

**ORDINANCE 2021-43
INTRODUCED BY: DEBERNARDO**

4333

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO AN
EQUIPMENT SHARING AGREEMENT BETWEEN THE
VILLAGE OF CHAGRIN FALLS AND ORANGE VILLAGE
AND DECLARING AN EMERGENCY.**

WHEREAS, the Village of Chagrin Falls and Orange Village have determined that it is in their mutual best interest to share use of a leaf vacuum machine (“Vacuum”) that is owned by Orange Village and it will be stored at the Village of Chagrin Falls Service Department;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF CHAGRIN FALLS, CUYAHOGA COUNTY, STATE OF OHIO:

Section 1. The Mayor is authorized and directed to enter into the Equipment Sharing Agreement between the Village of Chagrin Falls and Orange Village all as more fully set forth in the Agreement attached hereto and made a hereof as **Exhibit “A”**.

Section 2. That actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements, including Chapter 114 of the Codified Ordinances of the Village of Chagrin Falls.

Section 3. That in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls, public notice of this Ordinance shall be given by posting a copy thereof for not less than fifteen (15) days in the Village Hall.

Section 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the Village and for the further reason that the agreement needs to take immediate effect in order to get the benefit of the share of the use of the Vacuum at a time when leaf blowing will take place in the fall of 2021; wherefore, provided it receives the affirmative vote of at least two-thirds (2/3) of all members elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force after the earliest period allowed by law.

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PASSED: August 9, 2021

Erinn W Grube

Erinn Grube, Council President

Submitted to the Mayor for
his approval on this

11th day of August, 2021

Approved by the Mayor

08/11/2021, 2021

William A. Tomko

Mayor William Tomko

I hereby certify that Ordinance No. 2021-43 was duly enacted on the 9th day of August, 2021, by the Council of the Village of Chagrin Falls and posted in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls.

David B. Bloom

David Bloom, Clerk of Council

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EXHIBIT “A”

EQUIPMENT SHARING AGREEMENT
BETWEEN THE VILLAGE OF CHAGRIN FALLS
AND ORANGE VILLAGE

THIS AGREEMENT is entered into as of August 9, 2021, by and between the Village of Chagrin Falls (“Chagrin Falls”), and Orange Village (“Orange”), each a municipal corporation within the State of Ohio (individually a “Party” and collectively referred to as “Parties”).

RECITALS

- A. The Parties are municipal corporations duly organized and validly existing under the laws of the State of Ohio with the power to carry on its business as it is now conducted under the Constitution and the statutes of the State of Ohio, and their respective Charters and Ordinances.
- B. Each Party has a leaf vacuum machine and Orange is acquiring a new leaf vacuum machine and would prefer to keep the current leaf vacuum machine as backup, but does not have sufficient room to store the leaf vacuum machine (“Vacuum”).
- C. The Parties desire to enter into agreement to share the use of the Vacuum, to store the Vacuum at Chagrin Falls and to share equally in the cost of maintaining and repairing the Vacuum and therefore desire to enter into an agreement to establish procedures for sharing the Vacuum and defining their legal relationships and responsibilities.

NOW THEREFORE, it is mutually agreed by and between the Parties as follows:

1. **PURPOSE**
 - a. The purpose of this Agreement is to create an agreement for the sharing of the Vacuum between the Parties for efficiency and effectiveness of operations and to use the Vacuum in the event their primary leaf vacuum machine is out of service or for a second leaf crew during the periods of high leaf volume or pending inclement weather.
 - b. The Parties agree to make available to each other the Vacuum in a manner on the terms and conditions provided in this Agreement.

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2. **TERM**

- a. The term of this Agreement shall be for a period of **five (5)** years from the date of execution. Thereafter, this Agreement shall be extended automatically for one year terms starting on January 1 of each year, unless one or both Parties notify the other Party by November 30 of any given automatic renewal year they are terminating this Agreement at the end of the calendar year.

3. **SHARING PERIOD**

- a. The Vacuum shall be provided to the Parties upon reasonable request at mutually convenient times for a duration mutually agreed upon by the Orange Village Service Director and the Chagrin Falls Street Superintendent (“Sharing Period”). In the event of a disagreement as to the Sharing Period, the reasonable determination of the Orange Village Service Director shall prevail.
- b. During the Term of this Agreement, the Vacuum shall be stored in Chagrin Falls owned or leased locations as determined by the Chagrin Falls Street Superintendent. Chagrin Falls will provide indoor storage for the Vacuum in the off season, and when not being used, at no cost to Orange. Access to the Vacuum shall be made available to Orange at any time that Orange will be using the Vacuum pursuant to this Agreement and during the Term of this Agreement.

4. **INVOICES AND PAYMENTS**

- a. Chagrin Falls will be billed annually for its share of the maintenance and repair costs and pay its pro rata share of the Orange Village invoices in full within thirty (30) days from the date of receipt of any invoice with supporting documentation.

