

RESOLUTION NO. 2021-42
INTRODUCED BY: Mayor Bodnar

**AN EMERGENCY RESOLUTION
AUTHORIZING THE MAYOR AND PRESIDENT OF COUNCIL
TO ENTER INTO AGREEMENT WITH
THE CHAGRIN VALLEY DISPATCH COUNCIL
FOR USE OF THE FIRE STATION ALERTING SYSTEM SOFTWARE
IN AN AMOUNT NOT TO EXCEED \$18,000.00**

WHEREAS, based upon recommendation, it has been deemed in the best interest of the health, safety and welfare of all Village residents and inhabitants to utilize the Fire Station Alerting System provided by the Chagrin Valley Dispatch Council;

WHEREAS, the Fire Station Alerting System will enable the Village Fire Department to be in better communication with other area fire departments; and

WHEREAS, the Mayfield Village Fire Chief has reviewed the proposal and recommends that the Village enter into agreement with the Chagrin Valley Dispatch Council in an amount not to exceed \$18,000.00.

BE IT RESOLVED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

SECTION 1. The Council of Mayfield Village does hereby direct the Mayor and President of Council to enter into contract with Chagrin Valley Dispatch Council for the Fire Station Alerting System attached hereto as Exhibit A.

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution have been taken at open meeting of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This resolution is hereby declared to be an emergency measure immediately necessary for the preservation of health, safety and welfare of the residents of Mayfield Village, Ohio, for the reason that it provides for necessary services to ensure that the Village Fire Department is properly supported. It shall, therefore, take effect immediately upon the passage by

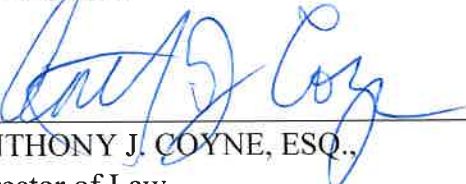
the affirmative vote of not less than five (5) members elected to Council and approved by the Mayor or otherwise at the earliest time allowed by law.


STEPHEN SCHUTT
Council President

First Reading: November 15, 2021
Second Reading: Suspended, 2021
Third Reading: Suspended, 2021
PASSED: November 15, 2021


BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:


ANTHONY J. COYNE, ESQ.,
Director of Law

ATTEST: 
MARY E. BETSA, MMC
Clerk of Council

End User License Agreement

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Section 1. Scope and Applicability

This End User License Agreement (“**EULA**”) between Mayfield Village (“**Village**”) and Chagrin Valley Dispatch Council (“**CVDC**”) covers Village’s use of the Fire Station Alerting System Software & Hardware (“**CVDC Technology**”). This document also incorporates any Product Specific Terms that may apply to the CVDC Technology Village acquires. Definitions of capitalized terms are in **Section 2. (Definitions)**.

Village agrees to be bound by the terms of this EULA through (a) Villages’s download, installation, or use of the CVDC Technology; or (b) Village’s express agreement to this EULA.

Section 2. Definitions

“**Affiliate**” means any corporation, company or governmental organization or council that directly or indirectly controls, or is controlled by, or is under common control with the relevant party, where “control” means to: (a) own more than 50% of the relevant party; or (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).

“**Authorized Third Parties**” means Village’s Users, Village’s Affiliates, Village’s employees, Village’s third-party service providers, and each of their respective Users permitted to access and use the CVDC Technology on Village’s behalf as part of Village’s Entitlement.

“**CVDC**” “**we**” “**our**” or “**us**” means CVDC or its applicable Affiliate(s).

“**CVDC Content**” means any (a) content or data provided by CVDC to Village as part of Village’s use of the CVDC Technology and (b) content or data that the CVDC Technology generates or derives in connection with Village’s use. CVDC Content includes geographic and domain information, rules, signatures, threat intelligence and data feeds and CVDC’s compilation of suspicious URLs.

