

AGREEMENT

THIS AGREEMENT, made this 27th day of JUNE, 2004, by and between **THE MUNICIPAL AUTHORITY OF THE BOROUGH OF PORTAGE**, a Pennsylvania municipal corporation, having a principal office at 606 Cambria Street, Portage, PA 15946, hereinafter referred to as "Authority"

AND

BOROUGH OF PORTAGE, a political subdivision of the Commonwealth of Pennsylvania, County of Cambria and State of Pennsylvania, hereinafter called "Borough".

WITNESSETH: That for and in consideration of the mutual covenants, payments and agreements hereinafter set forth the parties agree as follows:

1. **PURPOSE.** The purpose of the Agreement is to confirm the understanding between the parties applicable to insurance, maintenance, and repair costs applicable to the roller which is jointly owned by the Borough and the Authority.
2. **STANDARD OF SERVICES.** The parties shall perform the services required hereunder in accordance with all federal, state, and local laws, rules, and regulations.
3. **DUTIES AND RESPONSIBILITIES.** It is specifically understood that the Parties' duties and responsibilities shall consist of the following:
 - A) The parties shall share the cost of insurance, repairs, and maintenance equally;
 - B) Prior to expending any monies, each party shall obtain the written consent of the other party applicable to any needed repairs and/or maintenance;
 - C) Any party who fails to obtain the prior written consent of the other party referenced in the preceding paragraph shall be solely liable for the cost of the repairs and/or maintenance; and
 - D) The Parties agree to equally share any cost, payable to a third party (i.e. rental or lease payments), related to winter storage of the vehicle. Any party who fails to obtain the prior written consent of the other party referenced in this paragraph shall be solely liable for the cost.
4. **TERM.** The term of this Agreement shall be the useful life of the roller and shall be binding upon the Parties hereto, their respective successors and assigns. The term of this Agreement shall begin on the date hereof. Either party shall have the right to terminate this Agreement by providing written notice to the other party by certified mail, return receipt requested, not less than thirty (30) days prior to the effective date of the termination. Upon termination each Party shall own fifty (50%) percent of the roller, and unless the parties can reach an amicable settlement, the roller shall be sold and the

proceeds divided equally between the parties. Prior to the aforementioned sale, if one of the parties hereto desires to reimburse the other for its fifty (50%) percent interest therein, the fee therefor shall be set at one-half (1/2) of the appraised value of same. Any sale shall comply with the Portage Borough Charter.

5. **LIABILITY.** 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. This provision 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.

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 either party.

6. **FORCE MAJEURE.** Notwithstanding any other provision of this Agreement, no party hereto shall be responsible for 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 affected, however, shall proceed promptly to remedy the consequences of such event.

7. **INDEMNIFICATION.** Each party, its successors and assigns, shall protect, defend, indemnify and hold harmless the other party, its elected and/or appointed officials, officers, members, employees, agents, attorneys, contractors and subcontractors, from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions, including attorney's fees, in any lawsuit, including appeals, for personal injury to or death of any persons or persons, or loss or damage to property arising out of:

(a) the negligence or willful misconduct, tortious activity, error or omission of that party or its successors or assigns, or any of its officers, agents, employees, contractors or subcontractors in connection with the obligations or rights under this Agreement.

8. **NO ASSIGNMENT; SUCCESSORS AND ASSIGNS.** 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 for shall be binding upon and shall inure to the benefit of each party, their successors and assigns.

9. **ENFORCEMENT AND VALIDITY OF AGREEMENT.** Failure of either party at any time to enforce any provision of this Agreement or to require performance by a party of any provision hereby 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

subsequent default or breach.

10. CONFLICT AMONG AGREEMENTS. 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.

11. NOTICES. All notices required hereunder shall be given/delivered by either certified mail (postage pre-paid), or personal service or facsimile transmission, and shall be addressed as follows:

Municipal Authority of the Borough of Portage
606 Cambria Street
Portage, PA 15946

Borough of Portage
721 Main Street
Portage, PA 15946

12. AGENCY. The parties acknowledge that no party is an agent of the other party.

13. 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.

14. NON-EXCLUSIVE REMEDY. No right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any right or remedy, and every right and remedy shall be cumulative and in addition to any other right or remedy given by this Agreement or now or hereafter existing at law or in equity. The failure of either party to insist upon the strict performance of any obligation shall not be deemed a waiver thereof.

15. PRIOR AGREEMENTS. All prior agreements/contracts between the parties are not repealed by the terms and provisions of this Agreement, and shall survive and/or remain enforceable.

16: 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.

17. SEVERABILITY. Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

18. HEADINGS. The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

19. EFFECTIVE DATE. This Agreement shall become effective immediately upon signing by the Parties to the Agreement.

20. WAIVER. The failure of a party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions hereto shall not be construed as a waiver of any of its rights hereunder. Neither party hereto waives any rights or immunities arising out of any applicable governmental immunity, laws and/or statutes.

21. 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.

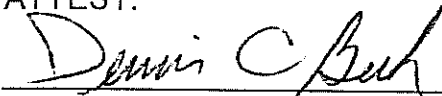
22. MODIFICATION. This Agreement may not be modified or amended except in a writing signed by the parties hereto.

23. DISPUTES/JURISDICTION/VENUE. The Court of Common Pleas of Cambria County, Pennsylvania, shall have jurisdiction/venue 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.

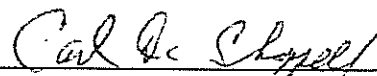
24. PENNSYLVANIA LAW. This Agreement shall be construed according to, be subject to and be governed by the laws of the Commonwealth

Municipal Authority of the Borough of Portage

ATTEST:




Authority Secretary
(Seal)

By: 

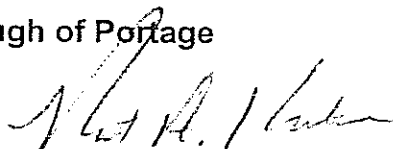
Name: CARL D. CHAPPELL
Title: PRESIDENT

Borough of Portage

ATTEST.



Borough Secretary
(Seal)

By: 

Name: ROBERT A. KOBAN
Title: BOROUGH MANAGER