

ORDINANCE NO. 47 (24-25)

An Ordinance to repeal Ordinance No. 269 (22-23), passed on the 18th day of May, 2023, and declaring an EMERGENCY.

WHEREAS, in 2022, the United States Environmental Protection Agency (EPA) ordered municipalities throughout the United States to inventory their water lines to ensure that none of lines contained lead by October 16, 2024; and

WHEREAS, in September, 2022, in anticipation of completing a water service lateral inventory by October 16, 2024, as required by the Ohio Environmental Protection Agency (EPA), the City of Marietta, Ohio nominated a \$400,000.00 Lead Service Line Investigation Project to Ohio EPA's, Office of Financial Assistance, for funding through EPA's Drinking Water Assistance Fund (DWAFF) Program Year 2023; and

WHEREAS, in December of 2022, the City was awarded principal forgiveness funds in the amount of \$400,000.00; and

WHEREAS, on May 18, 2023, the Council of the City of Marietta, Ohio passed Ordinance No. 269 (22-23), which was 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 Safety and Service of the City of Marietta, Ohio, and its municipal utility, the Water Department, as a result of needed inventorying of materials, and perhaps replacement of some of Marietta's water lines, to ensure that any lead piping that might be located could be replaced, so as to prevent an unhealthy condition that could detrimentally affect the citizens of the City of Marietta, Ohio; and

WHEREAS, Ordinance No. 269 (22-23) authorized and directed the Director of Public Safety and Service to enter into a contract or contracts without formal bidding, advertising, and quality based selection, pursuant to Ohio Revised Code Sections 735.051

and 153.71(B), for the Marietta Lead Service Lines Investigations, Design and Construction Project at a price not to exceed \$400,000.00 which consisted of \$100,000.00 to be used to hire a consultant to develop a program to complete the service lateral inventory and to develop design standards and procedures for lead service line replacement, including water system and property records research, identification of potential areas to investigate, development of a customer survey and maps of areas that would be needed to complete Subsurface Utility Excavations (SUEs). The remaining \$300,000.00 was to be used for SUEs at locations where no other documentation existed. The SUEs were to be performed with a hydro excavation truck that uses a high pressure water spray and a vacuum to make ten to twelve inch (10" to 12") diameter round "potholes" to expose the water service lines so the lines could be checked for lead; and

WHEREAS, a Quality Base Selection (QBS) process was completed and a consultant was awarded a contract in May of 2023 for the \$100,000.00 portion of the award; and

WHEREAS, because funding was awarded half-way through the fiscal year, the City did not have time to select a consultant, develop a list of locations and bid out the SUSs; and

WHEREAS, to address this, a SUE Contractor was acquired utilizing a "State Bid" Joint Purchasing Agreement; and

WHEREAS, F. H. Paschen, S.N. Nielson & Associates, LLC (Contractor) submitted Unit Prices for the task, and on June 29, 2023, entered into the City's standard construction contract for \$300,000.00. (Please see Contract No. 27-23 attached hereto as Exhibit "A"); and

WHEREAS, after the execution of the contract, F. H. Paschen, S.N. Nielson & Associates, LLC and the City developed a disagreement over pricing; and

WHEREAS, Paragraph 1.2 of the Contract between the City of Marietta, Ohio and F. H. Paschen, S.N. Nielson & Associates, LLC, titled "COMPLETION" stated that [The Project shall be finally completed by November 1, 2023, to-wit: (the "Completion Date"); and

WHEREAS, to date, no work has been performed toward the project and the completion date has passed; and

WHEREAS, on April 1, 2024, the City of Marietta, Ohio provided notice to F. H. Paschen, S.N. Nielson & Associates, LLC that the City was terminating Contract No. 27-23, pursuant to Paragraph 16.2 titled: (TERMINATION FOR THE CONVENIENCE OF THE OWNER); and

WHEREAS, in light of the disagreement over pricing with Paschen and the great cost of replacing all suspected water lines, the City has now decided to purchase a hydro-vac truck, wherein the Public Works Department will conduct excavation "potholing" of a representative number of water mains, corporation stops, and service laterals, by hydro excavating. These investigations will allow for replacement of any effected water lines and for the revision of records and maps, as well as provide locations for future replacement; and

WHEREAS, by purchasing a hydro-vac truck and then using City employees to conduct excavation "potholing" and City employees to replace any effected water lines, the City of Marietta will realize a considerable cost savings. Furthermore, by purchasing the hydro-vac truck, the City can perform future investigations such as locating clogged or collapsed water lines or sewer lines; and

WHEREAS, now that the Contract (# 27-23) between the City of Marietta, Ohio and Paschen, S.N. Nielson & Associates, LLC has been terminated, Ordinance No. 269 (22-23) needs to be repealed in its entirety; now therefore


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

Section 1 : That Ordinance No. 269 (22-23) passed on May 18, 2023 shall be and is hereby repealed in its entirety.

Section 2: 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 3: 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, that immediate action is necessary in order for the City of Marietta, Ohio to move forward with the testing of water lines for lead; and in order to comply with the Ohio Environmental Protection Agency's Drinking Water Assistance Fund (DWAF) that was initially awarded; and in order to comply with the United States Environment Protection Agency's deadline for locating and replacing any lead bearing lines; and for the reason that by purchasing a hydro-vac truck and using City employees to perform the work, the City will realize a cost savings.

Introduced by the Water, Sewer and Sanitation Committee, Ben Rutherford, Chairman.


Chairman


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Chairman

Passed this 4th day of April, 2024.


President of Council

ATTEST:


Clerk of Council

Approved this 4th day of April, 2024.


Mayor

First Reading April 4, 2024

Second Reading Suspended

Third Reading Suspended