

ORDINANCE NO. 2022-47 FIRST READING JUNE 13, 2022
INTRODUCED BY: DENNIS GALICK SECOND READING WAIVED
THIRD READING WAIVED

ORDINANCE AMENDING ORDINANCE 2022-40, APPROVING THE COMMUNITY FUNDING AND ESCROW AGREEMENT FOR THE MODERNIZATION OF THE CHAGRIN VALLEY FIRE DEPARTMENT FIRE STATION, AUTHORIZING THE MAYOR TO EXECUTE THE COMMUNITY FUNDING AND ESCROW AGREEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, Council of the Village of South Russell adopted Ordinance No. 2022-40 on May 9, 2022, authorizing a pre-paid expense of \$69,769.00 to the Chagrin Valley Suburban Volunteer Fireman’s Association, Inc., dba Chagrin Valley Fire Department (“CVFD”), which pre-paid expense shall be used toward the modernization of the CVFD Fire Station and accounted for and zeroed out in the fire contract between the Village and CVFD for years 2023, 2024, and 2025, and approving, and authorizing the Mayor to execute, the Community Funding Agreement and Escrow Agreement for the Modernization of the CVFD Fire Station;

WHEREAS, Council for the Village of South Russell desires to amend Ordinance No. 2022-40 to no longer zero out the pre-paid expense from the Fire Protection and Medical Service Agreement between the Village of South Russell and CVFD (the “Fire Contract”) and to instead include the one-time expense for capital improvement of the Fire Station to be paid by the Village of South Russell by July 1, 2022 pursuant to the Fire Contract and such pre-paid expense will be subject to the Community Funding and Escrow Agreement for the Modernization of the Chagrin Valley Fire Department Fire Station (“Agreement”), which Agreement is hereby attached and incorporated herein by reference as Exhibit A;

WHEREAS, Council of the Village of South Russell adopted Ordinance No. 2022-46 approving the Fire Contract with CVFD on June 13, 2022, which provides for the one-time expense of \$69,769.00 toward the modernization of the Fire Station and also provides for fire protection and emergency medical services for the Village; and

WHEREAS, the Village of South Russell desires to approve the Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of South Russell, Geauga County, Ohio that:

SECTION 1. Ordinance No. 2022-40 is hereby amended and the Agreement attached hereto and incorporated herein by reference as Exhibit A is hereby approved.

SECTION 2. The Mayor is hereby authorized to execute the Agreement on behalf of the Village of South Russell.

SECTION 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees on or after December 2, 1975, that resulted in formal actions, were in meetings open to the public in compliance with all legal requirements, including Section 121.22, Ohio Revised Code.

SECTION 4. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of the inhabitants of the Village and for the further reason to allow the CVFD to commence its capital project immediately; 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 by this Council and approval by the Mayor.

William G. Koma

Mayor - President of Council

ATTEST:

Danella Romanowski

Fiscal Officer

I certify that Ordinance No. 2022-47 was duly enacted on the 13th day of JUNE, 2022, by the Council of the Village of South Russell, and posted in accordance with the Codified Ordinances of the Village.

Danella Romanowski

Fiscal Officer

**COMMUNITY FUNDING AND ESCROW AGREEMENT
FOR THE MODERNIZATION OF
THE CHAGRIN VALLEY FIRE DEPARTMENT FIRE STATION**

THIS AGREEMENT is entered into by and between the **Chagrin Falls Suburban Volunteer Fireman's Association, Inc., dba Chagrin Valley Fire Department** (herein referred to as the Fire Department) 21 W. Washington Street, Chagrin Falls, Ohio 44022, a 501(c)(4) non-profit organization under the Internal Revenue Code, and **the Village of Chagrin Falls, the Village of Bentleyville, Chagrin Falls Township, the Village of Hunting Valley, the Village of Moreland Hills, and the Village of South Russell** (herein referred to as the Member Communities). The Fire Department and the Member Communities are herein referred to collectively as the Parties.

