

**COOPERATION AGREEMENT BETWEEN BOROUGH OF PORTAGE AND THE  
MUNICIPAL AUTHORITY OF THE BOROUGH OF PORTAGE WATER  
DEPARTMENT FOR THE PURPOSE OF SHARED SERVICES RELATED TO THE  
USE OF EQUIPMENT AND MANPOWER OF THE OTHER MUNICIPAL ENTITY  
UNDER APPROPRIATE CIRCUMSTANCES**

MADE this 7TH day of OCTOBER, 2010, by and between the BOROUGH OF PORTAGE, County of Cambria and State of Pennsylvania, hereinafter known as "Borough",

AND

The Municipal Authority of the Borough of Portage Water Department, County of Cambria and State of Pennsylvania, hereinafter know as "Authority":

WHEREAS, the BOROUGH OF PORTAGE and The Municipal Authority of the Borough of Portage Water Department have determined that the residents and customers of each municipal entity can be best served by entering into a formal agreement permitting each municipal entity to utilize and share equipment and manpower of the other municipal entity under appropriate circumstances;

WHEREAS, it is recognized that effective planning and cooperation can best be achieved in accordance with the provisions of the Intergovernmental Cooperation Law, Act of 1996, Dec. 19, P.L. 1158, No. 177, § 1, (53 Pa.C.S.A. § 2301 et seq.) as amended, and the Municipality Authorities Act (53 Pa.C.S.A. § 5601 et seq.) as amended, and that pursuant to the provisions of said Acts, BOROUGH OF PORTAGE and The Municipal Authority of the Borough of Portage Water Department deem it mutually beneficial to shares services related to the use of equipment and manpower of the other municipality under appropriate circumstances;

WHEREAS, the terms and conditions are agreeable to the BOROUGH OF PORTAGE and The Municipal Authority of the Borough of Portage Water Department; and BOROUGH OF PORTAGE and The Municipal Authority of the Borough of Portage Water Department are agreeable to and desirous of permitting the sharing/lending of equipment and appropriate personnel and

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

1. The BOROUGH OF PORTAGE and The Municipal Authority of the Borough of Portage Water Department agree to the reciprocal lending of equipment between and among the two municipal entity in order to best serve the residents and customers of each municipal entity, subject to the following conditions:
  - a. Any equipment which is loaned/leased shall be without an operator.
  - b. In the event an operator accompanies the equipment, the receiving municipal entity shall be responsible to reimburse the lending municipal entity at the lending municipal entity's normal rate of pay for that operator. This "reimbursement" shall obligate the receiving municipal entity to loan/lease the owed lending municipal entity future equipment and operator, if requested, with the intent being that the Parties shall attempt to achieve an equal benefit from the relationship.

- c. Any loaning/leasing of equipment shall be of a short-term nature only and shall not exceed one week in nature without prior approval of each municipal entity.
  - d. There shall be no change in ownership of any of the leased/loaned equipment.
2. In the event of any loss incurred or damage caused to any person, property and/or the loaned/leased equipment, the party causing the damage shall be responsible for any and all damages to any person, property and/or the loaned/leased equipment and shall reimburse the other party(s) for any and all costs and/or expenses. The party causing the damage agrees to accept all responsibility for, and indemnify, defend, release, and save harmless the other party(s) and its officers, elected and appointed officials, employees, representatives, agents, servants, assigns, contractors, and related entities and each of them, from and against any and all liability, suits or actions, damages, claims, demands, judgments, losses, liabilities, interest, legal or administrative proceedings, costs and expenses of whatsoever kind or nature arising out of the actions of the party causing the damage, including attorney's fees, in any lawsuit, including appeals.
  3. The employer/municipal entity is required to maintain workers' compensation coverage for their own employees in accordance with subsequent provisions of this Agreement.
  4. Any consideration payable hereunder to either municipal entity by the receiving municipal entity shall be payable within fifteen (15) days of the date of the invoice from the lending municipal entity.
  5. The term of this Agreement shall be month to month commencing on the date set forth herein. This Agreement, however, may be extended by mutual agreement of the parties hereto and shall continue in full force and effect on a monthly basis unless terminated by either party by thirty (30) days written notice delivered to either municipal entity at its regular business address. However, in the event any municipal entity ceases to exist, this Agreement shall terminate effective upon receipt of notice to the other party, or upon filing of formal documents terminating the existence of either municipal entity, with the option that the surviving municipal entity may decide to continue the relationship. Any notice required to be given under the terms of this Agreement shall be in writing and mailed to the recipients at their last known addresses or delivered in person. If sent by registered or certified mail, such notice shall be effective when mailed, otherwise, it shall be effective upon delivery.
  6. The parties acknowledge that this Agreement is intended for the purpose of loaning/leasing/lending equipment or labor, and the employees of either municipal entity shall at no time be deemed employees of the receiving municipal entity. Any member of the lending municipal entity providing services pursuant to this Agreement shall remain an employee of the lending municipal entity for the purposes of any activity under this Agreement and the lending municipal entity shall maintain and be responsible for all employee compensation, benefits, insurance and other incidentals of employment, including but not limited to, workmen's compensation benefits. The preceding sentence is subject to

the Parties agreeing that the lending municipal entity can invoice the receiving municipal entity for its actual cost of supplying the employee/operator.

