

**STUMP GRINDER AGREEMENT**

This is an agreement dated March 11<sup>th</sup> 2009 by and between the City of Lake Geneva (the City) and the Town of Geneva (the Town).

**WITNESSETH:**

WHEREAS, the City is a Municipal Corporation doing business as a City under the laws of the State of Wisconsin, and

WHEREAS, the Town is an unincorporated Town doing business as a Township under the laws of the State of Wisconsin, and

WHEREAS, the City and Town desire to enter into an agreement to share in the purchase, maintenance and use of a stump grinder;

WHEREAS, the City and Town are authorized to enter into this agreement pursuant to §66.0301, Wis. Stats;

NOW, THEREFORE, in consideration of the sum of TEN AND NO DOLLARS (\$10.00) the mutual covenants contained herein and of the good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Town hereby agree as follows:

1. The City and Town shall each pay the sum of \$23,625 for the purchase of a 2008 Demo Model Vermeer Stump Grinder bearing Model No.S852 (hereinafter "stump grinder") with full warranty. The total purchase price for the stump grinder shall be \$47,250.00.
2. The stump grinder shall be stored at the City of Lake Geneva Streets Department which is located at 918 W. Main Street, Lake Geneva, WI 53147. When the Town wishes to use the stump grinder, the Town's Superintendent of Public Works or his designee will contact the City's Superintendent of Streets or his designee to arrange for pick- up and use of the stump grinder. Neither party shall loan or rent out the stump grinder to third parties. To ensure the highest level of safety and cooperation between the parties, each party shall affirmatively alert the other party to any information they have regarding whether the stump grinder is or may be unsafe, or otherwise operating improperly. Said information shall be conveyed to the other party prior to or during any exchange of the stump grinder.
3. Times for use of the stump grinder shall be mutually agreed upon by the parties. A log of usage, maintenance, and repairs will be maintained by the Town and the City showing the hours of use, the repairs and maintenance on the stump grinder. Said log shall be maintained where the stump grinder is permanently stored. The Town will have a right to review such logs at their reasonable request. The Town will provide the City the number of hours of usage as well as any maintenance or repairs performed on the stump grinder. Neither party will do anything to compromise any warranties on the stump grinder.



4. Repairs and maintenance of the stump grinder shall be shared equally between the parties regardless of who was using the stump grinder when the repair or maintenance is required. The party which orders the repairs or maintenance shall pay in full for such service. The party paying for such repairs or maintenance may seek reimbursement from the other party for their half of such costs which shall be payable by the other party within 10 days of demand. The municipality which incurs costs for repairs or maintenance shall provide a demand for payment and a copy of the invoice to the other party as soon as possible, but in no event more than 90 days after the date of service. Failure to do so within this time limit shall constitute a waiver of the municipality's right to partial reimbursement for such costs. If the cost of any repair or maintenance is approximately the same as or more than the fair market value of the stump grinder, then no repair or maintenance shall be performed without written consent from both parties.
5. The City shall insure the stump grinder under its insurance policy. The Town may add the stump grinder to its property insurance policy for coverage while the stump grinder is in their possession. The party actively using the stump grinder shall be responsible for its safe transport, handling and care until returned to the agreed upon storage location. Any damage sustained to the stump grinder outside of normal wear and tear such as loss by negligence, careless treatment or abuse, shall be the responsibility of the party using the stump grinder and causing such damage. The Responsible party in such case shall pay 100% of any insurance deductible due or in the event there is no insurance coverage, the responsible party shall pay 100% for any repairs or replacement of the stump grinder as a result of negligence, careless treatment or abuse. Any insurance proceeds obtained for damage to the stump grinder shall be used toward the cost of repairs or the purchase price for a replacement stump grinder. Any replacement stump grinder acquired under the terms of this agreement shall be subject to the terms of this agreement. Any disagreements as to whether service or repair to the stump grinder is the result of regular wear and tear or ordinary maintenance (which costs are to be split equally between the parties) or whether the service or repair is to remedy negligence, careless treatment or abuse, (which costs are to be paid by the municipality that is responsible for such service) shall be decided by an authorized dealer in the equipment mutually agreed upon by both parties.
6. The City or the Town shall each be separately responsible for all liability arising out of their use of the stump grinder including harm to its employees, agents, the public and private property. The responsible party shall indemnify and hold the other party harmless from any claims brought against the other party including costs and reasonable attorney's fees caused by the responsible party.
7. This agreement shall be for a term of 5 years from the date of execution by all parties which agreement shall be automatically renewed for an additional term of 5 years unless either party notifies the other in writing 90 days before the expiration of the initial term. In the event this agreement is terminated as set forth above, either party may purchase the other party's ½ interest in the stump grinder for ½ of the fair market value of the stump grinder. If the parties cannot agree upon disposition of the stump grinder at the termination of this agreement, then the stump grinder shall be sold for on the open market or at a public auction and the proceeds shall be divided evenly between the parties.

Purchase of a replacement stump grinder during the term of this agreement shall not act to extend the original five (5) year term of this agreement.

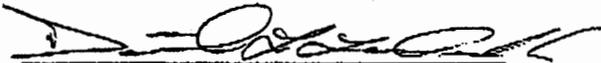
8. Each party has authority and has taken all actions necessary to enter into this agreement as evidenced by the signatures set forth below.
9. This agreement shall be governed according to the laws of the State of Wisconsin.
10. This agreement shall be binding on the successors and assigns of the parties.
11. This agreement is not assignable without the written consent of the parties.
12. Each party shall be entitled to claim an undivided half interest in the stump grinder, and shall be entitled to claim half of the depreciation for the stump grinder on their tax returns, notwithstanding the actual respective use of the stump grinder.
13. Neither party shall encumber, cloud the title, or use the stump grinder as collateral for any loans unless consent is obtained from both parties in writing.
14. Use of the stump grinder shall be on a "first come, first served" basis. However, parties can reserve their use of the stump grinder ahead of time by notifying the other party of the dates of intended use. The stump grinder cannot be reserved in advance for more than three consecutive days nor may use obtained on a "first come, first served" basis be for more than 3 consecutive days unless consented to by the other party.



William Chesen, Mayor for the City of Lake Geneva

3-11-09

Date



Daniel Lauderdale, Chairman for the Town of Geneva

03-17-09

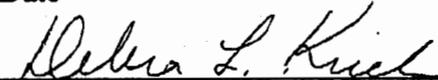
Date



Diana Dykstra, City Clerk for the City of Lake Geneva

3-12-09

Date



Debra Kirch, Town Clerk for the Town of Geneva

3-17-09

Date