WHEREAS, the Fire Department provides fire and emergency medical services to the Member Communities; and

WHEREAS, the Chagrin Valley Fire Department Fire Station located at 21 W. Washington Street, Chagrin Falls, Ohio 44022 (the "Fire Station") is in need of capital improvements and upgrades for modernization of the Fire Station (the "Improvements"), including, but not limited to, the following:

- New gear storage area to prevent diesel particulate from landing on stored gear in the open apparatus bays;
- Expanded living quarters and locker room facilities for female members of the Fire Department;
- Reconfigured floor plan to allow for more streamlined response;
- Updated classroom space for community education and EMS training;
- Additional renovations and replacement of outdated systems and infrastructure; and

WHEREAS, the Fire Department, the Village of Chagrin Falls and Cuyahoga County have committed to design and construct the Improvements cooperatively, with monetary and in-kind participation from each, which will include cost-sharing funds from each of the Member Communities; and

WHEREAS, the Fire Department has currently raised over Eight Hundred Thousand Dollars (\$800,000.00) in donations for the Improvements, and the Member Communities are committed to participating by contributing to the Fire Department's share of the Improvements under a cost-sharing formula based on the average squad billing totals to each community for the years 2017, 2018, and 2019; and

WHEREAS, the Parties desire to appoint an escrow agent ("Escrow Agent") to establish an escrow account ("Escrow Account") to receive proceeds of the cost shares contributed by the Member Communities (the "Escrow Funds") for disbursement according to the terms set forth in this Agreement; and

WHEREAS, the Fire Department and the Member Communities have agreed that Don P. Brown, Esq. shall serve as the Escrow Agent to hold the Escrow Funds in an Escrow Account from which the Escrow Agent shall be authorized to make progress payments for professional design services, construction work and materials incorporated into the Improvements; and

WHEREAS, the Village of Chagrin Falls will enter into agreements with a design professional and construction contractor selected by the Village of Chagrin Falls, and acceptable to the Fire Department, for the design and construction of the Improvements; and

WHEREAS, the design and construction of the Improvements shall be made to the satisfaction of the Fire Department, which shall be responsible for approving each disbursement of Escrow Funds, along with the Village Engineer for the Village of Chagrin Falls (“Engineer”), in payment for design services and construction of the Improvements performed under the design professional and construction contracts (the “Work”); and

WHEREAS, the Escrow Agent will make disbursements of progress payments from the Escrow Funds to the design professional and the construction contractor with the authorization of the Fire Department and the Engineer; and

NOW THEREFORE, in consideration of the provision of fire and emergency services by the Fire Department to the Member Communities and the enhancement of said services that will result from the Improvements, the Escrow Funds shall be contributed, held and disbursed as hereinafter provided, and the Fire Department and Member Communities agree and undertake as follows:

1. Prior to commencement of the Work, and no later than July 1, 2022, the Member Communities each shall deposit with the Escrow Agent, by check payable to the Chagrin Falls Suburban Volunteer Fireman’s Association, Inc., the contributions identified in paragraph 2, to be held in the Escrow Account as Escrow Funds.

2. The Member Community cost shares to be contributed to the Escrow Agent shall be as follows:

Village of Bentleyville	\$ 9,693.00
Village of Chagrin Falls	\$151,783.00
Chagrin Falls Township	\$ 5,000.00
Village of Hunting Valley	\$ 15,131.00
Village of Moreland Hills	\$ 47,722.00
Village of South Russell	\$ 69,769.00

3. The Escrow Agent will deposit the Escrow Funds in the Escrow Account and shall disburse the Escrow Funds pursuant to an escrow agreement between the Fire Department and the Escrow Agent in the form of the Agreement attached as Exhibit A. The Fire Department will be responsible for any costs and expenses of the Escrow Agent’s services in connection with carrying out its duties under said escrow agreement.

4. During the performance of the Work, the Village of Chagrin Falls will transmit to the Fire Department invoices for the Work for payment of the Fire Department's share of the Improvements, which will be paid directly from the Escrow Account to the design professional and the construction contractor. The Engineer will certify to the Fire Department that Work invoiced for payment has been fully performed. Payments from the Escrow Account shall be issued for Work performed to the satisfaction of the Fire Department, as indicated by the written approval of the President of the Chagrin Falls Suburban Volunteer Fireman's Association, Inc., which shall not be unreasonably withheld.

5. Upon submittal of authorization to pay each invoice for the Work by the Fire Department and Engineer to the Escrow Agent, the Escrow Agent will disburse payments in the amount of one hundred percent (100%) of the amount authorized to be paid by the Fire Department to the design professional and the construction contractor, respectively, less any retainage as set forth in the construction contract. No disbursements of any kind will be made from the Escrow Funds by the Escrow Agent without authorization by the Engineer and Fire Department.

