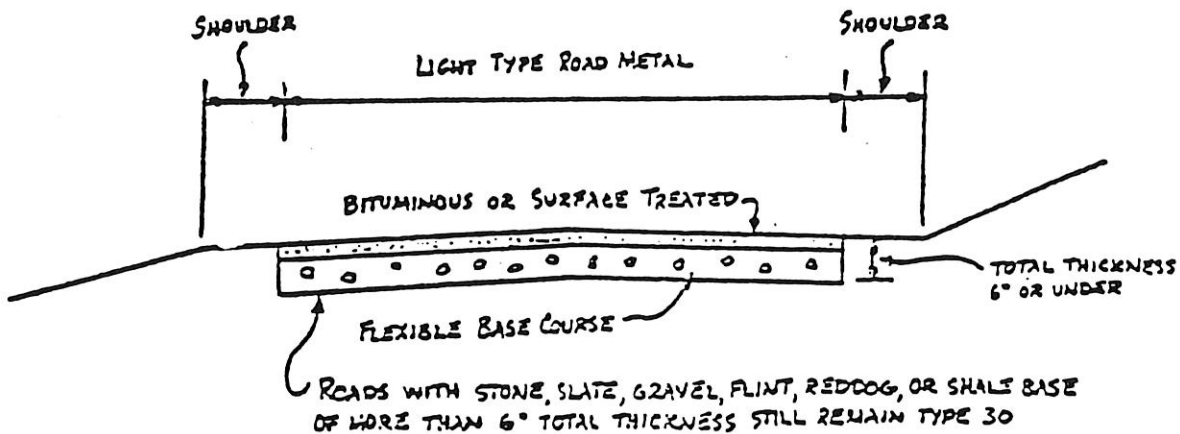
By: _____

Title

Attest:

APPENDIX C

TYPE 30



WIDENING OF RIGID PAVEMENTS WITH RIGID TYPE OR, WIDENING OF FLEXIBLE PAVEMENTS WITH AN EQUAL OR HIGHER FLEXIBLE TYPE, SHALL NOT BE SHOWN ON THE STRAIGHT LINE DIAGRAMS AS WIDENING, BUT SHALL BE SHOWN AS INCREASED WIDTH OF ROAD METAL AND THE PAVEMENT CODED FOR THE PREDOMINANT TYPE.

SCHEDULE A

Performance Bond

Date: _____, ____

Permit # _____

Principal means _____
of _____

_____.

Surety means _____
_____, public corporation having its principal place of business at _____
_____.

Township means West Mead Township, acting through its agent, the Township Board of Supervisors.

Agreement means an Excess Maintenance Agreement executed between the Township and the Principal.

Background

The Principal has executed an Excess Maintenance Agreement with the Township. Under this Agreement, the Principal has promised to pay all costs of excess maintenance, restoration or other expenses resulting from the movement of vehicles or combinations, together with loads, in excess of the gross weight restrictions on posted Township roads.

The Principal and Surety execute this Performance Bond as security for the performance of this promise.

Agreement

1. The Principal and the Surety, intending to be legally bound, jointly and severally, promise to pay to the Township the sum of _____
(\$ _____) Dollars.

2. This sum shall be payable by the Principal to the Township when demand is made upon the Principal for any cost of maintenance and restoration or other expenses incurred by the Township pursuant to the Agreement.

3. The Surety promises to pay this sum to the Township if the Principal fails to pay after the Township has made demand upon the Principal.

4. The Principal and Surety promise to be bound by the terms of this Performance Bond until the later of the date the Agreement terminates or the date all of the Principal's liability incurred under the Agreement is totally discharged and satisfied.

5. The Surety may terminate its future liability under this Performance Bond ninety (90) days after furnishing written notice of such intention to terminate, delivered by person or by registered or certified mail, to the Township at its appropriate office, located at P. O. Box 491, Meadville, Pennsylvania 16335.

This termination shall not affect the liability of the Surety and the Principal for any liability incurred by the Principal under the Agreement prior to the effective date of such termination, but the liability of the Principal and the Surety for any liability incurred by the Principal under the Agreement prior to the effective date of termination shall continue beyond the date of termination until such time as the Principal's liability is totally discharged and satisfied.

6. The promises of the Principal and Surety shall not be released by any alteration of or amendment to the Agreement.

7. This Performance Bond shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest.

8. If the Principal and/or Surety fail to keep any promise under this Performance Bond, the Principal and Surety authorize and empower any attorney of any court of record within the United States or elsewhere to appear for the Township and confess judgment against the Principal and/or Surety in favor of the Township as often as necessary, as of any term, with or without declaration filed, without stay of execution and without presentment for such sum or sums as may be payable, together with costs of suit and attorney fees, and with release of all errors; Principal and Surety waive inquisition on any real estate and exemption of any property whatsoever, and authorize condemnation of same and immediate issuance of a Writ of Execution, or exemption, and release and waive relief from any and all appraisement, stay of execution, or exemption laws of any state or nation, now in force or hereinafter to be passed, to the extent such statutes may be waived.

In Witness Whereof, the said Principal and Surety hereto have caused these presents to be duly executed, attested and ensealed by their proper officials, pursuant to due and legal action authorizing the same to be done, this _____ day of _____, ____.

Attest:

[Seal] Title

Attest:

[Seal]

Principal:

By: _____
Title

Surety:

By: _____
Title

Issuing Agency or Bonding Company

Name:

Address:

Phone:
