

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO AN
AGREEMENT WITH MARK'S CONSTRUCTION OF
VALLEY CITY, OHIO, FOR THE PHASE I, A AND B, OF
THE LOWER POND DAM AND STREAM RESTORATION
PROJECT, AND DECLARING AN EMERGENCY.**

WHEREAS, Spillway LLC has submitted a plan to the Village for the development of the former Ivex property; and

WHEREAS, the former Ivex property includes a dam on the Chagrin River which has been found to be substandard by the Ohio Department of Natural Resources and to be a source of water quality impairment on the Chagrin River by the Ohio Environmental Protection Agency; and

WHEREAS, Spillway LLC now owns the dam; and

WHEREAS, Spillway LLC, in conjunction with the Village, desires to lower the existing dam spillway and perform certain dam modifications, the Lower Pond Dam and Stream Restoration Project (the "Project"), that will allow the dam to be declassified by the Ohio Department of Natural Resources; and

WHEREAS, such modifications will increase water quality and public safety in the Village; and

WHEREAS, the Village has received an Ohio Environmental Protection Agency Clean Water Act Section 319(h) Nonpoint Source Grant to implement Project; and

WHEREAS, the Village Engineer's estimate of the cost of the Phase IA and Phase IB of the Project was sixty-five thousand dollars (\$65,000); and

WHEREAS, the Village is the agency primarily responsible for administering the grant; and

WHEREAS, the Village solicited bids in accordance with Ohio law for Phase IA and Phase IB of the Project; and

WHEREAS, bids were received on January 5, 2011; and

WHEREAS, the Village Engineer reviewed and evaluated the bids received and recommended that the contract be awarded to Mark's Construction of Valley City, Ohio, in an amount not to exceed eighty-six thousand three hundred five dollars and two cents (\$86,305.02); and

WHEREAS, the lowest and best bid was greater than ten percent (10%) above the Village Engineer's estimate of probable construction costs for Phase IA and Phase IB of the Project; and

WHEREAS, Section 153.12(A) of the Ohio Revised Code requires bids to be within ten

percent (10%) of the engineer's estimate of probable construction costs; and

WHEREAS, pursuant to both Ohio Revised Code Section 735.051 and to Article IV, Section 8 of the Chagrin Falls Charter, this Council has the authority to determine that an emergency exists that obviates the need for strict compliance with formal bidding requirements; and

WHEREAS, the Village must complete this project by April 1, 2011, to ensure that the Village is able to obtain the grant money for this project; and

WHEREAS, there is a second phase to the Project that can only be performed after this phase is completed; and

WHEREAS, this Council determines that an emergency exists that obviates the need to strictly comply with Section 153.12; and

WHEREAS, this Council desires to award this contract in accordance with the recommendation of the Village Engineer.

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

SECTION 1. That this Council finds and determines that the performance of Phase IA and Phase IB of the Lower Pond Dam and Stream Restoration Project constitutes an emergency, thereby obviating the need for the lowest and best bid to be within ten percent (10%) of the estimate of probable costs established by the Village Engineer, as ordinarily required under Ohio law.

SECTION 2. That the Mayor be and is hereby authorized and directed to enter into an agreement with Mark's Construction Company of Valley City, Ohio, for the Phase IA and Phase IB of the Lower Pond Dam and Stream Restoration Project, in an amount not to exceed eighty-six thousand three hundred five dollars and two cents (\$86,305.02), in accordance with the plans and specifications on file with the Village Engineer.

SECTION 3. That sufficient funds are hereby appropriated to pay for the agreement authorized herein.

SECTION 4. 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 5. 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.

ORDINANCE NO.: 2011- 03
INTRODUCED BY: MR. PATTON

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SECTION 6. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of this Village and for the further reason that this Ordinance must be immediately effective so that the dam repairs may begin immediately; wherefore, provided it receives the requisite number of affirmative votes 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; otherwise, it shall take effect and be in force after the earliest period allowed by law.

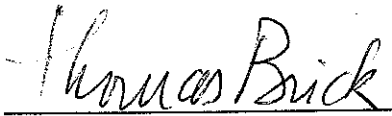
PASSED: January 10, 2011



Council President

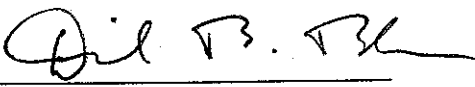
Submitted to the Mayor for
his approval on this
11 day of January, 2011

Approved by the Mayor
January 11, 2011



Mayor

I hereby certify that Ordinance No. 2011- 03 was duly enacted on the 10 day of January, 2011, 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.



Clerk of Council