

CITY OF BROOK PARK, OHIO

ORDINANCE NO. 115125-212216

INTRODUCED BY: MAYOR ORCUTT

P/C
CA Room 10/4/26
1st R 10/4/26
2nd R
3rd R
W/C

AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT
FOR PROFESSIONAL ENGINEERING SERVICES WITH THE
CONSULTING CITY ENGINEER (EUTHENICS, INC.) FOR THE
DESIGN OF THE BROOKPARK ROAD RESURFACING
PROJECT (PID 113598), AND THE MAYOR TO ENTER INTO
AGREEMENTS AS MAY BE NECESSARY FOR SAID PROJECT,
AND DECLARING AN EMERGENCY

WHEREAS, the existing Brookpark Road pavement within the City of Brook Park, Cleveland and Parma is typically in poor condition; and,

WHEREAS, the Brookpark Road Resurfacing Project includes the face to face of curb resurfacing of Brookpark Road; and,

WHEREAS, the project includes work within the City of Brook Park, the City of Cleveland at the west terminus and the City of Parma at the east terminus; and,

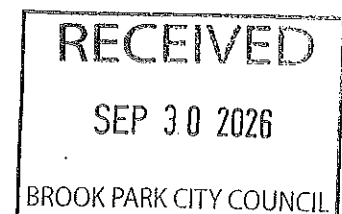
WHEREAS, this project is an ODOT LPA Federal ODOT-let project (PID 113598) with ODOT providing 80% funding for eligible costs up to a maximum of \$2,240,000 of State Funds; and,

WHEREAS, the City of Brook Park will serve as the contractual agent for the Cities of Cleveland and Parma.

WHEREAS, the cities of Brook Park, Cleveland and Parma plan to submit a joint grant application to OPWC for the State Infrastructure Programs (SCIP/LTIP/RLP); and,

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The Mayor is hereby authorized to enter into an agreement for professional engineering services for the design of the Brookpark Road Resurfacing Project (PID 113598). The payment obligation pursuant to said agreement shall not exceed \$557,080.00. (Exhibit A)



SECTION 2: The Mayor is hereby authorized to contract with the Manik and Smith Group for professional engineering services as a Third-Party Reviewer for said Project in accordance with proposal dated June 21, 2026. The payment obligation pursuant to said proposal shall not exceed \$9,740.00. (Exhibit B)

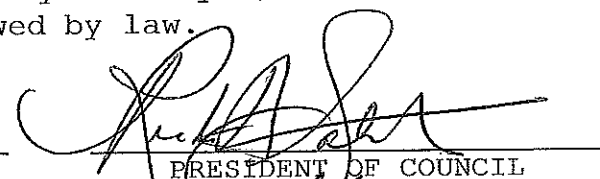
SECTION 3: The Mayor is further authorized to enter into agreements as may be necessary and appropriate to complete the project.

SECTION 4: The money needed to complete the aforesaid transaction shall be paid from the State Highway Improvement Fund No. 241, theretofore appropriated or to be appropriated for said purpose.

SECTION 5: It is found and determined that all formal actions of this Council concerning and relating to the adoption 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 action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 6: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety of said City, and for the further reason that City Council deems it necessary to proceed with the Brookpark Road (SR-17) Resurfacing Project (PID 113598) as soon as possible, therefore, provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately from and after its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: October 6, 2026

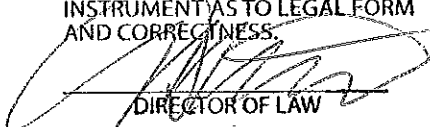

PRESIDENT OF COUNCIL

ATTEST: Michelle Blazek
ASST. CLERK OF COUNCIL

APPROVED: Edith A. Smith
MAYOR

10-6-2026
DATE

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS.


DIRECTOR OF LAW

CERTIFICATE

Assistant Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance Resolution No. 11363-2026 passed on the 1st day of October 2026 by said council.

Michelle Blazek

Year	Month	Day	Hour	Minute	Second
2026	10	06	10	10	10

Member	Vote
Gonzalez	1
Mencini	1
Roberts	1
Scott	1
McCorkle	1
Reintexter	1
Dufour	1

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR THE
BROOKPARK ROAD RESURFACING PROJECT (PID 113598)**

This Agreement is made and entered into, by and between the City of Brook Park, an Ohio municipal corporation ("City") and the Consulting City Engineer, Euthenics, Inc. ("Engineer") as authorized by City of Brook Park Ordinance No. _____ in regard to professional engineering services for the Brookpark Road Resurfacing Project (PID 113598) in the City of Brook Park, Ohio. For good and valuable consideration, the receipt, adequacy and legal sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

