

COUNCIL OF THE BOROUGH OF PROSPECT PARK
PASSAIC COUNTY, NEW JERSEY

RESOLUTION NO. 2020-43

**TITLE: RESOLUTION APPROVING AND AUTHORIZING
EMERGENCY CONTRACTS FOR SNOW REMOVAL SERVICES**

WHEREAS, an emergency has arisen with respect to the recent winter storm, which produced a significant accumulation of snow, creating the emergent need to retain outside snow removal contractors to remove snow from Borough streets in a timely fashion, and to prevent a public health and safety concern to local residents; and

WHEREAS, the snow removal services are classified as an emergency in accordance with N.J.S. A. 40A:11-6; and

NOW, THEREFORE, BE IT RESOLVED, that the following listed vendors for emergency snow removal services are hereby awarded to the vendors listed below:

Contract not to exceed

P. Park NJ LLC.
1750 New Highway
Farmingdale, NY 11735

\$ 13,200.00

A&C and Sons Trucking LLC
106 No. 17th Street
Prospect Park, NJ 07508

\$ 19,802.50

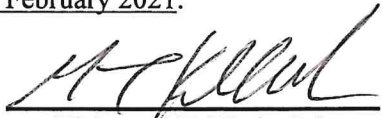
DTS Trucking LLC
65 Royal Avenue
Hawthorne, NJ 07506

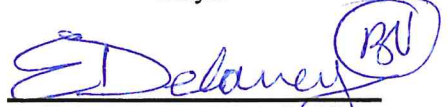
\$ 6,600.00

BE IT FURTHER RESOLVED, that the Chief Financial Officer has certified funds that are available contingent upon the Borough Council appropriating such in account # 1-01-122-279 of the 2021 Temporary Budget.

I hereby certify that this resolution, consisting of 2 page(s), was adopted at a Meeting of the Borough Council of the Borough of Prospect Park, held this 22nd day of February 2021.

	Moved	Second	Ayes	Nays	Abstain	Absent
Ortiz			✓			
Artis			✓			
Hussain			✓			
Matari			✓			
Perez		✓	✓			
Shah	✓		✓			


Mohamed T. Khairullah
Mayor


Erin Delaney, MPA, RMC
Municipal Clerk

RENTAL AGREEMENT

Lessor: <u>P.Park NJ LLC</u>	Agreement No.: <u>21-0001-01</u>
Lessee: <u>Borough of Prospect Park, New Jersey</u>	Agreement Date: <u>2/2/2021</u>
Address: <u>106 Brown Avenue</u> <u>Prospect Park, NJ 07508</u>	Contact: <u>Intashan Chowdhury</u>
Telephone: <u>973-790-7902</u>	Email: <u>chowdhuryi@prospectpark.net</u>

P. Park NJ, LLC ("Lessor") proposes to rent Lessee Equipment subject to the terms and conditions set forth in this Rental Agreement:

RENTAL RATE: Lessee agrees to pay a RENTAL RATE of \$300.00 per ☒ HOUR ☐ WEEK ☐ MONTH from the date of delivery of the Equipment until the date the Equipment is returned to us at the following location: **100 Planten Ave, Prospect Park, NJ 07508**. Rental rates expressed in this agreement are based on a normal work day of (8) hours and a normal work week of (5) days. Monthly rates are based on (22) days in any one thirty consecutive day period. All equipment must be returned grout, oil and debris free. Any damage to the finish from removing grout, oils or debris will be charged extra to restore equipment finish, such as paint and steel finish. There is a pressure washer onboard for your convenience.

ON-SITE STARTUP TRAINING Service technician for assistance with set up, installation and training – straight time at \$ N/A /hr, OT at \$ N/A /hr, Sundays and Holidays at N/A /hr. **Plus all travel expenses.** Our tech on job for mobilization and demobilization.

EQUIPMENT OPERATOR Local Union Operating Engineer -Straight time at \$ Included in Rental /hr. -OT at \$ Included in Rental /hr.

CASING & TOOLING Supplied casing and tooling will be in "like new" condition with new cutting teeth. All connections will be fully operational and free of grout and debris. All casing and tooling is to be returned in like condition, new cutting teeth, fully operational with connections free of grout and debris, etc. Casing and tooling will be inspected upon return. Failure to return casing and tooling in satisfactory condition will result in additional charges.

TRANSPORTATION CHARGES Lessee shall pay all transportation charges to the place of delivery and to the place of return 100 Planten Ave, Prospect Park, NJ 07508
Low Bed Moves: \$ N/A (Minimum of 4 hrs. weekday & 8 hrs. weekend. Each way. Plus permits, escorts & tolls)
Boom Truck / Flat Trailers: \$ N/A /hr. (Minimum of 4 hrs. weekday & 8 hrs. weekend. Each way)

Transportation charges include but are not limited to escorts, tolls, permits and waiting onsite. Lessee must account for adequate time for Lessor to acquire necessary permits when requesting mobilization and demobilization of rental.