6. The Fire Department, upon final completion of the Improvements, shall transfer ownership, to the extent it has such title, of the Improvements to the Village of Chagrin Falls. The Village of Chagrin Falls, upon acceptance of the Fire Station, shall maintain the Fire Station at its sole expense for the life of the building, including all maintenance and operating costs.

7. Upon final completion of the Improvements, any funds remaining in the Escrow Account will be remitted to the Village of Chagrin Falls for the maintenance and operating costs of the Fire Station.

8. Except for any legal requirements or contract obligations directly imposed upon the Village of Chagrin Falls, nothing in this Agreement shall establish an obligation of the Member Communities to the Fire Department, to the design professional or to the construction contractor for the cost of the Work to complete the Improvements. The Member Communities' obligations pursuant to this Agreement shall be limited to the cost share contributions in the amounts forth in paragraph 2, above.

9. The Escrow Funds will be utilized first, before the donations raised by the Fire Department, for the payments for the Work, provided that, in the event the Village of Chagrin Falls does not enter into contracts for the Improvements on or before December 31, 2023, the Member Communities' cost share contributions in the amounts set forth in paragraph 2, above, shall be reimbursed to the Member Communities. Upon the Village of Chagrin Falls entering into contracts to perform the Work, the Member Communities shall not be entitled to reimbursement of their cost share contributions in the amounts set forth in paragraph 2, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers on the dates noted below. This document may be executed by counterparts and said counter parted signatures shall be considered as a whole.

**CHAGRIN FALLS SUBURBAN VOLUNTEER
FIREMAN'S ASSOCIATION, INC., DBA
CHAGRIN VALLEY FIRE DEPARTMENT**

By: _____
John Catani, President

Date: _____

VILLAGE OF CHAGRIN FALLS

By: _____
Mayor William Tomko

Date: _____

Approved:

Dale H. Markowitz, Law Director

VILLAGE OF BENTLEYVILLE

By: _____
Mayor Leonard A. Spremulli

Date: _____

Approved:

Charles Nemer, Law Director

CHAGRIN FALLS TOWNSHIP

By: _____
John Finley, Trustee

Date: _____

By: _____
Jen McKee, Trustee

Date: _____

By: _____
Tom Florkiewicz, Trustee

Date: _____

Approved:

Cuyahoga County Prosecutor

VILLAGE OF HUNTING VALLEY

By: _____
Mayor Bruce V. Mavec

Date: _____

Approved:

Stephen L. Byron, Law Director

VILLAGE OF MORELAND HILLS

By: _____
Mayor Daniel Fritz

Date: _____

Approved:

William R. Hanna, Law Director

VILLAGE OF SOUTH RUSSELL

By: William G. Koons
Mayor William Koons

Date: 6-13-2022

Approved:

Bridey Matheney
Bridey Matheney, Solicitor

ACCEPTANCE BY THE ESCROW AGENT:

The undersigned hereby agrees to hold and disburse funds placed in escrow by the Member Communities and held in the Escrow Account in accordance with the terms and provisions of the foregoing Agreement. Further, the undersigned certifies that from the date of this Agreement the undersigned will fulfill his duties hereunder, ensuring that the Escrow Account is and shall remain available in the amount specified until disbursements are directed by the Fire Department in accordance herewith.

ESCROW AGENT

Date: _____

By: _____
Don P. Brown, Esq.

EXHIBIT A

ESCROW AGREEMENT

This Escrow Agreement, dated this 13th day of JUNE, 2022 (the "Escrow Agreement") is entered into by and between the **Chagrin Falls Suburban Volunteer Fireman's Association, Inc., dba Chagrin Valley Fire Department** (the "Fire Department"), 21 W. Washington Street, Chagrin Falls, Ohio 44022, a 501(c)(4) non-profit organization under the Internal Revenue Code, **the Village of Chagrin Falls, the Village of Bentleyville, Chagrin Falls Township, the Village of Hunting Valley, the Village of Moreland Hills, and the Village of South Russell** (herein referred to as the "Member Communities"), each referred to herein as a "Party" and collectively as the "Parties" and **Don P. Brown, Esq.**, 10 Center Street, Chagrin Falls, OH 44022, as escrow agent (the "Escrow Agent").

