



**Sunoco Logistics**  
Sunoco Pipeline L.R

September 26, 2016  
Township of Middletown  
27 North Pennell Road  
PO Box 157  
Lima, Pennsylvania 19037

**RECEIVED**

**NOV 18 2016**

MIDDLETOWN TOWNSHIP

Re: Mariner East 2\_Pennsylvania Pipeline Project-Segment 3  
Letter Agreement (the "Agreement") to Permanent Easement Agreement  
Tract #s PA-DE-0046.0000 (Folio #27-00-00627-99), , PA-DE-0104.0002 (Folio #27-00-01792-01), PA-DE-0104.0003 (Folio #27-00-01819-00) & PA-DE-0104.0004 (Folio #; 27-00-01103-00, & 27-00-01103-01);  
Permanent Access Road Easement Tract #s PA-DE-0076.0002-PAR (Folio #27-00-01199-01), PA-DE-0102.0001-PAR (Folio #27-00-00741-00), & PA-DE-0102.0002-PAR (Folio #27-00-00744-00);  
and to Temporary Construction Access Agreement for Folio Number 27-00-00388-02 situated in Middletown Township, Delaware County, Pennsylvania

Dear Township of Middletown ("you" or "Township"),

You have stated your willingness to grant Sunoco Pipeline L.P. ("SPLP") four (4) permanent easements to be used for the installation of pipelines (the "Pipelines"), three (3) permanent access road easements, and one temporary construction access agreement to be used for the access to the Pipelines during and after construction (collectively, the "Easements") on a portion of your property. The four (4) permanent easements and the three (3) permanent access road easements pertain to property described as: 246.5613 acres, known as Folio #s 27-00-00627-99, 27-00-01199-01, 27-00-00741-00, 27-00-00744-00, 27-00-01792-01, 2700-01819-00, 27-00-01103-00 & 27-00-01103-01 while the temporary construction access agreement applies to that parcel having Folio #27-00-00388-02, which are situated in Middletown Township, Delaware County, Pennsylvania (the "Property"). However, you have requested that additional terms and conditions apply to SPLP's use of the Property.

Accordingly, as an inducement for granting the Easements on your Property to SPLP, you and SPLP agree to the following conditions:

1. During any construction, reconstruction or repairs of the Pipelines (as defined in the permanent easements), either during their initial installation or thereafter, SPLP agrees to maintain such barricades, fences, warning lights and safety devices as are necessary to protect the safety of the public including, but not limited to, by placing safety fencing

along the affected Easements in areas where public access could easily occur on the properties known as "Sleighton Park" and "Linville Tract Open Space", aka PA-DE-0046.0000 and PA-DE-0104.0004.

2. Prior to starting any construction, SPLP shall be solely responsible for obtaining any and all requisite permits required by federal, state and local jurisdictions including, but not limited to, the Pennsylvania Department of Transportation, the Pennsylvania Department of Environmental Protection, the Army Corps of Engineers, the Pennsylvania Public Utilities Commission and the Federal Energy Regulatory Commission.
3. SPLP agrees that during any construction, reconstruction or repairs, no work will occur outside of the allowed time limits, as outlined in Grantor's Ordinance regarding the same, including but not limited to, accessing the property with truck traffic or equipment or preparing machinery to begin construction activities.
4. SPLP agrees that there will be no blasting activities on any premises belonging to Grantor in fee.
5. SPLP will provide, prior to construction, the name and contact information for a single point of contact (Representative) during construction on a 24/7 basis, and a complete list of names and contact numbers of those persons accessible to the Township at any time throughout the construction process.
6. The Township Engineer or his designee (hereinafter Engineer) shall generally monitor construction and restoration work being conducted within the Township by SPLP and oversee all restoration work on Township owned roads and Township-owned properties and facilities, all in accordance with its August 18, 2016 Memorandum that is attached hereto as Exhibit A. Said Engineer shall liaise with SPLP's Representative on a regular basis. The time, frequency and location of those meetings will be mutually agreed upon by the parties. SPLP's Representative will keep the Engineer apprised of any pending road closures due to its construction activities within the Township. Any reasonable concerns that the Engineer has regarding the health, safety and welfare of the citizens of the Township will be presented to SPLP's Representative and addressed by SPLP and/or its Representative in a timely manner.
7. SPLP agrees to reimburse the Township for all reasonable and documented expenses incurred in conjunction with the Easements including, but not limited to, legal fees (including, but not limited to, for the negotiation of the Easements, the review and drafting of any and all documents associated with the Easements, attendance at public and private meetings, and litigation costs and expenses incurred including in opposing the injunction filed against the Township in conjunction with the Easements) engineering fees (including, but not limited to, for the negotiation, review and drafting of documents associated with the Easements, and oversight of the construction and restoration of the Easements and Township property and roads), consultant costs and expenses (including, but not limited to, the charges of all appraisers), and administrative costs and fees. SPLP shall further reimburse the Township for all reasonable and documented expenses