7. Nothing in this Agreement shall prevent the members of either municipal entity from being covered by an applicable policy of insurance insuring the receiving municipal entity and/or related entities based upon the contractual and/or agency relationship which will exist pursuant to this present contract.
8. Any employee of either party to this Agreement shall remain an employee of that Municipal entity for the purposes of any activity under this Agreement and each party shall maintain and be responsible for all employee compensation, benefits, insurance and other incidents of employment including but not limited to workmen's compensation benefits. No municipal employee assigned under this Agreement shall be deemed to be an employee of the other municipal entity.
9. Each party shall provide such liability and other insurance appropriate to protect against any claims arising out of that party's performance under this agreement and not otherwise provided. All parties to this agreement shall have all rights and liability protection afforded by the statutes of the Commonwealth of Pennsylvania. Nothing in this agreement shall be construed to limit the immunity of any party municipal entity. The receiving municipal entity shall hold harmless and indemnify the lending municipal entity, its officers, directors, agents and employees from and against all claims by third parties, damages and losses, including costs, expenses and attorney's fees related to or resulting from any injury to any person or damage to property which may arise out of the rendering of services under this Agreement, unless said lending municipal entity, or its officers, directors, agents and/or any of the lending municipal entity's employees, is the party causing the damage.
10. The parties hereto agree that each shall maintain liability insurance on its own employees and each shall be solely responsible for the liability created by the action of its employees as same may be imposed pursuant to title 42 Pa. C.S. Section 8542. This agreement is intended solely for the mutual benefit of the parties hereto and is expressly not intended to provide any tort or contractual remedy to any third party beyond those provided by statutes.
11. Failure of either party at any time to enforce any provision of this agreement or to require performance by employees of any provision hereof shall in no way affect the validity of this agreement or any part hereof or the right of the parties thereafter to enforce their rights hereunder. Nor shall it be taken to constitute a condonation or waiver by the parties of that default or any other or subsequent default or breach.
12. Except as set forth herein, no rights of any kind under this agreement shall, without the prior written consent of each party, be transferable to or assignable by either party to any person or entity, or be subject to alienation, incumbrance, garnishment, attachment, execution or levy of any kind, voluntary or involuntary. This agreement shall be binding upon and shall inure to the benefit of each party, their successors and assigns.

13. This agreement constitutes the entire understanding and agreement among the parties hereto considering the subject matter hereof. All negotiations among the parties hereto concerning the subject matter hereof are merged into this agreement, and there are no representations, warranties, covenants, understandings or agreements, oral or otherwise, in relation thereto among the parties hereto other than those incorporated herein. Nothing expressed or implied in this agreement is intended or shall be construed so as to grant or confer on any person, firm or corporation other than the parties hereto, any rights or privileges hereunder. No supplement, modification or amendment of this agreement shall be binding unless executed in writing by each party hereto.
14. If any part or provision of this Agreement is found or declared to be in contravention of any part or provision of any prior or written agreement between the parties hereto, the part(s) and/or provision(s) shall be construed, if possible, so that effect may be given to both. If the part(s) and/or provision(s) are irreconcilable, the lending municipal entity shall have the sole discretion to determine which provision(s) and/or part(s) shall be given effect.
15. FORCE MAJEURE: Notwithstanding any other provision of this Agreement, no party hereto shall be responsible in damages to the other for any failure to comply with this Agreement resulting from an act of God or riot, sabotage, public calamity, flood, strike, or other event beyond its reasonable control. The party having the responsibility for the facilities, equipment or property affected, however, shall proceed promptly to remedy the consequences of such event.
16. AGENCY. The parties acknowledge that any Party is not an agent of the other Party(s); and that each party's sole purpose of entering into this Agreement is to provide a service to the other Parties.
17. COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall provide, apply/infer that either party is authorized to engage in any conduct which is not in compliance with all federal, state, and local laws, rules and regulations that presently exist and/or are adopted/amended in the future.
18. JOINT PREPARATION. This Agreement is to be deemed to have been prepared jointly by the parties hereto and any uncertainty and/or ambiguity existing herein or if any, shall not be interpreted against any party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements.
19. HEADINGS. The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.
20. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

21. MODIFICATION. This Agreement may not be modified or amended except in a writing signed by all Parties hereto.
22. DISPUTES. The Court of Common Pleas of Cambria County, Pennsylvania, shall have jurisdiction over any irreconcilable dispute or disagreement between the Parties hereto arising out of interpretation of this Agreement or any matters herein set forth. This Agreement shall be interpreted to have been mutually drafted by the Parties hereto.
23. PENNSYLVANIA LAW. This Agreement shall be construed according to, be subject to and be governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have hereunto set their hands and seals the day and year first above written.

ATTEST:

BOROUGH OF PORTAGE

By: Michelle Carr  
Secretary

By: Shaun M. McGehee  
(Vice) Chairperson

(Seal)

ATTEST:

THE MUNICIPAL AUTHORITY OF THE  
BOROUGH OF PORTAGE WATER DEPARTMENT

By: Dennis Beck  
(Assistant) Secretary

By: Raymond A. Volz  
(Vice) Chairperson

(Seal)