RECITALS:

The Fire Department and the Member Communities have entered into a Community Funding and Escrow Agreement for the Modernization of the Chagrin Valley Fire Department Fire Station ("Funding and Escrow Agreement") at 21 W. Washington Street in Chagrin Falls, Ohio. The Funding and Escrow Agreement contemplates that the Member Communities will contribute funds for the cost of the modernization of the Chagrin Valley Fire Department Fire Station (the "Improvements"). In accordance with the terms of the Funding and Escrow Agreement, the Fire Department and the Member Communities agreed to place the Member Community contributions (the "Escrow Funds") into an escrow account (the "Escrow Account") from which the Fire Department will authorize the Escrow Agent to make payments to a design professional and a construction contractor to be contracted by the Village of Chagrin Falls to provide the design and construction services to complete the Improvements (the "Work").

The Parties desire to have the Escrow Agent receive the Escrow Funds and disburse said funds according to the instructions set forth below. This Escrow Agreement will govern the deposit and the release of funds escrowed with the Escrow Agent by the Parties.

NOW, THEREFORE, in consideration of the mutual promises herein set forth and other good valuable and sufficient consideration, the receipt of which is hereby acknowledged by each of the parties hereto, the parties agree as follows:

**ARTICLE I
ESCROW AGENT**

The Fire Department and the Member Communities do hereby appoint Don P. Brown, Esq., to be and act as Escrow Agent, and Escrow Agent hereby accepts his appointment to hold in the Escrow Account the Escrow Funds under the terms and conditions set forth in this Escrow Agreement.

ARTICLE II
ESCROW ACCOUNT

The Escrow Account shall be set up by the Escrow Agent as a savings account established at a FDIC insured banking institution under the name “Chagrin Valley Community Escrow Account,” with the “Chagrin Falls Suburban Volunteer Fireman’s Association, Inc., dba Chagrin Valley Fire Department” as the account holder and the Escrow Agent authorized to make withdrawals from the account on behalf of the Fire Department.

ARTICLE III
ESCROW DEPOSIT

Section 3.1 Receipt of Escrow Funds. On or before July 1, 2022, the Member Communities shall cause the Escrow Funds, in the amounts set forth in paragraph 2 of the Funding and Escrow Agreement, to be provided to the Escrow Agent by check payable to the Chagrin Falls Suburban Volunteer Fireman’s Association, Inc. for deposit into the Escrow Account. It is expressly agreed and understood that the Escrow Funds shall, until distributed according to the terms of this Escrow Agreement, constitute assets of the Fire Department, provided that the Escrow Agent shall not distribute any Escrow Funds except as expressly provided in this Escrow Agreement.

Section 3.2 Disbursements. The Escrow Agent shall make disbursements of the Escrow Funds at the direction of the Fire Department directly to the design professional and the construction contractor contracted by the Village of Chagrin Falls in payment of their respective invoices for the Work. Such disbursements shall be made only upon written directive from Captain John Catani, President of the Chagrin Falls Suburban Volunteer Fireman’s Association, Inc., (the “President”), which shall not be unreasonably withheld, and shall be countersigned by Timothy R. Lannon, P.E., CT Consultants, Inc., 8150 Sterling Court, Mentor OH 44060, the Engineering Consultant for the Village of Chagrin Falls (the “Engineer”), certifying that all Work itemized on the invoice has been fully performed. The Village of Chagrin Falls will submit to the Fire Department itemized monthly invoices for the Fire Department’s share of the cost of the Improvements as the Work is performed, showing all items of work that have been fully performed. Disbursements of the Escrow Funds shall be in the full amount of each invoice as approved by the President and countersigned by the Engineer, less any retainage as set forth in the construction contract, which shall be indicated to be withheld on the invoice. Amounts held in retainage shall be released by the Escrow Agent to the construction contractor only upon written directive from the President, countersigned by the Engineer. Any funds remaining in the Escrow Account following completion of construction of the Improvements and release of retainage shall be transferred to the Village of Chagrin Falls upon the written directive of the President, to be held in a separate fund for the cost of operating and maintaining the Fire Station. Upon disbursement of all Escrow Funds in the Escrow Account, the Escrow Agent shall have no further responsibilities as to the Escrow Funds.

Section 3.3 Termination. Upon the disbursement of all of the Escrow Funds, this Escrow Agreement shall automatically terminate and be of no further force and effect.