associated with the oversight of any maintenance, repairs and/or replacement of the Pipelines and the use of the Easements. In addition to the above reimbursement, which shall occur promptly after the Township provides the details of its expenses following the execution of the Easements, SPLP shall deposit with the Township the sum of \$20,000 as security for the payment of all Township costs, expenses, charges and fees, which may be incurred by the Township under this letter and/or the Easements (this fund is hereinafter called the "Expense Fund"). SPLP specifically agrees that the Expense Fund may be used to reimburse the Township for any costs and expenses incurred in overseeing SPLP's installation of the Pipelines and the restoration of the Easements, as well as in conjunction with any repairs to any Township facilities that may be damaged by SPLP's activities (which damage shall include damage to Township roads resulting from the weight and frequency of the vehicles used in conjunction with SPLP's activities). In the event that expenditures cause the balance of the Expense Fund to be reduced below twenty-five (25%) percent of its original amount prior to the restoration of all of the Easements and the completion of all requisite repairs to Township facilities, within thirty (30) days of receiving notice from the Township, SPLP shall deposit such additional funds with the Township as are necessary to restore the Expense Fund to its original amount. When all Township costs, expenses and fees for which SPLP is hereby responsible have been paid, the Township shall return the balance in said fund to SPLP.

8. To the extent that any portion of the Easements terminate at or abut a public or private road, SPLP shall install and maintain a gate or similar barrier to prevent unauthorized vehicles from driving onto the Easements.
9. When SPLP's work, either in conjunction with the original installation of the Pipelines or any subsequent repairs or maintenance, is in the vicinity of a public or private road or driveway, SPLP shall position signs that read "WORK AREA AHEAD" on the road or driveway at least 100' away from the work area or at such distances as are required by Pennsylvania law, whichever is greater.
10. To the extent that SPLP places or stores any construction equipment, materials or supplies on any Easement, SPLP shall be solely responsible for the security of such construction equipment, materials and supplies.
11. SPLP shall be responsible for the cost of repairing any and all damage to Township-owned roads, fields, trails and real property that results from the operation of construction equipment and trucks on the roads or on Township owned property in conjunction with the construction of the Pipelines, all in accordance with the Excess Maintenance Agreement between the parties attached hereto as Exhibit B. SPLP shall post a bond in the amount of \$70,000 to secure the proper completion of all repairs to your roads and Township owned property at the end of SPLP's work on the Easements in conjunction with the installation of the Pipelines. The bond shall be in form and content as approved by the Township, and issued by a bonding company authorized to do business in Pennsylvania and acceptable to the Township. This bond shall remain in full force and effect until thirty-six (36) months after the completion of all requisite repairs to Township-owned roads and property to secure the proper completion and functioning of the repairs, after which time the Township shall authorize the termination of the bond.

The amount of the bond shall not be a limitation on SPLP's liability, which is for the full amount of any and all costs and repairs to Township roads and property including, but not limited to, the charges of Engineer and all Township attorney fees. In the event that SPLP replaces or relocates substantial segments of one or more of the Pipelines in the Township, prior to commencing such replacement, SPLP shall post a new bond in an amount determined by the Township to again secure the cost of repairing any damage to any Township-owned roads or property.

- \* 12. As consideration for the grant of the Easements, SPLP shall pay the Township the sum of \$1,800,000 upon the execution and delivery of the Easements and this side letter agreement by the Township.
- 13. SPLP shall prepare any and all applications for requisite highway occupancy permits, temporary driveway permits and similar permits required for SPLP to complete its work. The Township agrees to cooperate with SPLP in the preparation of such applications and to execute and/or submit them as necessary.
- 14. SPLP agrees that prior to placing the Pipelines in service, it shall provide written notice to the Township of the products being transported by the Pipelines so as to facilitate the operations of emergency responders in the Township to any incident involving the Pipelines. Prior to any change in the products being transported, SPLP shall notify the Township of the date of the change and identify the products that will be transported.
- 15. SPLP shall provide the Township with all of Grantee's required and applicable spacing, including depth separation limits and other protective requirements (including Cathodic protection), as set forth in paragraph 7 of the Permanent Easements.
- 16. Time is of the essence to any and all applicable provisions of this Agreement and the Easements. If any provision of any of the Easements or of this side letter agreement is judicially determined to be invalid, all remaining provisions shall remain legally binding and in full force and effect.
- 17. This Agreement shall not be recorded by you or any person acting on your behalf. It is expressly understood that it constitutes a document that must be disclosed under Pennsylvania's open records law if requested, and that Township officials must officially take public action to approve it.
- 18. SPLP shall be responsible for installing and maintaining at least two (2) additional vapor detectors (hydrocarbon detectors) in Middletown Township, as well as any others that SPLP may choose to install and maintain. One shall be at the valve station proximate to Glenwood Elementary School, one shall be at the valve station in Glen Riddle.
- 19. Notwithstanding any language in the Easements, for so long as the Easements are in existence, SPLP shall maintain in force at all times insurance coverage with insurers having AM Best Company's rating of not less than "A-:VII" in a minimum amount of Two Hundred Million Dollars (\$200,000,000.00) to cover any claims arising from the installation or operation of the Pipelines in Middletown Township. An endorsement shall

be added to the policy/policies that names the Township as an additional insured and that provides that the Township shall be provided with at least thirty (30) days notice prior to the non-renewal of the policy/policies. The minimum amount shall be increased annually based on the increase in the CPI-All Urban Consumers for Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD over the prior year. SPLP shall annually provide the Township with an acceptable Certificate of Insurance showing all insurance carriers providing coverage and the coverage limits for each carrier and confirming the continuing endorsement that names the Township as an additional insured.

