

ORDINANCE NO. 257 (22-23)

An Ordinance to declare the existence of a real and present emergency arising in connection with the operation and maintenance of the Department of Public Service of the City of Marietta, Ohio, and its municipal utility, the Wastewater Department, as the result of the 30-inch diameter sanitary sewer line collapse which creates an unhealthy condition that detrimentally affects the citizens of the City of Marietta, Ohio, and the City of Marietta, Ohio's financial condition; and, therefore, to authorize and direct the Director of Public Safety and Service to enter into a contract without formal bidding, advertising, and quality based selection, pursuant to Ohio Revised Code Sections 735.051 and 153.71(B), with Mack Industries, Valley City, Ohio for the completion of the City of Marietta East Norwood Pump Station and Sanitary Sewer Collapse Emergency Repair Project, at a price not to exceed \$389,381.00 and declaring an EMERGENCY.

WHEREAS, between June 2, 2020 and June 9, 2020, a catastrophic land slip destroyed approximately 300 feet of the Marietta River Trail Phase V; and

WHEREAS, the retaining wall located along Duck Creek, which was constructed to protect the Marietta River Trail Phase V and a 30-inch diameter sanitary sewer line, failed and collapsed; and

WHEREAS, the Marietta River Trail Phase V is closed to the public because of the dangerous conditions the land slip has created as a result of the collapse; and

WHEREAS, as a result of the land slip and the retaining wall's partial collapse and the sanitary sewer collapse, the City of Marietta has had to start bypassing raw sewage with pumps and external lines from manhole 3-70 to manhole 3-72; and

WHEREAS, on September 21, 2020, the City of Marietta, Ohio contacted the Ohio EPA and informed the EPA that a main sanitary sewer line had collapsed on June 8, 2020. The collapse occurred due to the failure of a retaining wall on the Marietta River Trail Phase V. The failure of the retaining wall caused the hill to slip and collapsed the sewer; and

WHEREAS, on October 8, 2020, the City of Marietta, Ohio received from the Ohio EPA, a notice of violation. This notice of violation was promptly answered and an action plan was put into place by the City of Marietta Wastewater Department; and

WHEREAS, the City of Marietta, Ohio has received further notices from the Ohio EPA of violations due to the collapse of the sewer line; and

WHEREAS, a health emergency exists in the operation and maintenance of the Department of Public Service of the City of Marietta, Ohio, and its municipal utility as a result of the sewer collapse; and

WHEREAS, the City of Marietta, Ohio contracted with DRS Enterprises, Inc. for the City of Marietta East Norwood Pump Station and Sanitary Sewer Collapse Emergency Repair Project

(the "Project"), the purpose of which was to remedy the health emergency by permanently bypassing the collapsed section of sanitary sewer line; and

WHEREAS, DRS Enterprises, Inc. failed to complete the Project and has failed to correct defective work in spite of numerous notices and demands from the City of Marietta, Ohio to do so; and

WHEREAS, DRS Enterprises, Inc.'s defective work has resulted in damage to pump station equipment and safety concerns; and

WHEREAS, DRS Enterprises, Inc. has informed the City of Marietta, Ohio that up to an additional year could be required to complete the Project and correct its defective work; and

WHEREAS, a health emergency still exists as the Project has not been completed and defective work remains to be corrected; and

WHEREAS, the nature of the emergency requires prompt action which would be unnecessarily delayed by compliance with the terms of Ohio Revised Code Section 735.05, regarding the competitive bidding process, and Ohio Revised Code Sections 153.65 through 153.70, regarding the quality-based selection process; and

WHEREAS, the City of Marietta has determined that it is necessary to complete the Project and correct the defective work by way of another contractor, as allowed by the Owner Contractor Agreement for the Project;

WHEREAS, the City of Marietta, Ohio has received a proposal from Mack Industries, Inc., Valley City, Ohio to complete the Project and to repair the defective work; and

WHEREAS, the Council for the City of Marietta, Ohio deems it necessary to preserve the health, safety and welfare of the citizens of Marietta, Ohio, that it authorizes a contract with Mack Industries, Inc., Valley City, Ohio without advertising for competitive bids, or quality-based selection pursuant to authority in O.R.C. §735.051 and O.R.C. §153.72(B) and 2 CFR § 200.320(c)(3) because the above-described facts constitute a public exigency; and

WHEREAS, the City Engineer, Robert C. Heady; the Director of Public safety and Service, Steve Wetz; and the Mayor of the City of Marietta, Ohio, Josh Schlicher; recommend immediate action be taken due to the real and present emergency that now exists as a result of the sewer line collapse and DRS Enterprises, Inc.'s failure to complete the Project; now therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARIETTA, OHIO:

Section 1 : That the Council for the City of Marietta, Ohio hereby declares that a real and present emergency arising in connection with the operation of the Department of Public Service of the City of Marietta, Ohio, and its municipal utility the Wastewater Department exists



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and that the facts giving rise to the emergency constitute a public exigency under 2 CFR §200.320(c)(3).

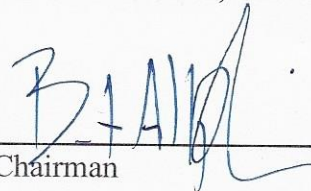
Section 2: That the Director of Public Safety and Service shall be and is hereby authorized and directed, without formal bidding, advertising, and quality based selection which requirements are hereby specifically waived, to enter into a contract with Mack Industries, Inc., Valley City, Ohio to complete the City of Marietta East Norwood Pump Station and Sanitary Sewer Collapse Emergency Repair Project, at a cost not to exceed \$389,381.00, according to the attached Exhibit "A," the terms and conditions of which are hereby adopted and approved.

Section 3: That it is 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 that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

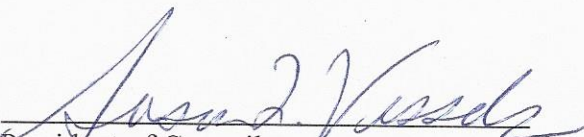
Section 4: That this Ordinance is hereby declared to be an EMERGENCY measure necessary for the immediate preservation of the public peace, health and safety of the City of Marietta, Ohio and for the further reason as a result of the catastrophic failure of the retaining wall, the 30 inch diameter sanitary sewer has collapsed and created Ohio EPA violations, thereby creating a real and present emergency to the City of Marietta, Ohio and its citizens.

WHEREFORE, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Introduced by the Water, Sewer and Sanitation Committee, Bret Allphin, Chairman.

  
Chairman

Passed this 20<sup>th</sup> day of April, 2023.

  
President of Council

ATTEST:

Michelle Newbanks  
Clerk of Council

Approved this 20<sup>th</sup> day of April, 2023.

  
Mayor

First Reading April 20, 2023

Second Reading Suspended

Third Reading Suspended