

HEAVY-HAULING AGREEMENT

THIS HEAVY-HAULING AGREEMENT (this "Agreement") is dated as of

-----, 200____, and is by and between:

BOARD OF SUPERVISORS OF MORRIS TOWNSHIP, Greene County, Pennsylvania, a second class township organized and existing under the laws of the Commonwealth of Pennsylvania, (hereinafter called the "Township"),

A

N

D

(hereinafter called "Operator").

WITNESSETH:

WHEREAS, the Township is required to repair and to maintain the public highway system of the Township; and

WHEREAS, a Township Ordinance (hereinafter called "Ordinance") was enacted on or about July 3, 2002 by the Township to restrict the weight of any vehicle to a maximum limit of ten (10) tons in order to prevent damage to and deterioration of the Township roads as set forth in the Ordinance; and

WHEREAS, Operator plans to operate facilities in Morris Township, Greene County, Pennsylvania; and

WHEREAS, Operator plans to transport heavy equipment, material, etc. from said operations over and across certain of the Township's roads as follows: _____

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For a distance of _____ miles to _____ (hereinafter, the "Work"); and

WHEREAS, in furtherance of Operator's gas business, Operator has requested the Township to permit the use of vehicles having a gross weight in excess of the maximum weight allowed on said Township Road (hereinafter, the "Overweight Haulage"); and

WHEREAS, the Township has agreed to permit Operator, its employees, agents and/or subcontractors to use said Township Road for the Overweight Haulage provided Operator indemnified the Township for any damages to the Township Road caused solely by the Overweight Haulage.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, and intending to be legally bound, the parties hereto agree as follows:

1. The Township agrees to permit Operator, its employees, agents, and/or subcontractors to use the Township Road for the Overweight Haulage provided that Operator complies with the terms and conditions as hereinafter set forth.
2. Operator agrees to repair said Township Road, including the base thereof, as to any damages solely caused by the Overweight Haulage, as follows (hereinafter, the "Work"):(a)

drainage ditches shall be cleaned and graded to maintain proper flow along roadway; (b) all holes in the blacktop shall be filled; c) any gravel portion of Township Road shall be properly graded and stoned provided, however, that it shall be an express condition precedent to the maturation of Operator's duty to perform the Work under this Section 2 that Operator shall have first received a notice from Township in writing setting forth in reasonable detail the Work required to be performed; and further provided, however, that in no event shall Operator be required to perform work hereunder over and above that needed to restore the Township Road to the condition it was in immediately prior to the Overweight Haulage. Said repair work shall be done under the direction and subject to the approval of the Township.

3. Operator shall:

(a) Provide proper traffic protection at all times while performing any Work.

This protection shall comply with the Pennsylvania Department of Transportation's work area traffic control requirements.

(b) Indemnify, save harmless and defend (if requested) the Township, its officers, agents and employees (collectively, the "Indemnified Parties"), 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 the portion(s) of Township Road and appurtenances to be repaired, by or for Operator, 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 Operator, servants, agents, employees, contractors or representatives, during the performance of the work provided, however, that Operator shall not be liable to the Indemnified Parties pursuant to this Section 3 for any amount in excess of \$1,000,000, in the aggregate.

C) Provide evidence to the Township of public liability insurance for bodily injury and property damage in the minimum amounts of \$500,000 each person, \$1,000,000 each occurrence. The insurance policies shall cover any loss that might occur during the performance of any maintenance or restoration by Operator, 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.

4. In order to guarantee the performance of the covenants and conditions of this agreement, Operator agrees to post a Performance bond with Township naming as surety a surety company licensed to do business in Pennsylvania Said shall be in the amount of _____ Thousand and no/100 (\$ _____,000.00) Dollars, and shall provide Township the guarantee of the performance of this Agreement.

5. Without the prior written consent of the Township, Operator, its employees, agents and/or subcontractors shall not use any other township roads except the Township Road for

Overweight Hauling. The Township must maintain other township roads for the benefit of those residents owning property abutting thereon. If Operator, its employees, agents and/or subcontractors use any other township roads for Overweight Haulage (such use being expressly conditioned upon prior written consent of Township), the term "Township Road" shall be deemed to include such other road and the provisions of Section 2 of this Agreement shall automatically apply.

6. Subject to the strict satisfaction of the express condition precedent set forth in Section 2, Operator shall promptly perform any Work. If the Township determines that Operator is not maintaining or restoring Township Road as agreed in paragraph two and four hereof, Township will notify Operator, in writing, of this determination, operator shall promptly perform the required maintenance and repair.

If Operator, within five (5) business days of its receipt of notification by the Township, fails to commence performance of the Work, the Township may, in its discretion, do any of the following:

(a) Rescind Operator's 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; or

(b) Maintain or restore the portion of Township Road with Operator 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 covered by the terms of this Agreement in order to maintain said road as required by this Agreement.

(2) If a third party does the required repairs, the Township shall request an Invoice.

(3) The Township shall send said Invoice to Operator for said costs with payment due within thirty (30) days.

(4) In the event Operator fails to make said reimbursement, the Township may close said Township Road or rescind Operator's permission to move vehicles or combinations, together with loads, in excess of the posted weight restrictions over and across the Township Road.

7. In the event Operator, after its operation has been completed, fails to complete required Work to the Township Road as required by this Agreement, then the Township may assume said responsibility and operator shall reimburse the Township the cost thereof.

8. Operator 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 Operator's representative shall inspect the Township Road. The Township Road shall be restored to a level consistent with that agreed to in

paragraph two. Thereupon this Agreement shall be terminated and of no further force or effect.

9. The Township may revoke the Operator's Excess Hauling Permit and may pursue whatever legal remedies it deems proper, if it reasonably determines, that Operator is not in compliance with any provision of this Agreement.

10. 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.

11. Operator shall pay one Hundred and no/100 (\$100.00) Dollars for said permit.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Township of Morris has caused this Agreement to be executed on its behalf by the Chairman of its Board of Supervisors and the Township Seal to be hereto affixed and attested to by its Secretary and _____ has caused this Agreement to be executed on his behalf on the day and year first above written.

ATTEST:

MORRIS TOWNSHIP BOARD OF SUPERVISORS

By: _____

Secretary

Chairman

WITNESS:

BY: _____