20. SPLP shall pay for firefighter training at the LNG fire training program operated by Texas A & M University for two (2) Middletown Township firefighters on an annual basis for a minimum of five (5) years. All expenses associated with travel to and attendance at the training program shall be borne by SPLP. In addition, SPLP shall provide semiannual courses for all Middletown Township firefighters on responding to emergencies involving pipelines and the types of products being transported by the Pipelines, and shall provide semiannual training to the operational officers of the Middletown Township fire departments regarding commanding operations at an incident involving a pipeline and the types of products being transported by the Pipelines.

- \* 21. SPLP shall establish a benchmark of the condition, quantity and quality of each and every well that may be affected by the installation and operation of the Pipelines. This benchmarking shall consist of pre-construction testing and post-construction testing. If the quantity and/or quality of the water of any such well is damaged, SPLP shall be fully responsible to restore the same quantity and quality of water to the affected residence, business, or institution, whether by making a connection to the public water supply or by drilling a new well. All costs associated with the restoration of water service shall be borne by SPLP. In the event that a test subsequent to the post-construction testing reveals that the quantity and/or quality of the water has been impacted by the products transported by SPLP or by the construction or operation of the Pipelines, SPLP shall be responsible for the cost of such test and for restoring the quantity and quality of water to the affected residence, business or institution. If a test subsequent to post-construction testing does not reveal any damage to the quantity and quality of the water, SPLP shall have no responsibility for paying for such testing.

- \* 22. SPLP shall be responsible to repair or replace and restore to operating condition any septic system that is damaged or impaired as a result of the installation of the pipeline regardless of whether the damage is located within any easement granted to SPLP. Repair or replacement must be performed in accordance with all Township requirements.

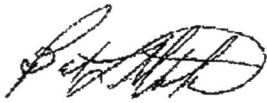
23. SPLP agrees that the provisions of this Agreement shall be binding on SPLP, its successors, heirs, assigns, affiliates, transferees, and any and all successors in interest, and that the Township shall have the right, but not the duty, to enforce any and all obligations undertaken by SPLP in any of the easement agreements entered into by SPLP involving properties located in the Township.

- \* 24. In the event of a conflict between the language of the Easements and this Agreement, the terms of this Agreement shall govern.

25. In the event of a dispute arising out of this Agreement, each side shall bear its own attorney fees and costs.

If the foregoing is acceptable to you, please indicate your agreement thereto by signing three (3) originals of this letter in the space provided below and returning one (1) original to the undersigned. By executing this letter, SPLP and the Township each agree to be legally bound by the terms and provisions of this Agreement.

Sincerely,

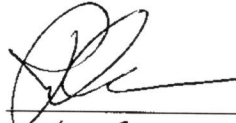


Bart L. Mitchell  
Land Project Manager,  
Representing Sunoco Pipeline L.P.

AGREED:

Township of Middletown

By:



Name: W. BRUCE CLARK  
Title: TOWNSHIP MANAGER  
Date: NOVEMBER 2, 2016



## EXHIBIT A

### Memorandum

To: Middletown Township

Re: Engineering Observation Services for Mariner East II Pipeline

Date: August 18, 2016

Pursuant to the request of Middletown Township for Kelly & Close Engineers to provide Engineering services as they relate to the Sunoco Mariner East II project specific to understanding, monitoring reporting, and to the extent possible controlling, minimizing and abating the impact on the Township roads, opens spaces, public property and appurtenances, the following scope has been developed to be included with the memorandum of understanding:

### Scope of Service

1. Pre-existing conditions file. This file will be developed by physical observation of all areas, roads, and open spaces within the potentially affected areas. The file will include field notes, field sketches, photograph log, video of unusual conditions (i.e. running water, loose manhole etc).
2. Review work schedules and projected schedules and develop an engineering schedule to accurately maintain the pre-existing conditions file.
3. Establish a chain-of-command for reporting. This will include "who reports to who" line of communication. This file will include office phone number, cell phone numbers and e-mail addresses.
4. Hold a Pre-Construction meeting prior to start of work or phase of work directly affecting Township property. The meeting will establish an effective communication chain, outline the scope of work, explain circumstance of the phase of work such as, work hours, storage and delivery of material, delivery routes, emergency procedures, emergency contacts, and potential impact to immediate neighbors, erosion and sediment control measures, notification of neighbors, noise limitations, road or bridge restrictions, conflict resolution, Holiday limitation or restrictions.
5. Daily Monitoring: Kelly and Close will conduct daily observation of work site(s) and record current condition. The daily logs will include existing conditions such as, date, time, temperature, equipment on site, foreman on site, general description of work, unusual conditions. Particular attention will be focused on erosion and sediment control measures, road condition, surrounding

Kelly & Close Engineers

1786 Wilmington Pike

Glen Mills, Pennsylvania 19342

610.358.9363 fax 610.358.9376

area(s) condition and limits of disturbance. A daily monitoring log file will be established and be available for Township review.