Section 3.4 Dispute Resolution. In the event of any dispute between the President and the Engineer regarding the disbursement of the Escrow Funds, the matter shall be resolved by mediation among the Parties, and if not resolved within thirty (30) days after submission to mediation among the Parties, the matter shall be submitted to an arbitrator selected by a vote of at least a majority of the Parties, for a binding determination, or in the event a majority of the Parties can't agree on the selection of the arbitrator, then upon application for appointment of an arbitrator by any of Parties to the Administrative Judge of the Cuyahoga County Court of Common Pleas pursuant to Revised Code Section 2711.04, such appointment shall be made. The arbitrator's fees shall be shared equally by all the Parties.

ARTICLE IV DUTIES OF ESCROW AGENT

Section 4.1 Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed ministerial in nature. This Escrow Agreement does not obligate the Escrow Agent to act as a fiduciary for the Parties for any purpose, and the Escrow Agent will not be responsible for or liable for the failure of the Parties to perform in accordance with this Escrow Agreement. The Escrow Agent has no responsibility with respect to any directive, instruction, certificate, notice or letter delivered to it, other than to carry out the obligations undertaken in this Escrow Agreement and to follow the directions in written instruments provided in accordance with the terms hereof.

Section 4.2 Reliance. The Escrow Agent may conclusively rely upon and act in accordance with any directive, instruction, certificate, notice, letter, and other written instrument believed to be genuine and to have been signed or communicated by the proper Party or Parties without further inquiry into the person's or persons' authority. The Escrow Agent shall not be liable for any action taken or not taken by the Escrow Agent in accordance with the direction or consent of the Fire Department and the Member Communities, or their respective officers, agents, employees and successors.

ARTICLE V SUCCESSORS AND ASSIGNS; NOTICES

Section 5.1 Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties shall be binding unless and until written notice of such assignment shall be delivered to the other Parties and the Escrow Agent and shall require the prior written consent of the other Parties and the Escrow Agent. In the event of the death or resignation of the Escrow Agent, or if for any reason the Escrow Agent is unable to carry out his duties, a successor Escrow Agent shall be appointed, by obtaining the approval of the majority of the Parties, who legislative bodies shall approve the appointment by motion.

Section 5.2 Notices. All directives, notices, instructions or any other certifications or communications required under this Escrow Agreement shall be in writing and shall be deemed to have been duly given if delivered by personal delivery, facsimile with written confirmation of

receipt, email with written confirmation of receipt, delivery by a reputable delivery service, or by U.S. Mail, return receipt requested, to the addresses shown below, or at such other address as any of them may designate by notice to each of the others:

If to the Escrow Agent:

Don P. Brown, Esq.
10 Center Street
Chagrin Falls, OH 44022
dpbrown@ameritech.net

If to the President:

Assistant Chief John Catani, President
Chagrin Falls Suburban Volunteer Fireman's Association, Inc.
21 W. Washington Street
Chagrin Falls, OH 44022
CataniJ@cffd.net

IN WITNESS WHEREOF, the Parties and the Escrow Agent have caused this Agreement to be executed by their duly authorized officers on the dates noted below. This document may be executed by counterparts and said counter parted signatures shall be considered as a whole.

**ESCROW AGENT:
DON P. BROWN, ESQ.**

Date: _____

**CHAGRIN FALLS SUBURBAN VOLUNTEER
FIREMAN'S ASSOCIATION, INC., DBA
CHAGRIN VALLEY FIRE DEPARTMENT**

By: _____
John Catani, President

Date: _____

VILLAGE OF CHAGRIN FALLS

By: _____
Mayor William Tomko

Date: _____

Approved:

Dale Markowitz, Law Director

VILLAGE OF BENTLEYVILLE

By: _____
Mayor Leonard A. Spremulli

Date: _____

Approved:

Charles Nemer, Law Director

CHAGRIN FALLS TOWNSHIP

By: _____
John Finley, Trustee

Date: _____

By: _____
Jen McKee, Trustee

Date: _____

By: _____
Tom Florkiewicz, Trustee

Date: _____

Approved:

Cuyahoga County Prosecutor

VILLAGE OF HUNTING VALLEY

By: _____
Mayor Bruce V. Mavec

Date: _____

Approved:

Stephen L. Byron, Law Director

VILLAGE OF MORELAND HILLS

By: _____
Mayor Daniel Fritz

Date: _____

Approved:

William R. Hanna, Law Director

VILLAGE OF SOUTH RUSSELL

By: William J. Koons
Mayor William Koons

Date: 6-13-2022

Approved:

Bridey Matheney
Bridey Matheney, Solicitor