5. **EQUIPMENT USAGE**

- a. The Parties agree to permit the Vacuum to be used only by properly trained and supervised operators. All Vacuum operators shall be properly trained and qualified to operate the Vacuum.
- b. The Vacuum shall be used only for the purpose of conducting official municipal business. Each Party shall use and operate the Vacuum for only its intended purpose, in a careful manner and in compliance with all requirements of operation and of any governmental authority having jurisdiction, if applicable.

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Neither Party shall allow anyone other than the Parties' employees to use the Vacuum.

- c. Whichever Party is using the Vacuum shall be responsible for supplying all fuel used during the Sharing Period it uses the Vacuum, and shall ensure that the fuel tanks are full when provided to the other Party for their use.
- d. Orange hereby represents the Vacuum is in good repair and ready for its intended use as a used but operational leaf vacuum machine. Orange shall provide a copy of all Vacuum operation safety manuals to Chagrin Falls upon request.

6. CONTACT PERSON

- a. The Orange Village Service Director and the Chagrin Falls Street Superintendent shall act as a liaison to serve as the contact for all use of the Vacuum and to otherwise facilitate the orderly and efficient use of the Vacuum. The Orange Village Service Director may be reached at: (440) 498-4403 and the current email is zuganr@orangevillage.com. The Chagrin Falls Street Superintendent may be reached at: (440) 247-5053 and the current email is John@chagrin-falls.org.

7. MAINTENANCE AND REPAIR OF EQUIPMENT

- a. Orange shall be responsible for performing all required maintenance during the Term of this Agreement, unless damages are caused to the Vacuum through the negligent or reckless use of the Vacuum by Chagrin Falls. Orange shall be responsible for tire repair and replacement. Each Party shall be responsible for the cost of repair or replacement of the Vacuum when operating the Vacuum outside of its normal operation or in a manner not intended by the Manufacturer or operating the Vacuum without performing the required maintenance that is the responsibility of the Party. Operating costs, such as fuel and daily Vacuum maintenance (e.g. greasing) will be the responsibility of the Party operating the Vacuum.
- b. Except in the case of damage or destruction by a Party as described in the previous paragraph, the Parties shall equally share in the costs of all

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maintenance and repair of the Vacuum. In the event that any parts or tires are replaced, the amortized costs using Internal Revenue Service depreciation tables shall be included in the costs to be shared by the Parties.

- c. In the event the Vacuum is stolen while in a Party's control, such Party shall submit a claim to their insurer to cover the cost of replacing the Vacuum and the Parties shall equally share in the cost of any co-insurance or deductible.

8. WARRANTY

- a. Orange is neither a manufacturer nor supplier of the Vacuum and makes no warranties, express or implied, including, without limitation, the condition of the Vacuum, its design, capacity, performance, construction, workmanship, or fitness for any particular use, other than as set forth in this Agreement. The Vacuum is shared on an "as-is" basis. Orange shall not be responsible or liable to Chagrin Falls for any loss, delay or damage of any kind resulting from defects in or accidental breakage of the Vacuum.

9. ASSIGNMENT

- a. The Parties shall not assign, sublet, transfer, or otherwise substitute their interests in this Agreement, or any of their rights or obligations under this Agreement, without the prior written consent of the other Party.

10. INSURANCE

- a. During the term of this Agreement, in consideration of Chagrin Falls storing the Vacuum, Orange will keep in force, at its own expense, insurance covering loss or casualty connected with the Vacuum, and each party shall maintain the current or better liability insurance coverages in place, during the term of this Agreement.

11. NOTICES

- a. Any written notices under this Agreement shall be mailed to the addresses indicated below:

To the Village Chagrin Falls Robert Jamieson,
Chief Administrative Officer
21 W. Washington Street
Chagrin Falls, Ohio 44022

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To Orange Village

Mayor Kathy Mulcahy
4600 Lander Road
Chagrin Falls, Ohio 44022

12. TERMINATION

- a. Any Party may terminate this Agreement for any reason by giving thirty (30) days prior written notice to the other Party. In the event of such termination, any unamortized costs paid by Chagrin Falls, as previously set forth in this Agreement, shall be reimbursed to Chagrin Falls, unless the term in this Agreement has exceeded the period of time in which Orange must reimburse Chagrin Falls for unamortized cost payment. Upon termination of this Agreement, the Vacuum shall be returned to Orange and it shall retain ownership of the Vacuum during the term of this Agreement and upon termination of this Agreement.

13. MISCELLANEOUS

- a. The laws of the State of Ohio shall govern this Agreement. In the event any legal action is commenced regarding this Agreement, the venue shall be in Cuyahoga County.
- b. This document comprises the entire and integrated agreement of the Parties concerning the use of the Vacuum and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendment to this document shall be effective only if in writing and signed by the Parties.
- c. If any term, provision, covenant or condition of this Agreement is held by a court to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES APPEAR ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written.

VILLAGE OF CHAGRIN FALLS

By: _____
William Tomko, Mayor

ORANGE VILLAGE

By: _____
Kathy Mulcahy, Mayor