“**CVDC Technology**” means the Fire Station Alerting System Software & Hardware.

“**Cloud Service**” means the CVDC hosted software-as-a-service offering or other CVDC cloud-enabled feature described in the applicable Product Specific Terms. Cloud Service includes applicable Documentation and may also include Software.

“**Confidential Information**” means non-public proprietary information of the disclosing party (“**Discloser**”) obtained by the receiving party (“**Recipient**”) in connection with this EULA, which is (a) conspicuously marked as confidential or, if verbally disclosed, is summarized in writing to the Recipient within 14 days and marked as confidential; or (b) is information which by its nature should reasonably be considered confidential whether disclosed in writing or verbally.

“**Delivery Date**” means the date agreed in Village’s Entitlement, or where no date is agreed: (a) where Usage Rights in Software or Cloud Services are granted separately: (i) for Software, the earlier of the date Software is made available for download or installation, or the date that CVDC ships the tangible media containing the Software, and (ii) for Cloud Services, the date on which the Cloud Service is made available for Village’s use; or (b) where Usage Rights in Software and Cloud Services are granted together, the earlier of the date Software is made available for download, or the date on which the Cloud Service is made available for Village’s use.

“**Documentation**” means the technical specifications and usage materials officially published by CVDC specifying the functionalities and capabilities of the applicable CVDC Technology.

“**Entitlement**” means the specific metrics, duration, and quantity of CVDC Technology that Village commits to acquire from CVDC through this End User License Agreement.

“Malicious Code” means code that is designed or intended to disable or impede the normal operation of, or provide unauthorized access to, networks, systems, Software or Cloud Services other than as intended by the CVDC.

“Product Specific Terms” means additional product related terms applicable to the CVDC Technology Village acquires.

“Software” means the CVDC computer programs including Upgrades, firmware and applicable Documentation.

“Upgrades” means all updates, upgrades, bug fixes, error corrections, enhancements and other modifications to the Software.

“Usage Term” means the period commencing on the Delivery Date and continuing until expiration or termination of the Entitlement, during which period Village has the right to use the applicable CVDC Technology.

“User” means the individuals (including contractors or employees) permitted to access and use the CVDC Technology on Village’s behalf as part of Village’s Entitlement.

“Village” means the individual or legal entity purchasing the CVDC Technology.

Section 3. Using CVDC Technology

3.1 License and Right to Use. CVDC grants Village a non-exclusive, non-transferable (a) license to use the Software ; and (b) right to use the Cloud Services, both as acquired from CVDC, for Village’s direct benefit during the Usage Term and as set out in Village’s Entitlement and this EULA (collectively, the **“Usage Rights”**), all as set forth in Exhibit A attached hereto.

Use by Third Parties. Village may permit Authorized Third Parties to exercise the Usage Rights on its behalf, provided that Village is responsible for (a) ensuring that such Authorized Third Parties comply with this EULA and (b) any breach of this EULA by such Authorized Third Parties.

3.3 Upgrades or Additional Copies of Software. Village may only use Upgrades or additional copies of the Software beyond Village’s license Entitlement if Village has (a) acquired such rights under a support agreement covering the applicable Software; or (b) Village has purchased the right to use Upgrades or additional copies separately.

3.4 Interoperability of Software. If required by law and upon Village’s request, CVDC will provide Village with the information needed to achieve interoperability between the Software and another independently created program, provided Village agrees to any additional terms reasonably required by CVDC. Village will treat such information as Confidential Information.

