

# THIS AGREEMENT

Entered into this \_\_\_\_ day of \_\_\_\_\_, 2021,

## BY AND BETWEEN

\_\_\_\_\_, a wholly owned business, with an office located at \_\_\_\_\_, hereinafter referred to as "Contractor",

*A*  
*N*  
*D*

**DONEGAL TOWNSHIP**, a political subdivision of Washington County, Pennsylvania, with its principal office located at 34 North Liberty Street, P.O. Box 310, West Alexander, Pennsylvania 15376, hereinafter referred to as the "Township".

**WHEREAS**, Contractor is engaged in the business which involves the conveying of heavy equipment and materials for business to accomplish a related business purpose within the Township, and intends to pursue these operations for a period of no more than twelve (12) months; and

**WHEREAS**, Contractor believes it may utilize \_\_\_\_\_ **Road (T-\_\_\_\_\_)** a length of \_\_\_\_\_ miles with blacktop surface(s) for these operations; and

**WHEREAS**, the Township is of the opinion that such hauling of heavy equipment and materials will damage said road(s) requiring the expenditure of substantial sums of money to keep the road in repair for the safe travel of others; and

**WHEREAS**, the hauling of heavy equipment is likely to be in contravention and violation of Township Ordinance No. 20-04, relating to maximum gross vehicle weight on roads within the Township; and

**WHEREAS**, the parties hereto are desirous of entering into an Agreement providing for Contractor to be responsible for the repair of said road caused by the transportation of conveying heavy equipment and materials for business purposes within the Township by itself and/or its suppliers, contractors, subcontractors, agents and/or employees during the period of said operations in the Township.

**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants herein contained, it is agreed between the parties as follows:

1. Contractor shall have the right to use the roadways set forth above and in addendum one (1) for the purpose of hauling heavy equipment for business purposes within the Township.

2. The permission for use of said roadways by the Township granted by this Agreement shall exist only for the period of time actually needed to haul heavy equipment and materials, which shall be no more than twelve (12) months from the date of the execution of this Agreement or until the Contractor notifies the Township in writing that operations have ceased. It is the sole responsibility of the Contractor to notify the Township in writing when it is finished using the aforesaid road. Failure of the Contractor to submit written notice to the Township shall not be a defense to any damage done to the road by third parties.

3. In order to assure performance under this Agreement, Contractor shall post either a secured line of credit or bonds with an approved surety company with the Township named as the beneficiary which bonds are to be approved and consented to by the Township, in the combined amount of **Twelve Thousand Five Hundred and 00/100 (\$12,500.00) Dollars per mile**. These bonds shall be posted with the Township.

4. The Township shall require a sum of **Three Thousand and 00/100 (\$3,000.00) Dollars** to be placed in an account with the Township. This account shall be used to pay engineering fees, inspection fees, video inspection fees, local equipment fees, legal fees and administrative fees to the Township. The Township will utilize an engineer to photograph and review the road(s) before use by the Contractor and subsequent to the final use of said road(s) by the Contractor. Written reports by the engineer shall be provided to the Township and the Contractor within ten (10) days thereof. Contractor shall not utilize said road(s) until it receives the initial report from the engineer.

5. The Contractor shall pay a fee of **Two Hundred Fifty and 00/100 (\$250.00) Dollars** as an application for the use of said road(s).

6. Contractor has the option of performing any road(s) repair or maintenance on Township road(s). In order to facilitate and an efficient resolution of road(s) repair issues, the parties agree to utilize the Township repair and maintenance protocol and Township road repair and maintenance work order form attached hereto as Exhibit A.

7. Contractor shall promptly perform any maintenance or restoration work required under this Agreement. If the Township determines that the Contractor is not maintaining or restoring the Township road(s) as required by this Agreement, the Township will notify the Contractor in writing of this determination in accordance with the protocol agreed to between the parties, and the Contractor shall promptly perform the required maintenance and repair in a commercially reasonable fashion. If the Contractor, within two (2) business days of its receipt of notification by the Township, or immediately in the case of an emergency endangering the public health, safety and welfare, at the Township's discretion fails to commence performance of the work, the Township may, in its discretion, do any of the following:

- a. Rescind Contractor permission to perform maintenance and restoration, and to move vehicles or combinations, together with loads, in excess of the posted weight restrictions over and across the Township road(s); or
- b. Maintain and restore the portion of Township road(s) with Contractor reimbursing the Township for all costs so incurred subject to the following:
  - (1) The Township shall keep a record of all labor performed by Township employees and of all Township equipment used on said Township road(s) covered by the terms of this Agreement in order to maintain said road as required by this Agreement.
  - (2) The Township shall send an invoice to Contractor for said costs with payment due within thirty (30) days.
  - (3) In the event Contractor fails to make said reimbursement, the Township may close said Township road(s) or rescind Contractor's permission to move vehicles or combinations, together with loads, in excess of the posted weight restrictions over and across the Township road(s).

