

EXCESS MAINTENANCE AGREEMENT

THIS AGREEMENT made the _____ day of _____, 2009 by ²⁰¹⁰
 and between the Township of Athens, Bradford County, Pennsylvania a municipal
 corporation having its principal place of business at 45 Herrick Avenue. Sayre Pa 18840
 (hereinafter "Municipality") and
CHESAPEAKE APPALACHIA, LLC
 _____ with an
 address of RR2 Box 73B Tolson PA 18848

 _____ (hereinafter "USER").

WHEREAS, the User in the conduct of its business makes use of portions of
 roads and highways which are under the jurisdiction, maintenance and control of
 Municipality; and

WHEREAS, Municipality, in accordance with the provisions of Section 4902 of
 the Pennsylvania Vehicle Code, Act of June 17, 1976 P.L. 162, as amended (75 Pa. C.S:
 § 4902), has posted gross weight restrictions on portions of these Municipal roads and
 highways; and

WHEREAS, 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; and

WHEREAS, the Municipality, pursuant to the provisions of 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 User in favor of Municipality to cover the cost of excess
 maintenance and restoration necessitated by the movement in accordance with the terms,
 conditions and provisions contained hereinafter in this Agreement;

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

1. Permission to Move Vehicles

The Municipality will permit User to move vehicles or combinations, together
 with loads in excess of the posted gross weight restrictions on the portion(s) of the
 Municipal highways indicated below, subject to all provisions of the Pennsylvania
 Vehicle Code, Act of June 17, 1976, P.L. 162, as amended and Title 67 Pa. Code Chapter
 189.

The Municipality has issued User a Type 2 permit to exceed the posted gross
 weight restrictions on the portions of Municipal highways identified below.

MUNICIPALITY ROADWAY	FROM	TO	
T-324 Sunnyfield Dr	2.4 miles dirt + gravel 1.8 miles pavement	4.2 miles total	\$36,900
T-325 Farr Road	.5 miles dirt + gravel	.5 miles total	" 3,000
T-326 Reagan Road	.9 miles paved road	.9 miles total	*11,250

2. Joint Use

In the event that more than one User makes use of the portions of Municipal highways described in Paragraph 1 above, the User shall report to 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 this Agreement.

3. Responsibility of User

The portions 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 road(s) 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 non-performance of normal maintenance by Municipality shall not, under any circumstances, constitute grounds for an offset or credit against any excess maintenance or restoration responsibility of User.

4. On-Side Inspection

The User and 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 User and Municipality. A memorandum shall be prepared describing the condition of the Municipal highway(s) and appurtenances together with the nature and extent of any repairs needed to correct existing damage for which User will not be liable. Photographs may also be taken. The memorandum and photographs (if any) shall be incorporated as an exhibit and made a part of this Agreement. All costs of this inspection shall be paid by User.

5. Maintenance Not-Covered

The User shall have no obligation for maintenance to remedy damage directly resulting from acts of God, war or routine removal of snow or ice.

6. Performance of Excess Maintenance and Restoration

The User and/or its contractor(s) shall perform the excess maintenance and restoration called for under this Agreement. The excess maintenance and restoration shall be performed to a level consistent with paragraph 3 hereinabove. The work shall be performed in conformance with specifications of Municipality. User shall give Municipality at least three (3) business days' notice before performing any work hereunder. Municipality reserves the right to monitor or direct any excess maintenance or restoration. User shall reimburse Municipality for any expenses incurred by Municipality in connection with such monitoring or directing.

User shall 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 ("Penn DOT") Specifications Publication 408 and supplements thereto and Penn DOT Publication 203.

User shall indemnify, save harmless, and defend (if requested) the Municipality and its officers, agents and employees, from all suits, actions or claims of any character, nature, 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 portions of the 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, contractor or representatives during the performances of work.

User shall provide evidence to Municipality of public liability insurance for bodily injury and property damage in the minimum amounts of \$250,000.00 each person and \$1,000,000.00 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, costs, 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 nor cancelled without forty-five (45) days advance written notice of such change or cancellation provided to Municipality.

