

RESOLUTION NO.	<u>2022-104</u>	FIRST READING	<u>November 28, 2022</u>
		SECOND READING	<u>December 12, 2022</u>
INTRODUCED BY:	<u>Dennis Galicki</u>	THIRD READING	<u>WAIVED</u>

A RESOLUTION AUTHORIZING PAYMENT OF COSTS FROM THE ARPA FUND FOR CLEANING OUT THE CONGREGATIONAL DISCIPLES CHURCHES OF CHAGRIN FALLS FEDERATED INC.'S STORMWATER RETENTION POND TO REDUCE AND RECAPTURE STORMWATER IN THE VILLAGE AND ABATE A PUBLIC NUISANCE CAUSING POLLUTION AND CONTAMINATING THE WATERS OF THE VILLAGE AND DECLARING AN EMERGENCY.

WHEREAS, the Village of South Russell has received a distribution of monies (the “ARPA Funds”) from the American Rescue Plan Act of 2021 (“ARPA” or the “Act”); and

WHEREAS, Congress passed the Act effective March 11, 2021; and

WHEREAS, Section 603 created the Coronavirus Local Fiscal Recovery Fund which, among other things, appropriated money to cities, nonentitlement units of local government, and counties to mitigate the fiscal effects stemming from the public health emergency with respect to the Coronavirus Disease (Covid-19); and

WHEREAS, Section 603(c) provides, in pertinent part, that a nonentitlement unit of local government, such as the Village of South Russell, shall only use the ARPA funds provided under a payment made under this section to cover costs incurred by the Village of South Russell by December 31, 2024, to make necessary investments in water, sewer, or broadband infrastructure, in addition to other specific uses of the ARPA funds;

WHEREAS, Department of Treasury Final Rule (“Final Rule”), published by the Federal Register on January 27, 2022, at Vol. 87, No. 18, 4438 – 4454, and effective April 1, 2022, and updated as of July 27, 2022, provides in part that the State and Local Fiscal Recovery Funds (“SLFRF”) under ARPA could be used to fund projects that would be eligible under the Environmental Protection Agency’s Clean Water State Revolving Fund (“CWSRF”) or Drinking Water State Revolving Fund (“DWSRF”) and broadened eligibility of SLFRF funds to be used to fund additional types of projects, such as additional stormwater infrastructure, beyond the CWSRF or DWSRF, if they are found to be “necessary;”

WHEREAS, the Village of South Russell has experienced pollution and contamination in waters of the Village by the maintenance of a public nuisance located at 16349 Chillicothe Road, Bainbridge Township (the “Property”), which is located to the south of the Village border and is owned by the Congregational Disciples Churches of Chagrin Falls Federated Inc. (the “Church”) by way of the Church’s failure to properly maintain its stormwater retention pond on its Property;

WHEREAS, pursuant to an Agreement between the Village and the Church, the Village has agreed to abate the public nuisance by cleaning out the Church’s stormwater retention pond (the

“Project”) whereby the Village and the Church split equally the cost of the Project (a copy of the fully executed Agreement is attached hereto and incorporated herein by reference as **Exhibit A**);

WHEREAS, an ARPA Fund was created by Council for the Village of South Russell pursuant to Ordinance No. 2021-30;

WHEREAS, the Final Rule provides that ARPA funds may be used to manage, reduce, treat, or recapture stormwater or subsurface drainage water pursuant to the CWSRF;

WHEREAS, the Village of South Russell will incur costs for the Project to manage, reduce and recapture the stormwater and abate the public nuisance, which Project is eligible for ARPA funds; and

WHEREAS, Council desires to authorize the use of funds from the ARPA Fund to pay for the Village’s one-half cost of the Project.

NOW THEREFORE, it is hereby **RESOLVED** by Council of the Village of South Russell that:

SECTION 1. The amount up to \$3,700.00 is hereby authorized to be paid from the ARPA Fund to clean out the Church’s stormwater retention pond and otherwise abate the public nuisance.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution 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 3. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety, and welfare and for the further reason to account for such payment of these eligible activities from the appropriate fund; 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 immediately upon its passage.



Mayor - President of Council

ATTEST:
Fiscal Officer


I certify that Resolution No. 2022 - 104 was duly enacted on the 12TH day of DECEMBER, 2022, by the Council of the Village of South Russell, and published in accordance with the Codified Ordinances of the Village.



Fiscal Officer

**AGREEMENT BETWEEN THE VILLAGE OF SOUTH RUSSELL AND THE
CONGREGATIONAL DISCIPLES CHURCHES OF CHAGRIN FALLS
FEDERATED INC. dbu ~~THE~~ Federated Church of Chagrin Falls**

*My
Falls*

This Agreement (“Agreement”) is made by and between the Village of South Russell, an Ohio municipal corporation (the “Village”) and the Congregational Disciples Churches of Chagrin Falls Federated Inc. (the “Church”) (collectively the “Parties” and each separately a “Party”).