6. **Notifications:** When a condition is observed that needs immediate attention or remediation the condition will be documented and reported to the responsible party or parties as established in the pre-construction meeting. These condition may include but are not limited to: potholes, ruts, mud on street, damaged curbs and aprons, failed erosion and sediment control measure, out of allowable limits of noise, out of allowable limits of earth disturbance and work hours, damage to Township owned properties, damage to stormwater or sanitary facilities, damage to overhead utilities.
7. **Report to Township Manager and Council.** Kelly and Close will establish reporting frequency suitable to keep the Township informed of daily progress.
8. Kelly and Close representative will act as an ombudsman to address the immediate concern or questions of the neighbors as they relate to current conditions, project schedule, overall project scope or general information.
9. **Post construction observation.** Kelly and Close will conduct a post construction observation to review, photograph and document the site conditions. Focus will be on stabilization of disturbed area, conditions of roads, curbs, aprons, shoulders, edge of pavement, disturbed landscaping, temporary fencing, temporary signage and any other outstanding condition observed during construction.
10. **Post construction documentation.** Kelly and Close will conduct a review of documents and provide a professional opinion to the close out/final acceptance condition prior to release of financial surety.

### **Out-of-Scope Services**

The following services are NOT included in this scope of work and proposal. If any of the following become required, Kelly & Close shall submit a written proposal and will receive written authorization from the Township, prior to starting the work.

- Preparation of Plans



- Preparation and submission of Erosion and Sediment Control Application and NPDES Plans to PADEP and DCCD.
- Existing Tree Inventory Plan.
- ACOE JD, Bog Turtle Habitat investigations, and any PA-DEP / ACOE General, Individual, or Joint Permits.
- Wetlands or stream delineations.
- PNDI or endangered species surveys.
- Specific performance standard studies.
- Traffic Impact Studies or PADOT HOP Plans for entrance, frontage improvements.
- Historic Studies.
- Water test for wells.
- Hydrogeologic testing and reports.
- Survey work.
- Construction stakeout and survey.
- As-built surveys, as-built plans, as-built certification
- Construction services.
- Phase I, II, or III Environmental Studies
- Method or means of installation of pipelines
- Weld(s) welding or pipe joint integrity inspections or observations
- Excavation, trench integrity inspections or observations
- Confined space entry observation or inspection
- OSHA compliance inspection, observation or notifications
- Any other engineering or related services not specified in the scope of work.

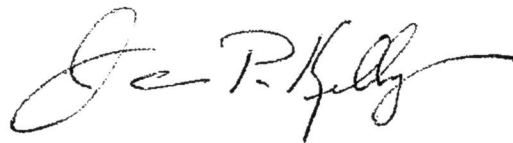
A handwritten signature in black ink, appearing to read "Joe R. Kelly". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

EXHIBIT B

**EXCESS MAINTENANCE AGREEMENT**

PLEASE TYPE OR PRINT ALL INFORMATION IN BLUE OR BLACK INK

---

Agreement Number \_\_\_\_\_ Executed Date \_\_\_\_\_

This Excess Maintenance Agreement ("Agreement") is made and entered into by and between **Middletown Township** and **Sunoco Pipeline L.P.** (hereafter, referred to collectively with its partners, employees, agents, contractors and subcontractors as "**USER**") with offices located at 525 Fritztown Road, Sinking Spring, PA 19608.

**DEFINITIONS**

**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 eight feet between supports (Publication 100A Bridge Management System 2 Coding Manual).

**Excess Maintenance** means maintenance or restoration or both that is in excess of normal maintenance (but not improvements beyond the state of repair existing at the date of the initial inspection) that is necessary to maintain the roadway, shoulders, drainage facilities, and other appurtenances due to traffic and construction related to the installation of a pipeline by **USER**.

**Execution Date** is the date this Agreement has been fully executed by both the **USER** and **Middletown Township**.

**Existing State of Repair** shall be the condition of the highway(s), on the date upon which the initial inspection document is signed by the **USER** and/or **Middletown Township**.

**Highway** means any highway or bridge, under the jurisdiction of **Middletown Township**. Highway shall include the entire width between right-of-way lines over which **Middletown Township** has assumed, or has been legislatively given, jurisdiction.

**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 initial roadway condition survey.

**BACKGROUND**

The **USER** wishes to operate vehicles or combinations, together with loads, and complete construction related to the installation of a pipeline. **Middletown Township** requires the execution of an approved form of security by the **USER** in favor of **Middletown Township**, to cover the costs of excess and preventative maintenance and restoration and all related costs, in accordance with the terms, conditions, and provisions of this Agreement.