User shall promptly perform excess maintenance or restoration as needed. If Municipality determines that User is not maintaining or restoring the portion(s) of Municipal highway(s) and appurtenances to the level agreed to in Paragraph 3 hereinabove, Municipality will notify the User in writing of this determination and the User shall promptly perform the required excess maintenance or restoration.

If 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 road(s) and appurtenances with the User reimbursing Municipality for all costs incurred;
- (c) proceed against the security provided pursuant to Paragraphs 7 and 12 hereinafter below;
- (d) terminate this Agreement;
- (e) any or all of the above options

7. Security

To secure the performance of the User's obligations, User shall execute and deliver to the Municipality the following types of security in the amounts as indicated:

A.	Irrevocable Letter or 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	\$ <u>51,150.00</u>
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 office or other registry in a manner and at such time and frequency as the Municipality deems proper. The costs of such filings shall be paid by User.

A copy of the security/securities to be utilized shall be attached to this Agreement as an exhibit(s).

8. User Liability

User shall be liable for all costs of excess maintenance and restoration as well as all other expenses incurred pursuant to this Agreement. The User's liability shall not be limited to the total amount of security identified in Paragraph 7 hereinabove.

9. Termination of Agreement

The User and Municipality retain the right to terminate their respective 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 Municipality and User~~ shall have their respective representatives inspect the Municipal road(s) and appurtenances. The Municipal road(s) and appurtenances shall be restored to the level of consistent with that agreed to in Paragraph 3 hereinabove. Restoration shall be performed by the party/parties agreed to in Paragraph 6 hereinabove. Thereupon this Agreement shall be terminated and of no further force or effect and all security delivered to the Municipality by User shall be released.

10. Revocation of Permit

Municipality may revoke the User's permit and may pursue any and all legal remedies it deems proper, if Municipality determines in its side discretion that User is not in compliance with any of the provisions of this Agreement. In the event that User has concluded its operations on any or all portions of roadways covered by this Agreement, the Municipality may, in its discretion, revoke User's permit(s) to operate on any other roadways(s) under any other similar Agreement with Municipality.

11. Closing of Municipal Roads

Nothing contained on this Agreement shall 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 a temporary closing due to climatic conditions, war, or an act of God.

12. Additional Security and Termination

In addition to the Municipality right of termination set forth hereinabove, the Municipality shall have the right to require additional security upon the date that Municipality determines, in its discretion, that the aggregate amount of damage to the Municipal road(s) exceeds 75% of the face amount of the security furnished. If additional security is required, it shall be retained by Municipality until all excess maintenance and restoration have been completed. The failure to provide such additional security as required shall constitute a breach of this Agreement.

13. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Any dispute arising from or connected in any manner with this Agreement shall be brought in the Court of Common Pleas of Bradford County, Pennsylvania or any minor judiciary located within such jurisdiction.

14. Definitions

The following terms contained in this Agreement have the following meanings:

"Municipality" means Athens Township, Bradford County, Pennsylvania

~~"User" means the entity who signs and execute this Agreement and who is identified as User herein.~~

"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 feet.

"Highway" means any highway, street, road or bridge on the Municipality's system of highways and bridges, including the entire width of right-of-way lines over which the Municipality has assumed or has been legislatively given, jurisdiction.

"Excess Maintenance"- means the 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 time 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.

"Type 3 Permit"- a Type 3 Permit is Valid only when carried in the over-posted-weight vehicle.

15. Effective Date

The effective date of this Agreement shall be the date upon which the on-site inspection memorandum is signed by the User and Municipality. The effective period of this Agreement shall continue from its effective date until the date of its termination as provided for herein.

IN WITNESS WHEREOF the parties have hereinto set their hands and seals on the date and year first above written.

..... Athens Township

BY: _____

Title: _____

ATTEST BY:

Township Secretary

USER:

BY: _____