3.5 Subscription Renewal. Usage Rights in CVDC Technology acquired on a subscription basis will automatically renew for the renewal period indicated on the order Village placed with CVDC (**“Renewal Term”**) unless:

(a) Village notifies CVDC in writing at least 45 days before the end of Village’s then-current Usage Term of Village’s intention not to renew; or (b) Village elects not to auto-renew at the time of the initial order placed with CVDC. CVDC will notify Village reasonably in advance of any Renewal Term if there are fee changes. The new fees will apply for the upcoming Renewal Term unless Village promptly notifies CVDC in writing, before the renewal date, that Village does not accept the fee changes. In that case, Village’s subscription will terminate at the end of the current Usage Term. For the Usage Term and Renewal Term an annual service fee of fifteen percent (15%) of the initial fees set forth in Exhibit A attached hereto is due on each annual anniversary date of this Agreement. CVDC’s maintenance and support services are set forth in Exhibit B attached hereto.

Section 4. Additional Conditions of Use

4.1. CVDC Technology Generally. Unless expressly agreed by CVDC, Village may not (a) transfer, sell, sublicense, monetize or make the functionality of any CVDC Technology available to any third party; (b) use the Software on second hand or refurbished CVDC equipment not authorized by CVDC, or use Software that is licensed for a specific device on a different device; (c) remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks; (d) reverse engineer, decompile, decrypt, disassemble, modify, or make derivative works of the CVDC Technology; or (e) use CVDC Content other than as part of Village’s permitted use of the CVDC Technology.

4.2. Cloud Services. Village will not intentionally (a) interfere with other customers’ access to, or use of, the Cloud Service, or with its security; (b) facilitate the attack or disruption of the Cloud Service, including a denial of service attack, unauthorized access, penetration testing, crawling, or distribution of malware (including viruses, trojan horses, worms, time bombs, spyware, adware, and cancelbots); (c) cause an unusual spike or increase in Village’s use of the Cloud Service that negatively impacts the Cloud Service’s operation; or (d) submit any information that is not contemplated in the applicable Documentation.

4.3. Evolving CVDC Technology. CVDC may: (a) enhance or refine a Cloud Service, although in doing so, CVDC will not materially reduce the core functionality of that Cloud Service, except as contemplated in this Section; and (b) perform scheduled maintenance of the infrastructure and software used to provide a Cloud Service, during which time Village may experience some disruption to that Cloud Service. Whenever reasonably practicable, CVDC will provide Village with advance notice of such maintenance. Village acknowledges that, from time to time, CVDC may need to perform emergency maintenance without providing Village advance notice, during which time CVDC may temporarily suspend Village's access to, and use of, the Cloud Service.

4.4. Protecting Account Access. Village will keep all account information up to date, use reasonable means to protect Village's account information, passwords and other login credentials, and promptly notify CVDC of any known or suspected unauthorized use of or access to Village's account.

4.5. Use with Third-Party Products. If Village uses the CVDC Technology together with third-party products, such use is at Village's risk. Village is responsible for complying with any third-party provider terms, including its privacy policy. CVDC does not provide support or guarantee ongoing integration support for products that are not a native part of the CVDC Technology.

Section 5. Fees

To the extent permitted by law, orders for the CVDC Technology are non-cancellable. Fees for Village's use of CVDC Technology are due and are set out in Village's purchase terms with CVDC as set forth in Exhibit A attached hereto. If Village uses CVDC Technology beyond Village's Entitlement ("Overage"), the CVDC may invoice Village, and Village agrees to pay for such Overage.

Section 6. Confidential Information and Use of Data

6.1 Confidentiality. Recipient will hold in confidence and use no less than reasonable care to avoid disclosure of any Confidential Information to any third party, except for its employees, affiliates, and contractors who have a need to know ("Permitted Recipients"). Recipient: (a) must ensure that its Permitted Recipients are subject to written confidentiality obligations no less restrictive than the Recipient's obligations under this EULA, and (b) is liable for any breach of this Section by its Permitted Recipients. Such nondisclosure obligations will not apply to information that:

(i) is known by Recipient without confidentiality obligations; (ii) is or has become public knowledge through no fault of Recipient; or (iii) is independently developed by Recipient. Recipient may disclose Discloser's Confidential Information if required under a regulation, law or court order provided that Recipient provides prior notice to Discloser (to the extent legally permissible) and reasonably cooperates, at Discloser's expense, regarding protective actions pursued by Discloser. Upon the reasonable request of Discloser, Recipient will either return, delete or destroy all Confidential Information of Discloser and certify the same.