ARTICLE I: SCOPE OF SERVICES

- 1.1 The Engineer shall provide professional engineering services for the Brookpark Road Resurfacing Project (PID 113598) in the City of Brook Park, Ohio consistent with the proposal submitted by the Engineer to the Mayor/Service Director dated August 14, 2026, which is on file in the office of the Mayor/Service Director and as fully a part of this Agreement as if attached to this Agreement or repeated herein. Services also include surveying, environmental engineering and permitting, right-of-way acquisition, and others deemed necessary and appropriate for the project. The "Standard of Care" applicable to the Engineer's services is the degree of skill and diligence normally employed by professional consultants performing the same or similar services at the time and location said services are performed. The Engineer's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work and, subject to the above Standard of Care, shall be consistent with the final project development schedule. This contract shall extend through the closeout of related construction contracts.
- 1.2 The Engineer shall provide final electronic copies of project documents including but not limited to the plans and specifications in native file and PDF format. Submitted PDFs shall be created from the native file using the appropriate software.
- 1.3 The City shall provide all available information, including previous engineering reports and plans, existing boundary and topographic surveys; existing proposed or pending subdivisions of land; elements of planning reports, such as subdivision regulations, land use studies and zoning regulations; topographic maps, tax maps; soil information; and financing data as applicable to the project. The City shall furnish existing site plans and plats describing physical characteristics, legal limitations and utility locations for the site of the project. The Engineer shall be entitled to reasonably rely upon the information and data provided by the City or obtained from generally acceptable sources within the industry without independent verification except to the extent such verification is expressly included in the Engineer's services. The City shall furnish all legal, accounting services as may be necessary at any time for the project, including auditing services that the City may require to verify the Engineer's Applications for Payment or to ascertain how or for what purposes the Engineer has used the money paid by the City. Prompt written notice shall be given by the City to the Engineer if the City becomes aware of any fault or defect in the project or noncompliance with the Contract Documents.

ARTICLE II: COMPENSATION

- 2.1 The City shall compensate Engineer based on the Fee Proposal included in the proposal submitted by the Engineer to the Mayor/Service Director dated August 14, 2026, which is on file in the office of the Mayor/Service Director and as fully part of this Agreement as if attached to this Agreement or repeated herein, with a not to exceed Total Agreement Price of \$557,080.00.

- 2.2 Payments are due and payable forty-five (45) days from the receipt of Engineer's invoice provided all backup documentation required by this Agreement is included.
- 2.3 Compensation will be made based on successful completion of the services described in the professional services proposal on a lump sum basis for each task.
- a. Task funds may be reallocated between tasks, so long as the changes do not result in a change to the original Scope of Services or increase to the Total Agreement Price. Changes in scope that result in an increase in the Total Agreement Price must be preapproved in writing by the Mayor/Service Director.
 - b. Services that are considered to be outside the original contract scope, such items will be deemed Additional Services.
 - c. Engineer shall not perform Additional Services, nor incur any expenses which are not required by this Agreement, and the City shall not be obligated to pay for such services and expenses until the following conditions have been satisfied:
 - i. Submittal by Engineer of written notice to the City prior to the initiation of such additional Services, including an estimate of cost and schedule implications and a detailed scope of such Services;
 - ii. If the Additional Services increase the Total Agreement Price under this Agreement, authorization by the Mayor/Service Director is required;
 - iii. A written modification to the Agreement; and
 - iv. Written notification to Engineer from the Mayor/Service Director directing Engineer to perform such additional Services prior to commencement of the additional Services.
 - d. In the event that additional costs are incurred by the Engineer as a result of delays to the project schedule, the Engineer shall provide documentation of the amount of additional expenses incurred and detailed justification for the request for additional funds. The City shall not be obligated to pay for such services and expenses until the conditions set forth in Section 2.3.c have been satisfied.
 - e. The City may issue a notice of suspension until resolution of the Additional Services and project schedule have been resolved.
- 2.4 The City is exempt from all sales, use, and excise taxes and the City shall not be obligated to pay for such taxes. Upon request by Engineer, the City shall provide a copy of the City's certificate of tax exemption.
- 2.5 Progress payments to Engineer shall be considered by the City based upon invoices, prepared and submitted by Engineer, with supporting information. The estimated current physical percent complete for each task of the project shall be submitted and will be reviewed by the City. The City retains the right to limit progress payments if, in the opinion of the City, the percentage of the Total Agreement Price billed exceeds the earned value in delivering the Services.
- 2.6 Required backup supporting the invoice includes subconsultant invoices, itemized receipts for direct expenses, and other documentation required in the scope of services.
- 2.7 Subconsultant costs shall be invoiced by Engineer with no markup.

- 2.8 Expense costs may be included in the Total Agreement Price with no markup. The Engineer shall fully document all charges for travel, lodging, and meals through the provision of receipts. Meals, travel and lodging expenses shall be paid only to those persons authorized to incur such costs when on assignment away from their home office. Payment for lodging and meal expenses may not exceed the maximum per diem rates in effect at the time of travel as set forth in 48 CFR Part 31.205.46. Mileage charges, when authorized, shall be at the current corporate rate but in no event to exceed Internal Revenue Service rates.
- 2.9 The cumulative sum of monthly progress payments shall not exceed the Total Agreement Price considering all approved Change Orders.
- 2.10 All funds remaining in a Task and/or Allowance at completion of the Services will be retained by the City.
- 2.11 No approval or payment made under this Agreement shall be conclusive evidence of the acceptance of performance under this Agreement either wholly or partially, and no payment made hereunder shall be construed to be an acceptance of deficient or unsatisfactory Services.
- 2.12 In the event of a disputed invoice, only the disputed portion shall be withheld from payment by the City and the City will process the remaining undisputed portion of the invoice.