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

**Permission to Move Vehicles**

1. **Middletown Township** will allow the **USER** to move vehicles or combinations, together with loads, and complete construction related to the installation of a pipeline in **Middletown Township**. The specific roadways in **Middletown Township** authorized for use are noted below and are more specifically delineated on the attached Exhibit A:

<b>Twsp. Road Name</b>	<b>Twsp. Road Number</b>	<b>Affected Length</b>
1. Valley Road	T-324	1.21 Miles
2. W. Forge Road	T-331	1.17 Miles
3. Riddlewood Drive	T-460	0.03 Miles
4. Martins Lane	T-574	0.07 Miles
5. Mt. Alverno Road	T-401	0.91 Miles
6. East St. Andrews Drive	T-541	0.24 Miles
7. St. Andrews Drive	T-539	0.20 Miles
8. Linvill Road	T-334	0.75 Miles

**Responsibility of USER**

2. The portion(s) of the noted roadway(s) and appurtenances shall be maintained to a level consistent with the existing state of repair at the time of the initial inspection. Preventative Maintenance projects to improve the noted roadway(s) beyond the existing state of repair may be performed pursuant to the authority granted by this Agreement, but **Middletown Township** may not require **USER** to upgrade the condition of the noted roadway(s) beyond the existing state of repair without the **USER's** consent. The **USER** may be required to provide a Maintenance Plan detailing expected maintenance procedures and related items to be employed by the **USER** and made a part of this Agreement as though physically attached. The nonperformance of normal maintenance by **Middletown Township** shall under no circumstances constitute grounds for an offset or credit against any excess maintenance, preventative maintenance or restoration responsibilities of the **USER**.

**Middletown Township**, by and through its designated engineer, shall determine, at its discretion, whether the excess and preventative maintenance and restoration are satisfactory.

**Inspections and Roadway Condition Surveys**

3. The **USER** and **Middletown Township** agree inspections shall be made by **Middletown Township's** consulting engineer in order to determine the condition of the portion(s) of the noted roadway(s) and appurtenances. The inspections should be conducted jointly by **Middletown Township** and the **USER**; however, the absence of the **USER** shall not prevent the inspection from being conducted. **Middletown Township** shall prepare a document describing the condition of the noted roadway(s) and appurtenances together with the nature and extent of any repairs needed to correct any existing damage for which the **USER** may be liable. Photographs and video may also be taken. The documents and photographs and video (if taken), of the initial inspection, shall be incorporated by reference as though physically attached and made a part of this Agreement. The **USER** shall pay all costs associated with the inspections and roadway condition surveys including, but not limited to, the charges of **Middletown Township's** consulting engineer.

- a) **Initial Inspection** - Upon full execution of this Agreement and prior to any hauling activity, an initial inspection shall be made. The inspection is used to determine the existing state of repair of the noted roadway(s) and appurtenances together with the nature and extent of any repairs needed to correct existing damage for which the **USER** will not be liable.

- b) **Interim Inspection - Middletown Township** may, at its discretion, conduct periodic interim or re-inspections to determine the extent of any repairs for which the **USER** may be liable and require immediate attention and to ensure the damages do not exceed the amount of surety provided.
- c) **Final Inspection** - A final inspection of the noted roadway(s) and appurtenances will be conducted to determine the extent of any repairs needed to correct damages for which the **USER** may be liable.
- d) **Roadway Condition Survey - Middletown Township** may conduct frequent, but less detailed surveys of the roadway to determine overall condition and identify any areas in need of repair.

4. 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.

#### **Performance of Excess and Preventative Maintenance and Restoration**

5. Excess and preventative maintenance and restoration shall be performed in accordance with maintenance option B.

#### **OPTION "A"**

The excess and preventative maintenance and restoration shall be performed by **Middletown Township's** maintenance forces and/or a contractor(s) selected by **Middletown Township** through its prescribed procedures. The excess and preventative maintenance and restoration shall be performed to a level consistent with that agreed to in Paragraph 2 (above). The work shall be in conformance with **Middletown Township's** specifications and shall be supervised and inspected by **Middletown Township**.

**Middletown Township** may invoice the **USER** for the estimated cost of repairs using either the latest maintenance contract prices or the latest average monthly maintenance unit prices. These estimated costs shall be computed for all damages noted following the initial roadway condition survey, during interim inspections and/or the final inspection. The **USER** agrees to reimburse **Middletown Township** for all estimated costs. **Middletown Township** will provide a final invoice, or reimbursement for over-payment, when maintenance and/or restoration work have been completed and actual costs are known.

The **USER** shall submit full payment to **Middletown Township** within 60 calendar days from the date of invoice. If the **USER** fails to make full payment, **Middletown Township** may at its discretion exercise its right under paragraph 9 below.

