

RESOLUTION NO. 104 (22-23)

A Resolution to authorize the Law Director of the City of Marietta, Ohio, or his designee, pursuant to O.R.C. 733.53 to file an appeal of a decision rendered in the Common Pleas Court of Washington County, Ohio in a case styled City of Marietta, Ohio vs. Professional Service Industries, Inc. et al, and declaring an EMERGENCY.

WHEREAS, in December 2008, the City of Marietta entered into a contract with Jobes, Henderson, & Associates, Inc. (the Jobes/Hull Contract) to provide engineering services and construction plans for the City of Marietta River Trail Phase III Project; and

WHEREAS, Jobes, Henderson & Associates, Inc. was acquired by and/or merged into Hull & Associates, LLC, thus the project was referred to as the “Jobes/Hull Contract”; and

WHEREAS, the Jobes/Hull Contract was modified several times through various Change Orders; and

WHEREAS, in, or about May 2015, the City of Marietta, Ohio entered into a contract with Professional Service Industries, Inc., hereinafter referred to as “PSI” (the PSI/Intertek Contract) to provide geotechnical engineering services for the Project; and

WHEREAS, PSI was acquired by Intertek Group plc later in 2015. PSI either operated under the name Intertek or legally became Intertek; and

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WHEREAS, the "Project" consisted of 0.84 miles of multi-use river trail along the Ohio River and Duck Creek, a bridge over Duck Creek, retaining walls, and associated fencing. Two retaining walls were constructed as part of the Project; one retaining wall along the Ohio River and the other along Duck Creek; and

WHEREAS, the Project was completed in December of 2019; and

WHEREAS, in June of 2020, the Duck Creek wall failed, which resulted in significant damage to the multi-use river trail, and existing sanitary sewer line located behind the Duck Creek Wall; and

WHEREAS, the contracts entered into with Jobes/Hull and PSI/Intertek each warranted that the companies had the expertise and experience to perform the duties necessary to construct the 0.84 miles of multi-use river trail along the Ohio River and Duck Creek; construct the bridge over Duck Creek; construct the retaining walls; and install the associated fencing, however, due to improper workmanship and or design on the part of both Jobes/Hull and PSI/Intertek, the Duck Creek wall failed, causing the City to have to expend significant funds to rebuild the retaining wall and the damaged river trail; and

WHEREAS, on May 17, 2023, the Common Pleas Court of Washington County, rendered a decision in favor of PSI/Intertek and against the City, stating that the contract entered into between the City and PSI/Intertek stated that "No action or claim, whether in tort, contract, or otherwise, may be brought against PSI arising from or related to PSI's work, more than two years after the cessation of PSI's work hereunder, regardless of the date of discovery of such claim." The Court found that the last work performed by

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PSI/Intertek was on November 28, 2017 and that the City had filed its Complaint against PSI/Intertek on June 23, 2021, alleging negligence and breach of contract, which is more than three years after PSI completed its work on the Project which Complaint was thus filed outside of the two year limitation of PSI's contractual conditions; and


WHEREAS, the Law Director of the City of Marietta, Ohio, or his designee, is requesting a Resolution authorizing and directing the Law Director or his designee to file an appeal on behalf of the City of Marietta, Ohio, now therefore

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

Section 1: That the Marietta City Council shall and does hereby authorize and direct the Law Director of the City of Marietta, Ohio, or his designee, to file an Appeal in the Fourth District Court of Appeals in the case of the City of Marietta, Ohio vs. Professional Service Industries, Inc., et al. (Washington County Common Pleas Court Case No. 21 OT 111).

Section 2: That this Resolution shall be and 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 the deadline for filing the appeal is June 16, 2023. WHEREFORE, this Resolution shall be in full force and effect from and immediately after its passage and approval by the Mayor.

Introduced by the Finance and Taxation Committee, Michael Scales, Chairman.

  
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Michael Scales, Chairman

Passed this 15<sup>th</sup> day of June, 2023.

  
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President of Council

ATTEST:

Michelle Newbanks  
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Clerk of Council

Approved this 15<sup>th</sup> day of June, 2023.

  
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Mayor

First Reading June 1, 2023

Second Reading Suspended

Third Reading Suspended