ARTICLE III: TERMINATION, SUSPENSION OR ABANDONMENT

- 3.1 This agreement may be terminated by either party upon not less than thirty (30) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 3.2 If the Project is suspended by the City for more than sixty (60) consecutive days, the Engineer shall be compensated for services performed prior to notice of such suspension. This Agreement may be terminated by the City upon not less than seven (7) days written notice to the Engineer in the event the Project is permanently abandoned. If the Project is abandoned by the City for more than ninety (90) consecutive days, the Engineer may terminate this Agreement by giving written notice.
- 3.3 Failure of the City to make payments to the Engineer in accordance with this Agreement shall be considered substantial noncompliance and cause for termination. If the City fails to make payment when due, the Engineer may, upon thirty (30) days written notice to City, suspend performance of services under this Agreement. Unless payment in full is received by Engineer within thirty (30) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Engineer shall have no liability to the City for delay or damage caused by the City because of such suspension of services.
- 3.4 In the event of termination not the fault of Engineer, the Engineer shall be compensated for services performed prior to termination.
- 3.5 The City may terminate this Agreement, in whole or in part, for its convenience upon thirty (30) days written notice to the Engineer. The Engineer shall be compensated for services for satisfactorily completed services through the termination date. Lost profits, anticipated profits and unearned fees are expressly excluded.

ARTICLE IV: RELATIONSHIP OF PARTIES

- 4.1 City and Engineer agree that, during the term of this Agreement, Engineer shall be engaged by City solely on an independent contractor basis, and Engineer shall therefore be responsible for all Engineer's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

- 4.2 While Engineer shall be required to render services described hereunder for City during the term of this Agreement, nothing herein shall be construed to imply, by reason of Engineer's engagement hereunder on an independent contractor basis, that City shall have or may exercise any right of control over Engineer with regard to the manner or method of Engineer's performance of services hereunder.
- 4.3 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

ARTICLE V: RECORD KEEPING

- 5.1 During performance of this Agreement and for a period of five years after its completion, Engineer shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to City as City may reasonably require.
- 5.2 Engineer acknowledges that records relating to this Agreement may constitute public records under Ohio law and agrees to comply with all applicable requirements concerning retention and production of public records.

ARTICLE VI: RELATED AGREEMENTS

- 6.1 The work contemplated in this Agreement is to be performed by Engineer, who may subcontract without City's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services described in Article I, Scope of Services, but which are required for its satisfactory completion. Engineer shall not enter into other subcontracts without prior written approval by City. All work subcontracted shall be at Engineer's expense.
- 6.2 Engineer shall bind its subconsultants to the terms of this Agreement, so far as applicable to the work of the subconsultant, and shall not agree to any provision which seeks to bind City to terms inconsistent with, or at variance from, this Agreement.
- 6.3 Engineer warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of City, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other agreements.
- 6.4 Engineer shall furnish to City a list of all subconsultants, their addresses, tax identification numbers, and the dollar amount of each subcontract.

ARTICLE VII: NONDISCRIMINATION OF EMPLOYMENT

- 7.1 Pursuant to section 153.59 of the Ohio Revised Code, Engineer agrees to both of the following:
 - a. That, in the hiring of employees for the performance of work under the contract or any subcontract, no engineer, sub-consultant or any person acting on a engineer's or sub-consultant's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates:
 - b. That no engineer, sub-consultant, or any person on an engineer's or sub-consultant's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color.

ARTICLE VIII: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE

- 8.1 Provided that Engineer has been paid for the services, City shall have the right to use the documents, maps, drawings, and specifications resulting from Engineer's efforts on the project. Reuse of any such materials by City on any extension of this project or any other project without the authorization of Engineer shall be at City's sole risk. Engineer shall have the right to retain copies of all such materials. Engineer retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from their services. The Engineer's opinions, recommendations and assessments are limited by a) the accuracy and completeness of information upon which it may reasonably rely, b) schedule constraints or scope limitations, c) unknown or variable site or other conditions, d) other factors beyond the Engineer's control. Any estimates as to construction costs are limited by a lack of control over financial and/or market conditions, including the future price of labor, materials, and prospective bidding environments and procedures. The Engineer does not warrant or guarantee the accuracy or completeness of its services to the extent impacted by these limitations and the City should limit its reliance on the Engineer's services in like manner. Limitations do not excuse negligent acts, errors, omissions, or failure to comply with this Agreement.