#### **OPTION "B"**

All excess and preventative maintenance and restoration shall be performed by the **USER** and/or its contractor(s), except that if maintenance or restoration is required on an emergency basis, and the **USER** cannot immediately complete such maintenance or restoration, then **Middletown Township**, at its election, may complete the necessary maintenance or restoration at the **USER's** expense. All excess and preventative maintenance and restoration shall be performed to a level consistent with that agreed to in Paragraph 2 (above). The work shall be in conformance with **Middletown Township** specifications.

The **USER** shall notify **Middletown Township** not less than three working days in advance of performing any excess and preventative maintenance and restoration. **Middletown Township** reserves the right to monitor or direct any excess and preventative maintenance or restoration. The **USER** shall reimburse **Middletown Township** for any expenses so incurred by **Middletown Township**. All excess, preventative maintenance, and restoration associated with bridges, shall be specifically developed in a memorandum by **Delaware County** and directed to the **USER** for completion, and the **USER**'s failure to timely comply with such memorandum shall constitute a default hereunder.

If performance **Option B** has been agreed to, the **USER** shall:

- a) Provide proper traffic protection at all times during excess and preventative maintenance and restoration. This protection shall comply with the work area traffic control requirements as contained in the Pennsylvania Department of Transportation's specifications (*Publication 408 and supplements thereto and the Pennsylvania Department of Transportation's Publication 213*).
- b) Provide proper environmental and erosion and sedimentation controls in accordance with Publication 408, Section 107.
- c) Comply with the requirements of 25 Pa Code Chapter 102, *Erosion and Sediment Control and Stormwater Management*, 25 Pa Code Chapter 92a, *National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance*, 25 Pa. Code Chapter 105, *Water Obstruction and Encroachment Permitting*; and any other applicable Federal, State, or local laws, ordinances or regulations.
- d) Obtain all applicable permits and comply with the conditions included in said permits.
- e) Indemnify, save harmless, and defend (if requested) **Middletown Township** and its officers, agents, and employees, from all suits, actions, civil penalties, or claims of any character, name, or description brought for or on account of any violation of law/permit, injuries, death, or damages received or sustained by any person, persons, or property, during the performance of the work on portion(s) of the noted roadway(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. In addition to any notice provided by a third party insurance company, the **USER** shall also notify **Middletown Township** of any change in insurance coverage, including but not limited to the **USER**'s cancellation of its policy. In no event shall any maintenance or restoration activities be performed by the **USER**, or its officers, agents, employees, contractors, or representatives, without the requisite level of insurance and there shall be no lapse in coverage at any time during the duration of this Agreement.
- f) Provide evidence to **Middletown Township** of public liability insurance for bodily injury and property damage in the minimum amounts of \$500,000 per each person and \$2,000,000 each occurrence. This insurance shall be occurrence based. The insurance policy shall cover any loss that might occur during the performance of any excess and preventative maintenance or restoration by the **USER**, or its officers, agents, employees, contractors, or representatives. **Middletown Township** 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 canceled without thirty (30) calendar days' advance written notice of such change or cancellation, excepting fifteen (15) days' advance written notice of cancellation for nonpayment of premium. This advance written notice of

change or cancellation shall be forwarded to **Middletown Township's** office, 27 N. Pennell Road, Media, Pennsylvania 19063.

- g) Within three days of receiving notice from **Middletown Township**, perform excess and preventative maintenance and restoration as needed pursuant to the requirements included in paragraph 2 above; provided, however, that if excess and preventative maintenance and restoration is required on an emergency basis to correct a potential safety hazard, such work shall be completed immediately by the **USER**, and if the **USER** cannot immediately complete such work, **Middletown Township**, at its election, may complete such work at the **USER's** expense. If **Middletown Township** determines that the **USER** is not maintaining or restoring the portion(s) of the noted roadway(s) and appurtenances to the level agreed to in Paragraph 2, **Middletown Township** will notify the **USER**, in writing, of this determination and the **USER** shall promptly perform the required excess maintenance, preventative maintenance or restoration.

### Security

6. To secure the performance of the **USER's** obligations, the **USER** shall execute and deliver to **Middletown Township** the following type(s) of security in the amount of \$70,000.00:

- A. Irrevocable Letter of Credit
- B. Performance Bond
- C. Other Security Acceptable to Middletown Township

**USER** agrees that, in the event **USER** breaches this Agreement or fails to perform satisfactorily under this Agreement, **Middletown Township** shall have the following remedies after ten (10) days' prior written notice thereof to **USER**; and if after such written notice the User has failed to cure or commenced to cure and proceed diligently therewith:

- a) Issue no further permits and revoke previously issued permits upon which substantial work has not been performed, and issue a "stop work" order in conjunction with any construction being performed by the **USER** on the pipeline(s);
- b) Apply the collateral security provided by this paragraph to the costs to complete the improvements at then-current costs for same as estimated by the **Middletown Township Engineer** before further building or construction may be done;
- c) Complete the work itself and collect the actual cost and reasonable expenses and fees (including attorney's fees) and bill the costs thereof to **USER** from the bond provided by the **USER** to **Middletown Township**;
- d) Seek such other legal or equitable relief as may be available, including, but not limited to, injunctive measures;
- e) Seek monetary damages from **USER** to the extent of the reasonable costs and damages as may be estimated by the **Middletown Township Engineer** or other parties; including in said damages any and all reasonable expenses and fees (including attorney's fees) for securing such monetary damages.
- f) Any or all of the above remedies may be employed by the Township at its option.

