



# City of Columbus

Office of City Clerk  
90 West Broad Street  
Columbus OH 43215-9015  
columbuscitycouncil.org

## Legislation Text

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### **BACKGROUND**

In 2019, Nickolas M. Savko & Sons, Inc. (“Savko”), on behalf of D.R. Horton-Indiana LLC dba Westport Homes (“D.R. Horton”), installed Roller Compacted Concrete (“RCC”) pavement in Section 1, Parts 1 and 2, of the Villages at Shannon Green residential subdivision project. Upon testing, certain portions of the RCC pavement failed to meet the required strength as dictated by the then-current edition of the Construction & Materials Specifications (“CMS”). The Department of Public Service, Division of Design and Construction, declined to accept the RCC pavement in question because of the failed testing. Savko contested the Department’s determination.

Following subsequent inspection and testing, as well as discussions between Savko and the Department of Public Service, as well as their counsel, Savko and the Department have decided it is in the best interest of the City to resolve their dispute by means of a settlement agreement. Therefore, this Ordinance is being submitted for City Council approval to authorize the City Attorney, on behalf of the Director of the Department of Public Service, to enter into a settlement agreement with Savko to resolve the dispute between the Department and Savko in the form of an extended maintenance security period for a portion of the RCC pavement in question, as well as related terms and conditions. A negotiated draft settlement is attached to this Ordinance.

This Ordinance is being submitted to City Council per Section 335.012 of the Columbus City Codes because the estimated value of the settled claim(s) exceeds \$20,000.00.

**FISCAL IMPACT:** This ordinance will have no fiscal impact.

To authorize the City Attorney, on behalf of the Director of the Department of Public Service, to enter into a settlement agreement with Nickolas M. Savko & Sons, Inc. for an extended pavement maintenance security period and related terms involving The Villages at Shannon Green, Section 1, Parts 1 and 2. (\$0.00)

**WHEREAS**, on January 3, 2019, the City, through its Department of Public Service (“City”), issued final approval for plans for the Shannon Green subdivision, Section 1, Parts 1 and 2 (collectively, for purposes of this Ordinance, Section 1, Parts 1 and 2 shall be known as the “Shannon Green Project”); and

**WHEREAS**, on or about April 17, 2019, two construction agreements were entered into between D.R. Horton-Indiana LLC dba Westport Homes (“D.R. Horton”) and the City; and

**WHEREAS**, the first construction agreement, Construction Agreement No. 2686, was for the construction of Shannon Green Section 1, Part 1, and D.R. Horton’s surety, Westchester Fire Insurance Company (“Westchester”) issued a performance bond in the amount of \$1,013,041.00 to guarantee the construction of Section 1, Part 1; and

**WHEREAS**, the second construction agreement, Construction Agreement No. 2687, was for the construction of Shannon Green Section 1, Part 2, and D.R. Horton’s surety, Westchester, issued a performance bond in the amount of \$267,006.00 to guarantee the construction of Section 1, Part 2; and

**WHEREAS**, during the construction of the Shannon Green Project, Nickolas M. Savko & Sons, Inc. (“Savko”), D.R.

Horton's general contractor, proposed to use Roller Compacted Concrete ("RCC") rather than asphalt, as contemplated by the Construction Agreements; and

**WHEREAS**, the City approved Savko's proposal to use RCC on the Shannon Green Project; and

**WHEREAS**, upon such approval by the City, Savko became subject to the then-existing City Construction and Materials Specifications ("CMS") governing RCC; and

**WHEREAS**, Savko installed RCC pavement in the Shannon Green Project; and

**WHEREAS**, in September 2019 and October 2019, the City performed core sampling of the pavement that Savko installed in the Shannon Green Project, in accordance with the CMS governing RCC; and

**WHEREAS**, two sections of pavement failed the RCC core sampling requirements; and

**WHEREAS**, the first of those two sections was located on Bamberg Drive in Shannon Green Section 1, Part 1, at the north lane of Bamberg Drive from stations 1+50 to 2+50 and at the south lane of Bamberg Drive from stations 1+95 to 2+50 (the "Bamberg Pavement"); and

**WHEREAS**, the second of those two sections was located on Tarboro Place in Shannon Green Section 1, Part 2, at the east lane of Tarboro Place from stations 5+25 to 7+75 ("East Tarboro Pavement") and at the west lane of Tarboro Place from stations 5+25 to 6+75 ("West Tarboro Pavement"); and

**WHEREAS**, a dispute arose between the City and Savko regarding the appropriate remedy for the Bamberg Pavement, East Tarboro Pavement, and West Tarboro Pavement ("Dispute"); and

**WHEREAS**, the Parties have reached an agreement as to the appropriate resolution surrounding the Bamberg Pavement, East Tarboro Pavement, and West Tarboro Pavement, namely, in the form of an extended maintenance guarantee and other related terms; and

**WHEREAS**, it is in the best interest of the City of Columbus to authorize the City Attorney, on behalf of the Director of the Department of Public Service, to enter into a settlement agreement with Savko to resolve the Dispute as to the RCC pavement and related matters in the Shannon Green Project; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:**

**SECTION 1.** That the City Attorney, on behalf of the Director of the Department of Public Service, is hereby authorized to enter into a settlement agreement with Nickolas M. Savko & Sons, Inc. for an extended pavement maintenance security period and related terms and conditions involving The Village at Shannon Green, Section 1, Parts 1 and 2, in substantially the same form and on substantially the same terms as the agreement attached to this Ordinance as Exhibit A and incorporated herein by reference.

**SECTION 2.** That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.