ARTICLE IX: LIABILITY

- 9.1 Engineer shall procure and shall maintain during the life of this contract workers' compensation insurance for all its employees to be engaged in work on the project under this contract and, in case any such work is sublet, Engineer shall require the sub-consultant similarly to provide workers' compensation insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by Engineer's workers' compensation insurance. Engineer shall be required to furnish a copy of a certificate showing that it has complied with the Ohio Workers' Compensation Act and shall relieve City from any and all costs and expenses which may be due to accidents or other liabilities mentioned in said Act.
- 9.2 Subject to the limitation set forth in Section 9.3, the Engineer agrees to indemnify and hold the City harmless (but not defend) from and against any loss or damage resulting solely from the failure of the Engineer to perform any duty or obligation expressly undertaken by the Engineer pursuant to the terms of this Agreement or the negligent performance or failure to perform by the Engineer of any such express duty or obligation.
- 9.3 No claim for loss or damage under this Agreement shall be asserted by the City against the Engineer by reason of this Agreement or the work undertaken by the Engineer hereunder, including without limitation any claim under Section 9.2 hereof. The total amount of all claims the City may have against the Engineer under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the total compensation paid or payable under this Agreement. As the City's sole and exclusive remedy under this Agreement any claim, demand or suit shall be directed and/or asserted only against the Engineer and not against any of the Engineer's employees, officers or directors.

9.4 Engineer shall maintain throughout the duration of this Agreement insurance in the following amounts:

COVERAGE REQUIRED

MINIMUM LIMITS REQUIRED

<u>X</u>	GENERAL LIABILITY (The following coverage must be included)	\$1,000,000 Per Occurrence
	Premises-Operations	\$2,000,000 General Aggregate
	Independent Contractors/Subs	Collapse (C)
	Broad Form Contractual	Underground (U)
	Broad Form Property Damage	Personal Injury
	Explosion (X)	Products-Completed Operations
		Fire Legal Liability
		Employer's liability (Ohio Stop Gap)
<u>X</u>	UMBRELLA LIABILITY Extending over all Liability Programs	\$5,000,000
<u>X</u>	AUTOMOBILE LIABILITY Owned, Hired, and Non-Owned Employee Non-Ownership	\$1,000,000 Per Occurrence
<u>X</u>	WORKERS' COMPENSATION <u>X</u> Workers' Compensation coverage in compliance with the laws of the State of Ohio	Statutory
<u>X</u>	PROFESSIONAL LIABILITY (includes Errors & Omissions)	\$1,000,000
<u> </u>	BUILDER'S RISK	<u> </u> 100% Completed Value
<u> </u>	INSTALLATION FLOATER	<u> </u> 100% Installed Replacement Value
<u> </u>	FLOOD INSURANCE	<u> </u> 100% of Completed Value or Maximum of Flood Program
<u> </u>	ENVIRONMENTAL IMPAIRMENT LIABILITY	\$ <u> </u>
<u> </u>	EMPLOYMENT PRACTICES LIABILITY	\$ <u> </u>

The certificate of insurance must show the City of Brook Park as a named additional insured & give thirty (30) days prior written notice of cancellation, non-renewal, or adverse change to the City. The foregoing policies shall be with responsible carriers qualified to do business within the State of Ohio. Certificates of Insurance showing such coverage to be in force shall be provided to the City upon request.

ARTICLE X: COMPLIANCE WITH LEGAL REQUIREMENTS

- 10.1 Engineer hereby represents and warrants to City that it is an Ohio corporation in good standing holding an unexpired and uncanceled license to transact business in Ohio.
- 10.2 Engineer hereby represents and warrants to City that there is no finding for recovery against it issued by the auditor of state on or after January 1, 2001 that is unresolved.
- 10.3 Said Engineer further agrees to withhold all City of Brook Park income taxes due or payable under the provisions of Part 18 (Taxation Code Effective 2016) of the Codified Ordinances of the City of Brook Park for wages, salaries and commissions paid to its employees and further agrees that any of its sub-consultants shall be required to agree to withhold any such City of Brook Park income taxes due under said sections for services performed under this contract.
- 10.4 Engineer shall comply with all applicable federal, state and local laws and ordinances and each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and this contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted or is not correctly inserted then upon the application of either party hereto, the contract shall forthwith be physically amended to make such insertion.

ARTICLE XI: DRUG FREE WORKPLACE

- 11.1 Engineer agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted sub-consultants purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way when they are engaged in the work being performed hereunder.

ARTICLE XII: ENTIRE AGREEMENT/WAIVER

- 12.1 This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.
- 12.2 This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- 12.3 A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

ARTICLE XIII: STANDARDS OF PERFORMANCE, ERRORS AND OMISSION

- 13.1 Services provided by the Engineer and all of its agents, subconsultants, and employees under this Agreement shall be performed in a manner consistent with the Standard of Care as defined in Article 1.
- 13.2 The City shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's Services. During the term of the Agreement, the Engineer shall be solely responsible for the accuracy of Services and shall promptly make necessary revisions or corrections to the Services performed to the extent that the necessary revisions or corrections resulted from Engineer's negligent acts, errors or omissions, without any additional compensation from the City.
- 13.3 Acceptance of Services, including payment for same, shall not relieve the Engineer of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities.