### Liability of USER

7. The **USER** shall be liable for any and all costs of excess and preventative maintenance and restoration and all other expenses incurred pursuant to this Agreement, including but not limited to costs related to inspections, roadway condition surveys and administration costs. The **USER** agrees that **Middletown Township** is under no obligation to prove that the **USER** caused the damage.

The **USER** agrees to pay all invoices promptly.

The **USER'S** liability shall not be limited to the total amount of security provided.

The **USER** shall be responsible for third party vehicle and property claims that arise as a result of the **USER** activities.

### Termination

8. The **USER** and **Middletown Township** retain the right to terminate their future obligations under this Agreement at any time by submitting a written notice of intent to terminate; provided, however, that in the event that the **USER** terminates its future obligations under this Agreement, it may not move vehicles or combinations on the roads as set forth in paragraph 1 as of the date of termination. As soon as possible after receipt of such notice and the passage of the date of termination, **Middletown Township** and the **USER** shall conduct a final inspection of the noted roadway(s) and appurtenances.

The noted roadway(s) and appurtenances shall be restored to a level consistent with that agreed to in Paragraph 2 (above). Restoration shall be performed by the party(s) agreed to in Paragraph 5 (above).

Upon notice of completion of all required work and reimbursement of all costs incurred by **Middletown Township**, this Agreement shall be terminated and of no further force or effect; provided, however, that the **USER** shall be responsible for guaranteeing for a period of eighteen (18) months following the termination of this Agreement that any and all restoration is to the level consistent with that agreed to in Paragraph 2 (above), and all security delivered to **Middletown Township** by the **USER** shall remain in place to secure such guarantee. During such eighteen (18) month period, if **Middletown Township** determines that any restoration is not to the requisite level, it shall notify the **USER**, which shall be responsible for correcting such deficient restoration, and if the **USER** does not timely complete such a correction, **Middletown Township** may do so at the **USER'S** sole cost and expense and may draw upon the security for the cost of such work.

### Remedies

9. If the **USER** fails to comply with any provisions of the Agreement, **Middletown Township** may at its discretion:

- a) Notify the **USER** of noncompliance with the Agreement;
- b) Require additional security pursuant to Paragraph 11, below;
- c) Require additional plans or details to show how the **USER** will restore compliance with this Agreement;
- d) Suspend the **USER'S** permission to move vehicles or combinations, together with loads, over and across any roadway(s) noted in Paragraph 1 until the **USER** is in compliance with this Agreement;

- e) Revoke the **USER's** permission to move vehicles or combinations, together with loads, over and across any roadway(s) noted in Paragraph 1.
- f) Elect to maintain or restore the portion(s) of the noted roadway(s) and appurtenances with the **USER** reimbursing **Middletown Township** for all costs so incurred;
- g) Proceed against security provided pursuant to Paragraphs 6 and 11 (below);
- h) Terminate this Agreement pursuant to Paragraph 8;
- i) Any other remedies allowed by law; or
- j) Any or all of the above.

### **Closing of Highways**

10. This Agreement shall not prohibit **Middletown Township** from closing a highway or bridge to any vehicle or combination 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.

### **Additional Security**

11. **Middletown Township** shall have the right to require additional security upon that date **Middletown Township** determines, in its discretion, that the aggregate amount of damage to the noted roadway(s) exceeds 75% of the face amount of the security furnished. If additional security is required, it shall be retained by **Middletown Township** until all excess maintenance and/or restorations have been completed. Failure to provide such additional security as is required shall constitute a breach of this Agreement.

### **Compliance with all Federal, State, and Local Law**

12. If the **USER** is notified by any federal, state, or local agency that it is not in full compliance with any federal, state, or local law, regulation, or ordinance associated with excess and preventative maintenance and restoration, the **USER** shall immediately correct any such violation or deficiency and shall cease all excess and preventative maintenance and restoration until the **USER** is in full compliance. The **USER** shall provide **Middletown Township** with written notice within one working day of any such notification.

### **Non-waiver**

13. The failure by **Middletown Township** to require performance by the **USER** of any provision of this Agreement shall not affect **Middletown Township's** right to require performance at a time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default, or a waiver of the provision itself.

### **Severability**



14. If any provisions of this Agreement are held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

**Choice of Law and Forum**

15. This Agreement shall be interpreted under the laws of the Commonwealth of Pennsylvania. Venue for any dispute arising under this Agreement shall be in the Delaware County Court of Common Pleas.