FUEL Billed upon return at \$ 6.00 /gallon if not returned full.

PAYMENT TERMS: Lessee agrees that it shall pay all invoices in full within thirty (30) days of the date on the invoice. All invoices not timely paid shall incur interest at the lesser rate of 1.5% per month, compounded monthly, or the maximum rate permitted by law, from the date any payment is due until the date payment is received by Lessor. Post-judgment interest at 1½% per month, compounded monthly, will apply to any judgment in favor of Lessor relating to or arising out of this Rental Agreement or the Equipment.

DEFAULT BY LESSEE:	Should Lessee default under any of the terms of this Rental Agreement, (1) Lessor shall be entitled to immediately re-take possession of all Equipment rented hereunder and (2) Lessee shall be liable to Lessor for all costs, fines, damages and expenses incurred as a result of such default including, but not limited to, all attorneys' fees incurred (a) as a result of the default, (b) in enforcing any of the terms of this Rental Agreement and/or (c) in collecting any sums due hereunder.
USE OF EQUIPMENT:	<p>Prior to accepting delivery of the Equipment, Lessee shall thoroughly inspect same. By accepting delivery, Lessee shall be conclusively deemed to have thoroughly inspected the equipment and acknowledged that the Equipment was delivered in good working order and without any damage. Lessee agrees (1) that it shall only use the Equipment in the proper manner, (2) that it shall only permit experienced and competent individuals to operate the Equipment, (3) that it shall be solely responsible to obtain all operating permits and (4) that it shall be solely responsible to protect and secure the Equipment and maintain the Equipment in good working order. Lessee shall not cause any damage in excess of ordinary wear and tear to the Equipment. Lessee agrees that it shall be solely responsible for all loss or damage caused by accidents or motor, engine or other troubles or defects with the Equipment (even where Lessor supplies Equipment Operator). If at the time Lessee returns the Equipment, any of the Equipment is damaged, is in disrepair and/or is not in working order, Lessee shall immediately be liable to Lessor for the lesser of (a) the cost of fully repairing the Equipment and removing all damage thereto or (b) the Replacement Cost of Equipment set forth above.</p> <p>Lessee understands that in addition to being liable for the lesser of the cost to repair or replace the Equipment, rental charges shall continue to accrue at the RENTAL RATE set forth above until the Equipment is fully repaired or replaced and that Lessee shall be solely liable for such continued rental charges. Lessee also agrees that when it returns the Equipment, the fuel in the tank of the Equipment shall be equal to or greater than the Current Fuel Level set forth above or Lessee shall immediately be liable to Lessor for the difference in fuel cost between the Current Fuel Level and the amount of fuel in the tank of the Equipment when it is returned by Lessee. Lessee may only use the Equipment at the Project set forth above and may not move the Equipment from such Project without Lessor's express written consent.</p>
OPERATOR	Lessor will provide certified trained operator. Lessee is responsible for placing operator on their company payroll for the duration of rental.
DAMAGES:	Lessee is responsible for any damages incurred to the equipment including but not limited to the following: Wear on Kelly Bar Keys and Drive Head Keys. Damage (scuffs, kinks, etc.) Wire Rope, Kelly Rope, Winch Rope. Grout covered glass, broken glass.
JOB BREAKDOWNS:	If any of the Equipment breaks down on the job, Lessor shall have the option to (1) request the Lessee to make the required repairs, (2) send a serviceman to make the repairs or (3) replace the Equipment with another unit. All repairs resulting from normal wear and tear, excluding Lessee labor, will be Lessor's responsibility. Lessee shall be liable to Lessor for all repairs resulting from operation or handling causing damage exceeding normal wear and tear. Lessor is not responsible for any charges that the Lessee may incur because of mechanical malfunction of the Equipment, and Lessor shall not in any manner be charged or held liable for any back charges whatsoever or any direct, indirect, special or consequential damages.
EQUIPMENT SERVICE:	Equipment will be fully serviced and operational prior to delivery. Lessee is responsible for greasing and all PM services. (Note. First PM service is due after 250 hours of use from equipment hours listed above.
EQUIPMENT PERFORMANCE:	Based on conditions disclosed by the Lessee, Lessor reasonably expects that the Equipment will perform as required. However, due to ever-present variable factors and underground soil conditions, Lessor cannot and does not guarantee performance of the Equipment. Except as set forth herein, LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR THE SUITABILITY OR OPERATION OF THE EQUIPMENT. Lessee agrees that its sole remedy in the event of the inability of the Equipment to perform as required will be termination of this Agreement and return of the Equipment to Lessor in accordance with its terms. Lessee further agrees that Lessor shall not be responsible for any direct or consequential damages of any nature whatsoever.
ALTERATIONS OR ATTACHMENTS:	Lessee shall not make alterations in, or attachments to, the Equipment without the prior written consent of Lessor. Any and all alterations in, or attachments to, the Equipment shall be removed and/or replaced by the Lessee, at Lessee's own expense, prior to the return of the Equipment to Lessor. If such work has not been performed, Lessee shall be liable to Lessor for all costs incurred by Lessor to restore the Equipment to its original condition.
STOLEN EQUIPMENT:	If any Equipment is stolen, Lessee shall immediately report the theft to the appropriate police department having jurisdiction and provide a copy of the police report to Lessor. Lessee understands and agrees that until Lessor is in receipt of the written police report, the Equipment shall for all purposes be deemed to remain on rental and that Lessee shall remain liable for all rental charges accruing at the RENTAL RATE set forth above. In addition to the foregoing, for any stolen Equipment, Lessee shall also be liable to Lessor for the full Replacement Cost of Equipment set forth above.
TITLE; NO AGREEMENT TO SELL EQUIPMENT:	Title to the equipment shall at all times vest in Lessor. If Lessee takes any action that would in any way prejudice Lessor's title to the equipment, including but not limited to subjecting the Equipment to any lien, Lessee shall immediately become liable to Lessor and will pay Lessor the full value of the equipment. Lessee understands and agrees that nothing in this Rental Agreement provides Lessee with the right to purchase the Equipment.