- 13.4 If the City reasonably determines that any negligent act, error, or omission in any phase of the Services is the Engineer's responsibility and requires correction, repair, reconstruction, or related field or office work, the City shall promptly notify the Engineer. The Engineer shall perform the necessary corrective Services without delay and at no additional cost to the City. The Engineer's obligation to re-perform Services under this Section shall be limited to three (3) years from the date the original Services were performed. The Engineer shall be reimbursed for costs incurred for correction, repair, reconstruction, or related field or office work that is later determined not to be the Engineer's responsibility
- 13.5 The City will endeavor to review Engineer provided reports, studies, drawings, specifications, proposals and other documentation in a timely manner and provide prompt written notice of any inconsistencies, errors or items of concern.

ARTICLE XIV: CONTROLLING LAW

- 14.1 This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Agreement and/or performance thereunder.
- 14.2 In the event of any dispute between the parties to this Agreement, the venue for the dispute resolution shall be the Court of Common Pleas of Cuyahoga County, Ohio.

ARTICLE XV: MISCELLANEOUS

- 15.1 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have occurred and the applicable statutes of limitations shall commence to run not later than either the date of contract completion for acts or failures to act occurring prior to contract completion, or the date of issuance of the final certificate for payment for acts or failures to act occurring after contract completion.
- 15.2 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against City or Engineer.
- 15.3 Engineer represents that it has no financial or other interest that conflicts with its obligations to the City under this Agreement and shall promptly disclose any actual or potential conflict of interest arising during performance.

Article XVI: HEADINGS

- 16.1 The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

Article XVII: SEVERABILITY

- 17.1 The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in Ohio, nevertheless be binding and enforceable.

ARTICLE XVIII: SUCCESSORS AND ASSIGNS

- 18.1 The Engineer and City, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither City nor Engineer shall assign this Agreement without the written consent of the other.

ARTICLE XIX: EXECUTION

19.1 This Agreement shall be effective when it has been executed by both parties.

THE CITY OF BROOK PARK BY:

EUTHENICS, INC. BY:

_____(Signature)

_____(Signature)

Edward Orcutt / Brian Beyer

_____(Name)

Mayor / Service Director

_____(Title)

Date Signed: _____

Date Signed: _____

Certificate of Fiscal Officer

Pursuant to section 5705.41(D)(1) of the Ohio Revised Code, as fiscal officer of the City of Brook Park, I do hereby certify that the amount required to meet the obligation of the forgoing contract in this fiscal year has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance.

Robert McGann, Finance Director
City of Brook Park, Ohio

Date Signed: _____

Contract#/PO#: _____



June 21, 2026

Brian Beyer, Service Director
City of Brook Park
6161 Engle Road
Brook Park, OH 44142

RE: Brookpark Road Resurfacing Third-Party Review PID 113598

Dear Mr. Beyer:

The Mannik & Smith Group, Inc. (MSG) is confident in its ability to assist the City of Brook Park with third-party review services for the Brookpark Road Resurfacing PID 113598 project and is pleased to submit this proposal for consideration. Our proposal is based upon your request and our experience with this type of project. MSG understands your needs, is experienced in completing this type of work, and has the desire to perform this project in an efficient, timely, and cost-effective manner. We trust that the scope of our services detailed below conveys to the City of Brook Park the expertise of our project team and our strong commitment to provide the quality consulting service you expect and deserve.

We believe the selection of MSG offers the City of Brook Park the following advantages:

- **Experience with similar projects:** We have successfully completed the design of numerous LPA projects similar to the Brookpark Road Resurfacing project, and we have provided plan review services to the City of Fairview Park as part of our consulting engineer contract. *This design and review experience enables us to provide a quality review of the Brookpark Road Resurfacing project.*
- **Experience with the Ohio Department of Transportation (ODOT):** We have assisted our clients in preparing a wide variety of projects involving ODOT. *We will use this knowledge and experience to assist you in complying with ODOT's third-party review requirement.*
- **Familiarity with the City and location of the project:** This work will be performed at our local Middleburg Heights, OH office, and our employees at the Middleburg Heights office are very familiar with Brookpark Road due to our current role as consulting engineer for the City of Fairview Park. *This knowledge of the Brookpark Road corridor will allow us to understand the needs of the project and will assist us in providing timely reviews.*

Brookpark Road 3rd Party Review Proposal.docx

TECHNICAL SKILL.
CREATIVE SPIRIT.

BACKGROUND

MSG understands the City of Brook Park's consulting engineer, Euthenics, Inc., will prepare the plans for the CUY – SR 017 – 04.43 (Brookpark Road Resurfacing) PID 113598 project. This project is a joint ODOT LPA project between Brook Park, Cleveland, and Parma and consists of the resurfacing of Brookpark Road from Rocky River Drive to West 130th Street. A third-party plan review is required by ODOT since the plans are being prepared by Brook Park's consulting engineer.