WHEREAS, the Church is the titled owner of the property located at 16349 Chillicothe Road, Bainbridge Township, situated in Geauga County, Ohio (the “Property”), which Property borders to the south of the Village;

WHEREAS, on July 19, 2022, pursuant to Section 660.19 of the Codified Ordinances of the Village, the Village cited the Church for maintaining a public nuisance by allowing its stormwater retention pond located on its Property to build up silt and other debris to pollute or contaminate the waters of the Village, which include streams, lakes, ponds, and drainage systems, among other watercourses, inside and outside the borders of the Village;

WHEREAS, the Village permitted the Church ninety (90) days from July 19, 2022 to develop a stormwater management plan to remedy and abate its public nuisance, but the Church failed to provide such plan;

WHEREAS, pursuant to Section 660.19 of the Codified Ordinances of the Village, the Village may take legal or equitable action as may be necessary to prevent or remedy a public nuisance; and

WHEREAS, the Parties have agreed that the Village may abate the public nuisance by allowing the Village and/or its agent or contractor to clean out the Church’s

stormwater retention pond on its Property subject to the foregoing terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises, the Parties agree as follows:

1. The Church agrees, allows, permits, and authorizes the Village and its duly authorized employees, agents, and contractors to enter upon the Property for the purpose of cleaning out the Church's stormwater retention pond to abate the public nuisance (the "Work").

2. The Church agrees to pay the Village \$3,700.00, which is one-half of the Village's total cost of \$7,400.00 to abate the nuisance, and the Church further agrees to pay its' one-half share, or \$3,700.00, to the Village within ten (10) days of the completion of the Work.

3. The Parties agree that they will communicate and arrange for the Work to be performed on a date within sixty (60) days of this executed Agreement; provided however, that should inclement weather or other conditions render this time period for which to perform the Work infeasible or impracticable, then the Parties shall communicate and arrange for the Work to be performed at another agreed-upon date.

4. The Work shall be performed in accordance with the plans and specifications prepared by the Village for improvement and cleaning out of stormwater retention ponds.

5. The Church hereby releases the Village, its agents and employees from any and all damages or claims for damages resulting by reason of the Work, excepting those arising from said plans and specifications. It is understood that any contractor

engaged for the Work is an independent contractor and is solely responsible for any and all damages or claims for damages arising from any conduct not within the control of Village.

6. It is further understood that the Church shall, at all times, maintain and keep in good repair its stormwater retention pond so as to not cause a public nuisance by polluting or contaminating the waters of the Village and the Village assumes no obligation for the continued maintenance or repair of the Church's stormwater retention pond or any other part of the Church's Property.

7. The Parties agree that any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Church and the Village, and their respective heirs, executors, administrators, successors and assigns.

8. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

9. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement, and is executed by the Church and the Village.

10. The Parties further represent and warrant that they have read this Agreement and know and understand the full content of this Agreement and are voluntarily entering into this Agreement upon the advice of their attorneys or after having waived their right to have their attorneys review this Agreement.

Signature Pages to Follow

WHEREFORE, the Parties have caused this Agreement to be duly executed on the dates set forth below.

CONGREGATIONAL DISCIPLES CHURCHES OF
CHAGRIN FALLS FEDERATED INC.

By: [Signature]
Printed Name: MELISSA LOVINGER OWEN
Title: Sr. Director of People and Operations
Date: Dec. 1, 2022

STATE OF OHIO

SS

COUNTY OF GEORGIA

Before me, a Notary Public in and for said County and State, personally appeared, MELISSA LOVINGER OWEN, who is the Sr. Director of People and Operations of Congregational Disciples Churches of Chagrin Falls Federated Inc., who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this day of December, 2022.

[Signature]
Notary Public
My Commission expires on: 5-1-2026



RUTH M. GRISWOLD
NOTARY PUBLIC - OHIO
My Commission Expires May 1, 2026

VILLAGE OF SOUTH RUSSELL

By: William G. Koons

William Koons, Mayor

Date: 11-23-2022

STATE OF OHIO

SS

COUNTY OF GEAUGA

Before me, a Notary Public in and for said County and State, personally appeared, William Koons, Mayor of the Village of South Russell, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, personally and as such officer and the free act and deed of said Village.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at South Russell, Ohio this 23rd day of November, 2022.

Ruth M. Griswold
Notary Public

My Commission expires on: 5-1-2026



RUTH M. GRISWOLD

NOTARY PUBLIC - OHIO

My Commission Expires May 1, 2026