**Agreement Supplementation**

16. This Agreement and the exhibits attached hereto constitute the entire Agreement between the parties and may not be transferred or assigned without the prior written consent of the parties hereto. This Agreement may be modified or amended by letter amendment to add or subtract routes, increase or decrease the security amount or type, or amend any maintenance plan submitted pursuant to this Agreement or its exhibits.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

USER Phone Number: \_\_\_\_\_ USER Fax Number: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Signature Date BY Signature Date

\_\_\_\_\_  
Attest Title Authorized Signatory Title

*If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a Sole Proprietorship, only the owner must sign; if a Partnership, only one partner need sign; if a Limited Partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.*

**DO NOT WRITE BELOW THIS LINE - FOR MUNICIPALITY USE ONLY**

Middletown Township

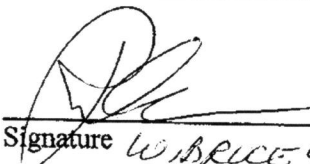
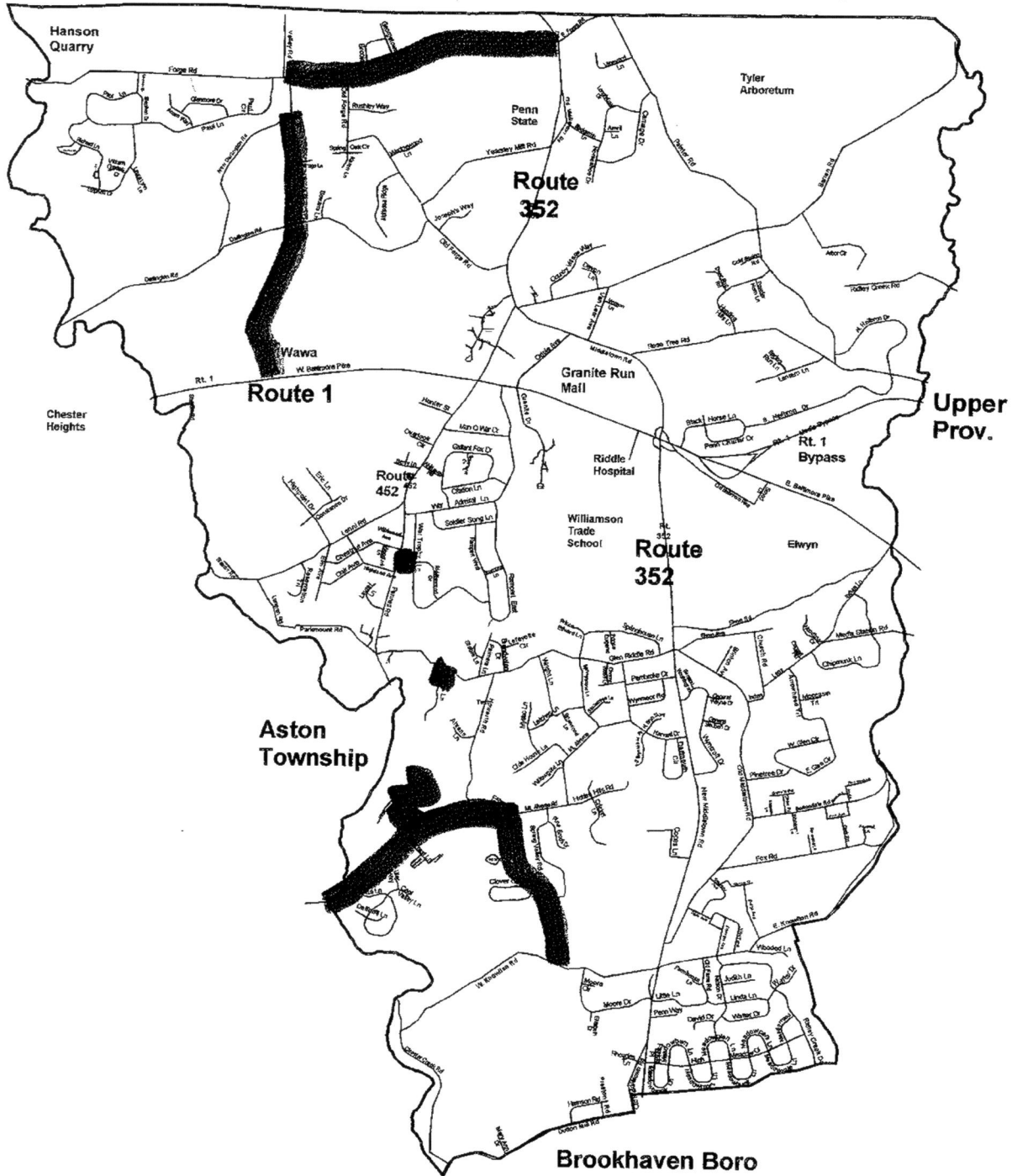
By:   
Signature W. BRUCE CLARK 11/2/2016 Date  
TOWNSHIP MANAGER

EXHIBIT "A"

Thornbury Township

Edgmont Township



Upper Prov.

Aston Township

Brookhaven Boro



Middletown Township