SCOPE OF WORK

MSG will review the Stage 1, Stage 2/3, and PS&E plans and will provide a written list of comments for each review. The review for each stage will include plan sheets, quantity tables, notes, details, specifications, estimates, and review documentation.

SCHEDULE

MSG will provide written comments for each review within three weeks of receiving each submittal, including the plans and supporting documentation.

ASSUMPTIONS

We believe communication is vital to the successful delivery of every project. Therefore, we are making the following assumptions regarding the scope of work to be performed:

Assumptions:

1. No reviews of right-of-way plans or acquisition are included.
2. The plans and documents for review will be provided in PDF format.

PROJECT FEE

As justified upon consideration of project specifics, MSG proposes to perform this project on a time and materials basis. Fees will be based upon the number of actual hours worked by each employee multiplied by the employee's classification billing rate. Direct expenses will be charged to this project without markup.

The Scope of Work for this project has been detailed above and enables MSG to estimate the work effort required to complete each task. Based upon the project scope identified above, MSG proposes to complete this project for the following amount:

Third-Party Plan Review.....	\$9,490.00
Expenses	\$250.00
Total Time & Materials	\$9,740.00

For the purposes of fiscal control, MSG will notify you at such time as it becomes apparent that costs may exceed the estimated amount and will seek your approval to proceed. We agree that reasonable variation to the work to be performed may be made, but reserve the right to renegotiate the above amounts should significant variation be requested.

Work requested to be performed by the client beyond the Scope of Work, e.g., meetings, presentations, report copies, or other related activities beyond those described above will be charged on the same time and materials fee basis.

TERMS OF PAYMENT

MSG will bill the City of Brook Park monthly for work performed that month.

AGREEMENT

The costs provided in this proposal are confirmed for a period not to exceed sixty (60) days. If this proposal meets with your approval, you may signify acceptance by signing and dating the designated locations attached and returning one signed copy to the undersigned. Your signature will be our written authorization to proceed with the project. Alternately, you may issue a purchase order referencing the date and scope of this proposal.

MSG appreciates the opportunity to provide this proposal and looks forward to serving the City of Brook Park. Please do not hesitate to contact the undersigned if you have any questions, require clarifications pertaining to the specifics of this proposal, or would like additional information.

Sincerely,

Kimberly R. Kerber, PE
Senior Associate

AGREEMENT FOR SERVICES

By execution of this Agreement, the Client authorizes The Mannik & Smith Group, Inc. to provide the services described within the proposal designated below according to the attached Terms and Conditions. In the event client directs The Mannik & Smith Group to proceed with the work, even if not signed below, the Terms and Conditions are considered accepted by the Client.

No terms or conditions other than those stated within the attached, and no agreement or understanding oral or written, in any way purporting to modify these terms and conditions whether contained in Client's purchase order or elsewhere, shall be binding on MSG and its subcontractors unless hereafter made in writing and signed by an authorized representative of MSG. All proposals, negotiations, and representations, if any, made prior to, and referenced hereto, are merged herein.

APPROVAL AND ACCEPTANCE

The Mannik & Smith Group, Inc. is hereby directed and authorized to proceed with the services for the designated project in accordance with the provisions of this Agreement.

Proposal Date: June 21, 2026**Proposal Number:** 401.2601534.P00**CITY OF BROOK PARK****THE MANNIK & SMITH GROUP, INC.**_____
Signature_____
Signature_____
Name (Printed)Kimberly R. Kerber, PE
Name (Printed)_____
TitleSenior Associate
Title_____
DateJune 21, 2026
Date

The Mannik & Smith Group, Inc.

Standard Terms and Conditions

These Standard Terms and Conditions ("Terms") provide the terms and conditions pursuant to which The Mannik & Smith Group, Inc. ("MSG") will provide those certain services to you ("Client") for the project (hereinafter, "Project") set forth in the proposal issued to Client (the "Proposal") and as further described in the attached "Scope of Work." Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Proposal or Scope of Work, as the case may be. The terms of the Proposal, the Scope of Work, and these Terms shall be collectively referred to herein as this "Agreement."

1. **Services:** MSG will perform the Scope of Work as set forth in the Proposal and in accordance with these Terms. MSG has developed the Scope of Work, schedule, and compensation based on Client provided information and various assumptions about Client's needs and preferences. The Client acknowledges that equitable adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by MSG in performing their services.

Client further acknowledges that the Scope of Work was prepared at Client's request. In the event that the Scope of Work or a portion thereof, was developed by a party other than MSG, MSG makes no claims as to its adequacy. Accordingly, Client acknowledges that MSG is forced to assume that the Scope of Work is fully adequate for Client's purposes. Client also understands that MSG assumes that Client has an alternative source from which to obtain any needed or desired services not listed.