Lessee further understands and agrees that none of Lessor's employees, officers or agents has the right or authority to enter into a verbal agreement to sell the Equipment. In this regard, Lessee agrees that any verbal agreement or claimed verbal agreement to sell any of the Equipment to Lessee shall be void and unenforceable and that the only way in which Lessee may purchase any of the Equipment is by a separate written agreement executed by one of Lessor's officers.

LESSEE'S WAIVER Lessee agrees, understands and acknowledges that under no circumstances shall it seek or be entitled to recover from Lessor any OF DAMAGE costs, expenses and/or damages (including, but not limited to, damages for delay, interference, impact or suspension) caused by, or incurred as a result of, the Equipment and/or any acts or omissions of the Lessor (including, but not limited to, the failure to timely deliver or remove the Equipment).

NON-WORKING TIME

No allowances or credits against the RENTAL RATE will be given due to non-working or non-use time of the Equipment caused by factors over which Lessor has no control, including but not limited to bad weather, holidays, strikes, or other delays in the job. No allowances or credits against the RENTAL RATE will be given due to equipment down-time for routine parts replacement, service or maintenance.

**NO
REPRESENTATIONS
BY LESSOR**

Lessee agrees and acknowledges that it has not relied upon any representation or promise by Lessor (other than the representations and promises expressly set forth in this Rental Agreement) in entering into this Rental Agreement. Furthermore, Lessee expressly acknowledges that Lessor has not made any representations or promises with respect to the condition of the Equipment or that the Equipment is suitable to Lessee's needs.

LESSEE'S INSURANCE

Until it returns all of the Equipment, Lessee shall maintain comprehensive general liability insurance (including contractual liability) with a policy limit of not less than One Million Dollars (\$1,000,000.00), Contractor's leased or Rented Equipment of not less than One Million Dollars (\$1,000,000) and all other insurances set forth in the annexed certificate of insurance. Lessor shall not be required to deliver any of the Equipment, until Lessee provides Lessor with proof that Lessee has obtained the foregoing insurances. Notwithstanding the foregoing, Lessor's delivery of any of the Equipment prior to receiving such proof of insurances shall not be deemed a waiver of Lessee's unconditional obligation to maintain the insurances set forth in this Agreement. Lessor and Lessor shall be named as an additional insured on all insurance policies obtained by Lessee under this Agreement and the policies obtained by Lessee shall state that the coverage provided to additional insureds is primary not contributory. All insurance policies required by this Agreement shall contain provisions stating that Lessor is to receive at least thirty (30) days written notice prior to such policies being terminated or canceled. Lessee shall also maintain insurance on the Equipment to compensate Lessor for the full replacement cost of the Equipment in case it is lost, stolen, damaged or destroyed. In addition, Lessee shall maintain Business Auto Liability with limits of at least \$1,000,000 each accident. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles. Contractor, Owner, and all other parties that Contractor is required to name as additional insureds by any contract, shall be included as insureds as per the written contract or by endorsements providing equivalent or broader coverage to the additional insureds. The coverage provided to the additional insureds under the policy issued to the Lessor shall be at least as broad as the coverage provided to the Lessor under the policy. Coverage for the additional insureds shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds. "This insurance may not include terms which make the coverage afforded to an additional insured excess to other insurance on which such insured is also an additional insured."