6.2 How We Use Data. CVDC will access, process and use data in connection with Village's use of the CVDC Technology in accordance with applicable privacy and data protection laws.

6.3 Notice and Consent. To the extent Village's use of the CVDC Technology requires it, Village is responsible for providing notice to, and obtaining consents from, individuals regarding the collection, processing, transfer and storage of their data through Village's use of the CVDC Technology.

Section 7. Ownership

Except where agreed in writing, nothing in this EULA transfers ownership in, or grants any license to, any intellectual property rights. Village retains any ownership of Village's content and CVDC retains ownership of the CVDC Technology and CVDC Content. CVDC may use any feedback Village provides in connection with Village's use of the CVDC Technology as part of its business operations.

Section 8. Warranties and Representations

8.1. Performance. CVDC warrants that: (a) for a period of 90 days from the Delivery Date or longer as stated in Documentation, the Software substantially complies with the Documentation; and (b) during the Usage Term, it provides the Cloud Services with commercially reasonable skill and care in accordance with the Documentation and Product Specific Terms.

8.2. Malicious Code. CVDC will use commercially reasonable efforts to deliver the CVDC Technology free of Malicious Code.

8.3. Qualifications. Sections 8.1 and 8.2 do not apply if the CVDC Technology or the equipment on which it is authorized for use: (a) has been altered, except by CVDC or its authorized representative; (b) has been subjected to abnormal physical conditions, accident or negligence, or installation or use inconsistent with this EULA or CVDC's instructions; (c) is not a CVDC-branded product or service; or (d) has not been provided by CVDC. Upon Village's prompt written notification to CVDC during the warranty period of CVDC's breach of this Section 8, Village's sole and exclusive

remedy (unless otherwise required by applicable law) is, at CVDC's option, either (i) repair or replacement of the applicable CVDC Technology or (ii) a refund of the (a) license fees paid or due for the non-conforming Software, or (b) the fees paid for the period in which the Cloud Service did not comply, excluding any amounts paid under a service level agreement/objective, if applicable.

Where CVDC provides a refund of license fees paid for Software, Village must return or destroy all copies of the applicable Software. **Except as expressly stated in this Section, to the extent allowed by applicable law, CVDC expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition or other implied term as to merchantability, fitness for a particular purpose or non-infringement, or that the CVDC Technology will be secure, uninterrupted or error free.**

Section 9. Liability

Neither party will be liable for indirect, incidental, exemplary, special or consequential damages; loss or corruption of data or interruption or loss of business; or loss of revenues, profits, goodwill or anticipated sales or savings. The maximum aggregate liability of each party under this EULA is limited to (a) for claims solely arising from Software licensed on a perpetual basis, the fees received by CVDC for that Software; or (b) for all other claims, the fees received by CVDC for the applicable CVDC Technology and attributable to the 12 month period immediately preceding the first event giving rise to such liability.

These limitations of liability do not apply to liability arising from (a) Village's failure to pay all amounts due; or (b) Village's breach of Sections 3.1 (License and Right to Use), 4.1 (CVDC Technology Generally), 4.2 (Cloud Services). This limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement, or otherwise, even if either party has been advised of the possibility of such damages. Nothing in this EULA limits or excludes any liability that cannot be limited or excluded under applicable law. This limitation of liability is cumulative and not per incident.

Section 10. Termination and Suspension

10.1. Suspension. CVDC may immediately suspend Village's Usage Rights if Village breaches Sections 3.1 (License and Right to Use), 4.1 (CVDC Technology Generally), 4.2 (Cloud Services).