2. **Additional Services:** The Client and MSG acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, MSG shall notify the Client of the need for additional services, and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

3. **Project Requirements:** The Client has the right to retain its own consultants and contractors ("Client's Consultants") to perform services on the Project and shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception and provide any reports, testing, and documents necessary for MSG to complete its Scope of Work. MSG, Client, and Client's Consultants shall coordinate Project related services. MSG shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness and timeliness of services and information furnished by Client and Client's Consultants. However, MSG shall provide notice to the Client if MSG becomes aware of any error, omission or inconsistency in such services or information. If the Client has established design standards, they shall be furnished to MSG at Project inception. MSG will review the Client design standards and may recommend alternate standards considering the Standard of Care as defined in Section 5 herein. Client's Consultants shall be properly licensed to practice in the jurisdiction of the Project and shall maintain insurance, including professional liability insurance, as sufficient and appropriate for the Project. The Client shall identify a representative authorized to act on Client's behalf with respect to the Project.

4. **Compliance with Laws:** MSG shall perform its services in accordance with its Standard of Care as defined herein and will endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice or official interpretations thereof change during the Project, MSG shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

5. **Standard of Care:** Services provided by MSG will be performed with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances ("Standard of Care"). The Standard of Care shall exclusively be judged as of the time the services are rendered and not according to later standards. MSG makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with the services rendered hereunder.

6. **Information from Third Parties:** The Client and MSG acknowledge that MSG will rely on information furnished by third parties in performing its services under the Project. MSG shall not be liable for any damages that may be incurred by the Client in the use of third-party information.

7. **Period of Service:** MSG shall perform the services for the Project in a timely manner consistent with its Standard of Care. MSG will strive to perform its services according to the Project schedule set forth in the Proposal. The services of each task shall be considered complete when deliverables for the task have been presented to the Client for review and approval. MSG shall be entitled to an extension of time and compensation adjustment for any delay and/or disruption beyond MSG control. MSG is not responsible for any delay and/or disruption beyond its control, including, but not limited to, those Force Majeure Events set forth in Section 8 herein.

8. **Force Majeure:** MSG shall be entitled to an equitable adjustment to the Project schedule and compensation for force majeure events, including but not limited to: acts of God or the public enemy, Acts of any government in its sovereign and/or contractual capacities, fires, acts of war, terrorism, violence, floods, pandemics, epidemics, quarantine restrictions, strikes, embargoes, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism or hacking including a ransomware attack, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, unusually severe weather, and/or any other cause outside of the control of MSG (each a

"Force Majeure Event"). MSG shall notify Client in writing after the beginning of any such cause becomes known, which would affect its performance. In the event a Force Majeure Event continues for more than thirty (30) days, MSG may terminate this Agreement for convenience and shall submit an invoice for services performed up to the effective date of termination and the Client shall pay MSG all outstanding invoices.

9. Compensation: In consideration of the services performed by MSG, the Client shall pay MSG in the manner set forth in the Proposal. The parties acknowledge that terms of compensation are based on the orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays, disruptions or extensions of time beyond the control of MSG.

Where total project compensation has been separately identified for various Work Orders, Scope of Work, and/or Tasks identified therein, as applicable, MSG may adjust the amounts allocated between the Work Orders, Scope of Work, and/or Tasks identified therein, as applicable, as the work progresses so long as the total compensation amount for the Project is not exceeded except as otherwise provided herein.

The Client shall be solely obligated to pay and remit to the appropriate governmental authority such sales, value added, duties, withholding or other taxes on MSG's services, subcontracted services and reimbursable expenses without reduction of MSG's compensation, unless and except when such subcontracted services and reimbursable expenses are included in the total project cost as specified in the Proposal or Scope of Work. Payment for MSG's services shall be made in United States dollars.

10. Changed Costs on Design Services and Project Development Services: MSG's rates are generally updated as of July 1st of each calendar year and are subject to periodic review and prospective change. Any non-lump sum fees and projects that are payable by Client for a "not to exceed" amount shall be subject to and adjusted based upon any rate increases or periodic changes.

11. Cost Estimates or Opinions on Construction Services: MSG may prepare cost estimates or opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and MSG acknowledge that neither the Client nor MSG has control over the cost of labor, materials, or equipment; a contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Therefore, actual costs may vary from the cost estimates or opinions prepared and MSG offers no guarantee related to the Project cost.

12. Payment Terms: Client recognizes that time is of the essence with respect to payment of Client's Consultants' invoices and that timely payment is a material part of the consideration of MSG's services. MSG shall submit monthly invoices for services performed and Client shall pay the full invoice amount within thirty (30) calendar days of the invoice date. Invoices will be considered correct if not questioned in writing within ten (10) calendar days of the invoice date. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Client will exercise reasonableness in contesting any billing or portion thereof. MSG shall be

entitled to a 1.5% per month administrative charge in the event of payment delay. Client payment to MSG is not contingent on arrangement of project financing, property acquisition, or approvals necessary for project initiation through completion. Invoice payment delayed beyond sixty (60) calendar days shall give MSG the right to suspend services until payments are current. Non-payment beyond seventy (70) calendar days shall be just cause for termination of the services by MSG. MSG shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension or termination by MSG.

