

ORDINANCE NO. 50 (24-25)

An Ordinance to authorize and direct the Director of Public Safety and Service to apply for, accept, and enter into a Water Supply Revolving Loan Account Agreement (**as a change of scope**), on behalf of the City of Marietta, Ohio for the purchase of a Hydro-Vac Truck the be used for potholing the water mains and lines in the City of Marietta, Ohio to locate any lines containing lead and for the further construction of safe drinking water facilities; **designating a dedicated replacement source** for the loan, 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 applied for a \$400,000.00 (WSRLA) Loan for its Lead Service Line Investigation Project from Ohio EPA's, Office of Financial Assistance, for funding through EPA's Drinking Water Assistance Fund (DWAF) Program Year 2023 for the planning, design, and or construction of the City's drinking water facilities 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

ORDINANCE NO. 50 (24-25)  
PAGE TWO

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

ORDINANCE NO. 50 (24-25)  
PAGE THREE

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-

ORDINANCE NO. 50 (24-25)  
PAGE FOUR

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; and

WHEREAS, in light of the termination of the contract between the City of Marietta, Ohio and F. H. Paschen, S.N. Nielson & Associates, LLC (Contractor) the City would now like to **change the scope** of the initial nomination of the \$400,000.00

ORDINANCE NO. 50 (24-25)  
PAGE FIVE

through EPA's Drinking Water Assistance Fund (DWAF) Program Year 2023, in order to purchase a Hydro-Vac truck for identifying lead lines in the City of Marietta; and

WHEREAS, the \$300,000.00 that the City intended to pay to the Contractor to remediate the lead line issues in Marietta will now be used towards the purchase of a Hydro-Vac truck so the City can conduct the potholing in-house; and

WHEREAS, the remaining \$189,500.00 needed to purchase the Hydro-Vac truck will come from the Marietta City Water Fund; and

WHEREAS, the dedicated repayment source for the WSRLA Loan is the Marietta City Water Fund, **(the dedicated repayment source)**; and

WHEREAS, the Ohio Water Supply Revolving Loan Account requires the government authority to pass legislation for the application of a loan and the execution of an agreement, as well as designating a dedicated repayment source, now therefore

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

Section 1: That in December of 2022, the City of Marietta, Ohio was awarded a \$400,000.00 principal forgiveness loan for the City's Lead Service Line Investigation Project from Ohio EPA's, Office of Financial Assistance, for funding through EPA's Drinking Water Assistance Fund (DWAF) Program Year 2023.

Section 2: That from the \$400,000.00 award, \$100,000.00 was paid to a consultant who conducted extensive research using old maps and other documents to determine areas that most

likely contain lead. This consultant also helped the City develop a plan of action for eliminating all lead service line within the City of Marietta, Ohio.

- Section 3: That \$300,000.00 that was set aside to pay the Contractor to conduct potholing and construction work to replace effected water lines, has not be used, because the contract between the City and the Contractor was terminated due to a disagreement.
- Section 4: That this Ordinance is to **change the scope** of the original award of \$400,000.00 for the City's Lead Service Line Investigation Project that was received from Ohio EPA's, Office of Financial Assistance, through the Drinking Water Assistance Fund (DWAF) Program Year 2023, so as to use the \$300,000.00 that was set aside for the Contractor who was slated to do the potholing and construction/replacement of lead lines, but whose contract was ultimately cancelled, to now purchase a Hydro-Vac truck so the potholing and construction/replacement of lead lines can be done in-house.
- Section 5: That the remaining \$189,500.00 needed to purchase the Hydro-Vac truck will come from the Marietta City Water Fund.
- Section 6: That the **designated source of repayment** for the Water Supply Revolving Loan Account (WSRLA) will be the **Marietta City Water Fund**.
- Section 7: 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.


ORDINANCE NO. 50 (24-25)  
PAGE SEVEN

- Section 8: That the Director of Public Safety and Service shall be and is hereby authorized and directed to approve the **change of scope** of the original WSRLA loan so as to redirect \$300,000.00 of said award towards the purchase of a Hydro-Vac truck so the lead pipe remediation can be performed in-house, instead of through an outside contractor.
- Section 9: That the Director of Public Safety and Service shall be and is hereby authorized and directed to **apply for, accept and enter into a Water Loan Agreement (WSRLA) as (a change of scope)** and to sign all documents for the WSRLA with the Ohio Environmental Protection Agency and the Ohio Water Development Authority for the planning, design and/or construction of safe drinking water facilities for the City of Marietta, Ohio.
- Section 10: 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.

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

ORDINANCE NO. 50 (24-25)  
PAGE EIGHT

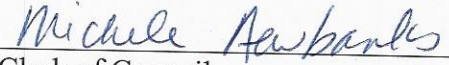
Introduced by the Water, Sewer & Sanitation Committee, Ben Rutherford, Chairman.

  
Chairman

Passed this 4<sup>th</sup> day of April, 2024.

  
President of Council

ATTEST:

  
Clerk of Council

Approved this 4<sup>th</sup> day of April, 2024.

  
Mayor

First Reading April 4, 2024

Second Reading Suspended

Third Reading Suspended