10.2. Termination. If a party materially breaches this EULA and does not cure that breach within 30 days after receipt of written notice of the breach, the non-breaching party may terminate this EULA for cause. CVDC may immediately terminate this EULA if Village breaches Sections 3.1 (License and Right to Use), 4.1 (CVDC Technology Generally), 4.2 (Cloud Services). Upon termination of the EULA, Village must stop using the CVDC Technology and destroy any copies of Software and Confidential Information within Village's control. If this EULA is terminated due to CVDC's material breach, CVDC will refund Village the prorated portion of fees Village has prepaid for the Usage Rights beyond the date of termination. Upon CVDC's termination of this EULA for Village's material breach, Village will pay CVDC any unpaid fees through to the end of the then-current Usage Term. If Village continues to use or access any CVDC Technology after termination, CVDC may invoice Village, and Village agrees to pay, for such continued use.

Section 11. Verification

During the Usage Term and for a period of 12 months after its expiration or termination, Village will take reasonable steps to maintain complete and accurate records of Village's use of the CVDC Technology sufficient to verify compliance with this EULA ("**Verification Records**"). Upon reasonable advance notice, and no more than once per 12 month period, Village will, within 30 days from CVDC's notice, allow CVDC and its auditors access to the Verification Records and any applicable books, systems (including CVDC product(s) or other equipment), and accounts during Village's normal business hours. If the verification process discloses underpayment of fees: (a) Village will pay such fees; and (b) Village will also pay the reasonable cost of the audit if the fees owed to CVDC as a result exceed the amounts Village paid for Village's Usage Rights by more than 5%.

Section 12. General Provisions


12.1. Survival. Sections 5, 6, 7, 9, 10, 11 and 12 survive termination or expiration of this EULA.

12.2. Third-Party Beneficiaries. This EULA does not grant any right or cause of action to any third party.

12.3. Assignment and Subcontracting. Except as set out below, neither party may assign or novate this EULA in whole or in part without the other party's express written consent. CVDC may (a) by written notice to Village, assign or novate this EULA in whole or in part to an Affiliate of CVDC, or otherwise as part of a sale or transfer of any part of its business; or (b) subcontract any performance associated with the CVDC Technology to third parties, provided that such subcontract does not relieve CVDC of any of its obligations under this EULA.

- 12.4. **Modifications to the EULA.** CVDC may change this EULA or any of its components by agreement with Village and by updating this EULA accordingly. Changes to the EULA apply to any Entitlements acquired after the date of modification.
- 12.5. **Compliance with Laws.** Each party will comply with all laws and regulations applicable to their respective obligations under this EULA. CVDC may restrict the availability of the CVDC Technology in any particular location or modify or discontinue features to comply with applicable laws and regulations.
- 12.6. **Governing Law and Venue.** This EULA, and any disputes arising from it, will be governed exclusively by the laws of the State of Ohio. The courts located in Cuyahoga County, Ohio will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the EULA or its formation, interpretation or enforcement. Each party hereby consents and submits to the exclusive jurisdiction of such courts. Either party may seek interim injunctive relief in any such court of appropriate jurisdiction with respect to any alleged breach of CVDC's intellectual property or proprietary rights.
- 12.7. **Notice.** Any notice delivered by CVDC to Village under this EULA will be delivered via email or regular mail. Notices to CVDC should be sent to CVDC via email or regular mail unless this EULA, applicable Product Specific Terms or an order specifically allows other means of notice.
- 12.8. **Force Majeure.** Except for payment obligations, neither party will be responsible for failure to perform its obligations due to an event or circumstances beyond its reasonable control.
- 12.9. **No Waiver.** Failure by either party to enforce any right under this EULA will not waive that right.
- 12.10. **Severability.** If any portion of this EULA is not enforceable, it will not affect any other terms.
- 12.11. **Entire agreement.** This EULA is the complete agreement between the parties with respect to the subject matter of this EULA and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral).
- 12.12. **Order of Precedence.** If there is any conflict between this EULA and any Product Specific Terms expressly referenced in this EULA, the order of precedence is: (a) such Product Specific Terms; (b) this EULA (excluding the Product Specific Terms and any CVDC policies); then (c) any applicable CVDC policy expressly referenced in this EULA.