INDEMNIFICATION

Lessee agrees to indemnify, defend and hold harmless Lessor, and any other individual or entity whom Lessor is required to indemnify, defend or hold harmless and all of their respective subsidiaries, affiliates, shareholders, directors, officers, partners, members, employees, consultants, design professionals, attorneys, agents, successors and/or assigns (the "Indemnitees") from and against any and all claims, damages, liens, judgments, losses, disputes, costs, expenses, attorneys' fees, actions, proceedings, demands and liabilities (including statutory liability), foreseeable or unforeseeable, related to and/or arising directly or indirectly from or out of (i) this Rental Agreement and/or (ii) Lessee's use and/or possession of the Equipment (even where Lessor supplies Equipment Operator).

All expenses of the Indemnitees that may be incurred in connection with any such claim, damage, lien, judgment, loss, dispute, action, proceeding, demand and liability, including reasonable attorney's fees, court costs and insurance deductibles, shall be chargeable to and paid for by Lessee. The Lessee's foregoing obligation to indemnify, defend and hold harmless the Indemnitees (w) is intended to be as broad as permitted by law, and shall include, without limitation, claims, damages, loss or expense attributable to bodily injury, sickness, disease, death, loss of use of or injury to or destruction of property, (x) is intended to require Lessee to fully defend (at Lessee's sole expense) an Indemnitee (with counsel reasonably acceptable to the Indemnitee) in any action or proceeding in which allegations are made that Lessee caused the damage(s), injury(ies) and/or death(s) alleged, regardless of whether or not there are also allegations that the Indemnitee caused such damage(s), injury(ies) and/or death(s), subject to Lessee being able to recoup from the Indemnitee the percentage of the cost of defending the Indemnitee equal to the percentage of liability of the Indemnitee for the damage(s), injury(ies) and/or death(s) set forth in a final (after all possible appeals are taken) order or judgment issued in the action or proceeding, (y) shall include claims, damages, liens, judgments, losses, costs, expenses, attorneys' fees (including, but not limited to, attorneys' fees incurred in enforcing Lessor's rights and/or Lessee's obligations under this section), disputes, actions, proceedings, demands and liabilities of every kind and nature including, but not limited to, for tort, under contract, for strict liability or other liability without fault and/or under statute, rule or regulation, and (z) shall not be limited in any way by an amount or type of damage, compensation, or benefits payable under any insurance policy or applicable workers compensation, disability benefits or other similar employees' benefits. Notwithstanding the foregoing, Lessee shall have no obligation to indemnify, defend or hold harmless a particular Indemnitee from any claim, damage, lien, judgment, loss, dispute, action, proceeding, demand, or liability resulting solely from the gross negligence or willful misconduct of that Indemnitee.

Subject to the terms and conditions in this Rental Agreement, **P. Park NJ, LLC**("Lessor") proposes to rent Lessee the following Equipment:

Equipment Description	E# 017 - Volvo Payloader L150F		
Equipment Serial No.:	VCEL150FA00013821		
Equipment Hours:	N/A	Current Fuel Level:	N/A

Full Replacement Cost of All Equipment: \$ 300,000.00

All terms and conditions of this agreement remain unchanged.

LESSOR, **P. Park NJ, LLC**

Joe E. Posillico/Facility Manager

By: Joseph E. Posillico
Digitally signed by Joseph E. Posillico
DN: cn=Joseph E. Posillico, o=P. Park NJ, LLC, email=jposillico@p.parknjllc.com, c=US
Date: 2021.02.02 15:46:35 -05'00'

Title:

LESSEE, **Borough of Prospect Park, New Jersey**

Intashan Chowdhury, BA

By:

Title:

PERSONAL GUARANTY

AS AN INDUCEMENT TO LESSOR TO RENT THE EQUIPMENT TO LESSEE, THE UNDERSIGNED AGREES TO PERSONALLY AND UNCONDITIONALLY GUARANTY ALL OF LESSEE'S OBLIGATIONS UNDER THIS RENTAL AGREEMENT (INCLUDING, BUT NOT LIMITED TO, LESSEE'S OBLIGATIONS TO PAY ALL RENTAL CHARGES, INTEREST FEES, ATTORNEYS' FEES AND OTHER SUMS DUE HEREUNDER). I, THE UNDERSIGNED, HEREBY ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD THIS PERSONAL GUARANTY.

Signature By: Intashan Chowdhury
Digitally signed by Intashan Chowdhury
Date: 2021.02.02 15:46:35 -05'00'

Address: 106 Brown Avenue
Prospect Park, NJ 07508

Date: 2/02/2021

SS No.: xxx-xx-_____