8. Contractor agrees to repair the base of Township road(s) to a condition equal to or better than that which existed prior to said use by Contractor. The base shall be repaired using compacted crushed aggregate of an appropriate size to the pre-existing depth, or such greater depth as reasonably determined by the Township.

9. In the event Contractor, after their operation has been completed, fails to replace and restore Township road(s) as required herein, then the Township may assume said responsibility and Contractor shall reimburse the Township the cost thereof.

10. Contractor and 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 Contractor's representative shall view the Township road(s). The Township road(s) shall be restored to a level consistent with that agreed to herein. Thereupon this Agreement shall be terminated, and the Contractor shall be liable for any costs to repair the Township road(s) as set forth herein.

11. The Township reserves the right to unilaterally revoke the Heavy Hauling Permit and pursue the appropriate legal remedies, if it determines in its sole discretion that the Contractor is not in compliance with this Agreement.

12. This Agreement shall not prohibit the Township from closing a road(s) or bridge(s) 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.

13. Contractor specifically agrees that any sums payable under this Agreement for the repair and/or maintenance of said roadways shall be made payable to Township and may be directly claimed by Township after notice to Contractor. Contractor agrees to take any action necessary to allow Township to collect upon the proceeds of the secured line of credit or bond. Contractor further agrees to remain liable for any amount required for the maintenance and/or repair of said roadways in excess of the amount of the secured line of credit or bond posted.

14. Contractor shall maintain Public Liability Insurance for personal injury or death to persons, or for property damage in the amount of One Million and 00/100 (\$1,000,000.00) Dollars, and shall present evidence of such insurance to Township within five (5) days of the execution of this Agreement.

15. A. Township shall not be liable for any injury, death or property damage suffered by Contractor, Contractor's employees, agents, subcontractors, etc. at any time except injuries or damage to the Contractor, Contractor's employees, agents, subcontractors, etc. caused solely by Township's gross negligence or willful misconduct.

B. Contractor shall indemnify, defend, protect, save and hold harmless and fully release, acquit and forever discharge Township, Township's employees, agents, contractors, subcontractors, guests, invitees, heirs, successors and assignees from any and all obligation (including without limitation, the obligation to warn of know dangers), actions, assessments, cause of actions, claims, demands, judgments, liabilities, losses, citations, costs, damages and expenses of whatever kind or character (including, without limitation reasonable attorney's fees) for any injury, death or damages of any kind or character, whether to persons, animals, real property, or personal property, arising out of or caused by, directly or indirectly and without limitation: (i) any accident or injury to or death of persons or loss of or damage to property occurring as a result of this Agreement or any part thereof that are in any manner caused (in whole or in part) by Contractor or any of its employees, agents, contractors, subcontractors, guests, invitees, heirs, successors or permitted assignees (the "Contractor Parties"); and (ii) any failure on the part of Contractor or Contractor Parties to perform or comply with any terms of this Agreement and/or addendum thereto; and (iii) any act or omission on the part of the Contractor or any of the Contractor Parties.

C. For all purposes of this Paragraph 15 the acts or omissions of any agent, employee, contractor, subcontractor or invitee of Contractor shall be treated as those of the Contractor.

D. This Paragraph 15 shall be applicable regardless of the identity of the party asserting, bringing, demanding or filing the action, assessment, cause of action, claim, demand, judgment, liability, loss, citation, cost, damage or expense.

E. Contractor shall not be obligated to indemnify Township for any matter to the extent that it rises out of the gross negligence or willful misconduct of Township.

F. This Paragraph 15 shall survive the expiration or termination of this Agreement and/or addendum thereto with respect to the obligations and liabilities of Contractor or Contractor Parties hereunder, actual or contingent, which have arisen on or prior to such expiration or termination.

16. In the event of a breach of this Agreement by either party, each party shall have the right to terminate this Agreement immediately upon written notice to the other party at the addresses set forth in this Agreement, and to pursue its remedies provided by the laws of the Commonwealth of Pennsylvania for damages arising out of the breach by the other party.

17. This Agreement is made and entered into by the Township pursuant to a Motion by the Board of Supervisors duly adopted at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, authorizing and directing that the same be made and done.

18. This Agreement shall extend to and shall be binding upon the successors and assigns of the parties hereto.

19. This Agreement may only be amended in writing and by consent of the parties.

20. This Agreement shall be construed according to the laws of the Commonwealth of Pennsylvania and venue shall lie in the Washington County Court of Common Pleas.

**IN WITNESS WHEREOF**, the parties have hereunto affixed their hands and seals on the day and year first above written, with the intention to be legally bound hereby.

ATTEST:

**DONEGAL TOWNSHIP**

\_\_\_\_\_  
Heather Wood, Asst. Secretary/Treasurer

By: \_\_\_\_\_  
Richard Fidler, Chairman

(SEAL)

ATTEST:

(COMPANY)

\_\_\_\_\_

By: \_\_\_\_\_