MAYFIELD VILLAGE:



 Brenda T. Bodnar, Mayor



 Stephen Schutt, Council President

Approved as to form only:


 Anthony J. Coyne, Law Director
 Mayfield Village

CHAGRIN VALLEY DISPATCH COUNCIL:

 Mayor Kirsten Holzheimer Gail, President

Approved as to form only:

 David J. Matty, Director of Law
 Chagrin Valley Dispatch Council

FISCAL OFFICER'S CERTIFICATE

It is hereby certified that the amount necessary to meet the obligation, contract, agreement, payment or expenditure described on the attached Resolution No. 2021-42 has been lawfully appropriated or authorized or directed for such purpose and is in the Treasury or in the process of collection to credit the fund(s)/account(s) named herein free from any obligation or certification now outstanding.

Date: 11-16-21



Ronald C. Wynne, Director of Finance

Exhibit A			
ITEM	DESCRIPTION	Req	PRICE
FSA	Web Based Fire Station Alerting Solution (per station)	Yes	\$12,000.00
Computer	Fire Station Alerting computer w/backup UPS	Yes (4)	\$1,500.00
Firewall	Firewall Fortigate 61F (for VPN Access to Dispatch)	Yes (1)	\$1,500.00
Web Relay	Needed for Lighting / PA / Timer Controls	No (2)	\$200.00
Web Relay -Pwr Supply	Power Supply for above if POE is unavailable	No	\$30.00
Light -LED Flashing	Flashing Red LED Light for alerts (Add \$15.00 for white LED)	No	\$115.00
Light -LED Power Supply	Altronix Power Supply (Required for LED Lights, only 1 per site)	No	\$300.00
PA Amp	Bogen V100 (< 20 Speakers)	No	\$575.00
PA Amp	Bogen V250 (> 20 Speakers) *Maybe required for large deployments	No	\$750.00
PA Amp Rack Kit	Bogen Rack Mount Kit	No	\$50.00
PA Input	Bogen TBL1S -Balance (Phones/Radios/Computer) 1 for Each Type	No	\$95.00
PA Speaker -Ceiling	Bogen Drop in Speaker Tile 2'x2'	No	\$90.00
PA Speaker -Wall	Bogen Wall Baffle Speaker	No	\$50.00
PA Speaker -Bay	Bogen Orbit Pendant Speaker for bays w/Safety Chain	No	\$250.00
PA Speaker Volume Control	Bogen Speaker Volume Control one per room wall mount	No	\$65.00
PA Radio Timer	Radio Timer Module (Allows radio to be on a timer for PA system)	No	\$375.00
Usage Term	Continuous unless terminated per End-User-Agreement	N/A	N/A
Installation	Installation cost to be determined based on site survey and options selected.	Yes	\$75 per hr per tech
Installation Supplies	Installation supplies (wiring / boxes / connectors / etc.) to be determined based on site survey and options selected.	Yes	
Exhibit B			
ITEM	DESCRIPTION	Req	SELL PRICE
Yearly Support -Basic	Basic support only includes computer, UPS, and software. (NBD)	Yes (3)	\$1,500.00
Yearly Support -Advanced	Covers all additional options selected. Must have basic support. (NBD)	Yes (2)	\$750.00
Yearly Support -Premium	24x7 support (4 hour response) for up to 5 fire stations from the same agency.	No	\$10,000.00
Note 1.	Not required if existing VPN to dispatch is set up. Highly recommended to have a CVD Firewall in place to ensure reliability.		
Note 2.	Required if any PA or Lighting Option is selected.		
Note 3.	Basic support includes emergency computer replacement.		
Note 4.	Must have stable and sufficient (Min. 50x50Mbps Business Class) Direct Internet Access		