



# WHITE OAK BOROUGH EXCESS MAINTENANCE AGREEMENT

Excess Maintenance agreement (single user) \_\_\_\_\_

User: \_\_\_\_\_ of \_\_\_\_\_

## DEFINITIONS:

**User** means that user who signs and executes this agreement.

**Municipality** means White Oak Borough 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 (eight) 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 having a gross weight in excess of a posted weight limit.

## Type 1 Permit

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

## Type 2 Permit

A Type 2 Permit is valid only when conspicuously displayed at the user's place of business.

**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 herinafter contained in the 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 assigns 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, (75PaCS) and 67 Pa Code, Chapter 189.

The **municipality** has issued the user a Type \_\_\_\_\_ Permit to exceed the posted gross weight restrictions on the portions of municipal **highways** identified below:

County	Municipality	Highway	From	To
Allegheny	White Oak Borough	_____		
Allegheny	White Oak Borough	_____		
Allegheny	White Oak Borough	_____		
Allegheny	White Oak Borough	_____		

## **JOINT USE:**

2. In the event that more than one **user** makes 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 the 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 \_\_\_\_\_", and the portion(s) of Municipal **highway(s)** and **appurtenances** shall be restored to a level consistent with the attached cross-section identified as "Type \_\_\_\_\_". 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 **highway(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 the 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 \_\_\_\_\_ below.

### **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 work shall be in conformance with **Municipality** Specifications and shall be supervised and inspected by **Municipal** personnel.

The **Municipality** may invoice the **user** for the estimated cost of repairs using either the latest maintenance contract prices 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 or 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 (3) days in advance of doing the work. An **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. The 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 (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 an **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 (45) 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: 2280 Lincoln Way, White Oak, PA 15131-2489.
- 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 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 pursuant to Paragraphs 7 and 13 (below).
  - d) Terminate this Agreement.
  - e) Any or all of the above.

**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 amount 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 filed in the appropriate prothonotary’s office or other registry in a manner and a 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).

**LIABILITY OF USER**

8. The **user** and the **Municipality** retain the right to terminate their future obligation 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 elected, shall be restored to 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 shall be released.

**REVOCAION OF PERMIT**

9. 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 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.

## **CLOSING OF MUNICIPAL HIGHWAYS**

10. 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**

11. 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**

12. 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 restorations have been completed. Failure to provide such additional security as is required shall constitute a breach of this Agreement.

**WHITE OAK BOROUGH**

Attest:

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

\_\_\_\_\_  
Seal

By: \_\_\_\_\_  
President, White Oak Borough Council

**USER**

Attest:

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

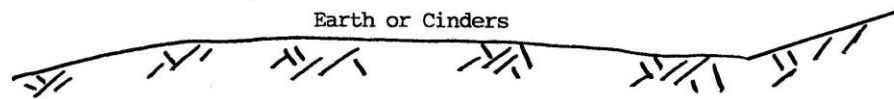
\_\_\_\_\_  
Seal

By: \_\_\_\_\_  
Name, Title

White Oak Borough Planning and Zoning  
2280 Lincoln Way  
White Oak, PA 15131  
Phone: (412) 672-9727 ext 231  
Fax: (412) 672-9727

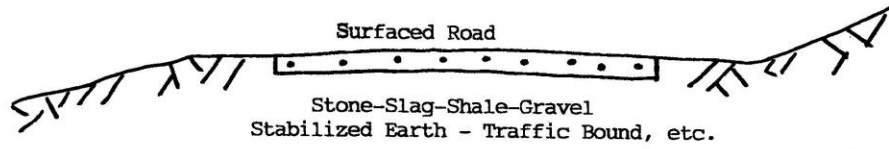


**TYPE 10**



Schedule A

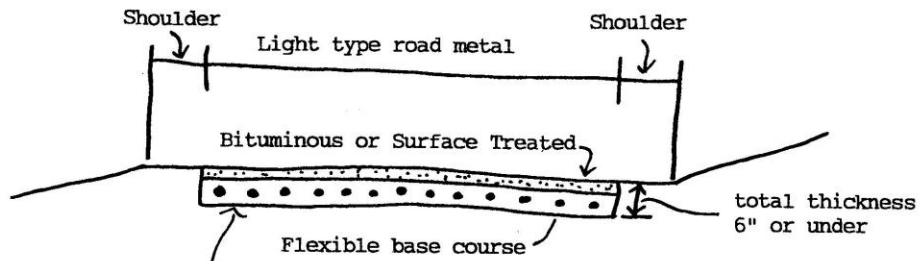
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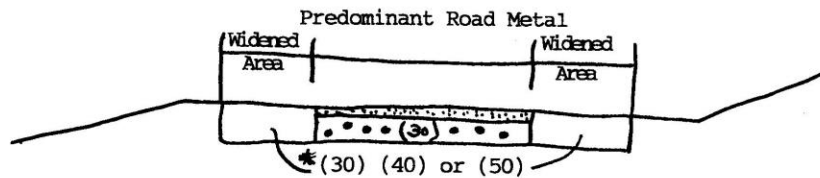
Schedule A

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## TYPE 30



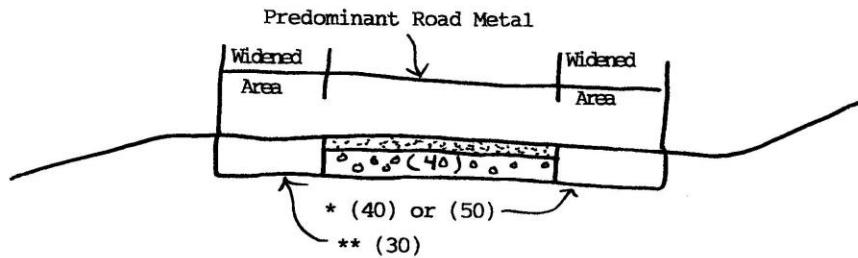
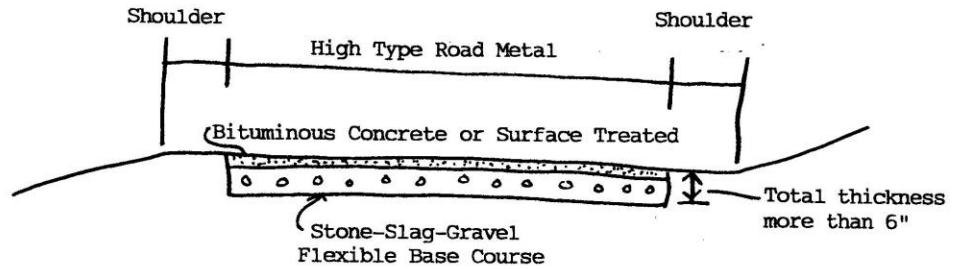
Roads with stone, slate, gravel, flint, reddog, or shale base of more than 6" total thickness still remain Type 30



\* Widening of road 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

## TYPE 40



\* Widening of rigid pavements with rigid type CR, 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.

\*\* When widened area is of a type less than the predominant type, it shall be shown as widening on the straight line diagram.

Schedule A