In cases where MSG has issued reports and/or letters of reliance, MSG may also notify the Client and any other party to which these reports and/or letters of reliance were issued of MSG's withdrawal of reliance upon the information contained therein, and request return of all written reports, data, and other information as the rightful property of MSG, based upon the Client's failure to pay. In the case of such a request, the Client agrees to return all documents and/or letters of reliance, and provide written notification to any party to which MSG's reports or data were disseminated, notifying them of MSG's withdrawal of reliance.

13. Lien Rights: MSG may file a lien against the Property in which the Project is situated and/or file a claim against any available payment bonds for the Project in the event that the Client does not make payment within the time prescribed in this Agreement. The Client agrees that services by MSG are considered property improvements and the Client waives the right to any legal defense to the contrary.

14. Ownership of Documents: Documents prepared or furnished by MSG pursuant to this Agreement are instruments of MSG's professional services and MSG shall retain all ownership and property interest therein, including all copyrights. Upon payment for services rendered, MSG grants Client a non-exclusive license to use instruments of MSG's professional service for its intended purpose. It is expressly understood that computer-aided design and drafting ("CADD") and/or building information modeling ("BIM") files are issued only as supplemental information for convenience to the Client or other authorized users. CADD and BIM, like any electronic data when transferred in any manner or translated from the system and format used by MSG pursuant to this Agreement to another system or form, are subject to errors and modifications that may affect the accuracy and reliability of the data, and, in addition, such electronic data may be altered or corrupted whether inadvertently or otherwise. As such, record documents of service shall be based on the printed copy. Reuse or modification of any such documents by Client, without MSG's written permission, shall be at Client's sole risk, and Client agrees to indemnify, defend and hold MSG harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client. Client may request electronic CADD and BIM files prepared by MSG upon submitting a signed MSG's Electronic File Release Agreement which specifies the electronic files requested. If and to the extent Client requests and receives electronic files prepared by MSG, the terms of the Electronic File Release Agreement are hereby incorporated herein by reference and apply in all respects.

15. Independent Contractor: MSG shall serve as an independent contractor for services provided under this Agreement. MSG

shall retain control over the means and methods used in performing its services and may retain subconsultants to perform certain services as determined by MSG.

16. Insurance: At a minimum, MSG will maintain the following insurance and coverage limits during the period of service if such coverage is reasonably available at a commercially affordable premium. Upon request, the Client will be named as an additional insured on the Commercial General Liability and Automobile Liability policies.

Worker's Compensation:	As required by applicable state statute
Commercial General Liability:	\$1,000,000 per occurrence (bodily injury including death and property damage) \$2,000,000 aggregate
Automobile Liability:	\$1,000,000 combined single limit for bodily injury and property damage
Professional Liability:	\$2,000,000 each claim and in the aggregate

The Client shall arrange for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. MSG shall be a named additional insured on those policies where MSG may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

17. Limitation of Liability: IN NO EVENT SHALL MSG BE LIABLE TO THE CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE OR LOSS OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, DAMAGE TO PROPERTY, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOST SAVINGS, EVEN IF MSG HAS BEEN ADVISED OF OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. In recognition of the relative risks and benefits of the Project to both the Client and MSG, the Client agrees to the fullest extent permitted by law, to limit the liability of MSG for any and all claims, losses, breaches, damages or expenses arising out of this Agreement and/or MSG's performance of services on the Project, from any and all causes, to \$50,000 or the fee realized by MSG for the Project, whichever is greater.

18. MSG as Business Entity: Client acknowledges that MSG is a business entity and agrees that any claim made by the Client arising out of any act or omission of any member, owner, partner, manager, director, officer or employee of the business entity in the execution or performance of this Agreement shall be made solely against the business entity and not against any individual or group of individuals in any capacity.

19. Indemnification: MSG agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless from damage, liability or cost to the extent caused by MSG's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its subconsultants or anyone for whom MSG is legally liable.

The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold MSG harmless from damage, liability or cost to the extent caused by the Client's negligent acts, errors or omissions and

those of his or her contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the Project that is the subject of this Agreement. Neither party is obligated to indemnify the other in any manner whatsoever to the extent of the other's own negligence or the negligence of the other's agents, subcontractors or consultants, or anyone for whom the other is legally liable.

20. Safety: MSG shall be responsible solely for the safety precautions or programs of its employees and no other party. In no event will MSG be responsible for construction methods, means, techniques or sequences of construction, which are solely the responsibility of the Client or any other contractor or consultant engaged by the Client, nor shall MSG be responsible for the Client's or any other contractor or consultant engaged by the Client's failure to perform such party's work in accordance with the requirements of this Agreement.

21. Defects in Service: The Client shall promptly report to MSG any defects or suspected defects in service. The Client further agrees to impose a similar notification requirement on all contractors in its agreements with contractors and shall require all subcontracts at any level to contain a like provision. Failure by the Client or Client's contractors or subcontractors to notify MSG shall relieve MSG of the costs of remedying such defects in service, to the extent that the cost of remedy would have cost less had prompt notification been given when such defects were first discovered. MSG will correct defects, at its own costs, if timely notified by Client.

22. Betterment: If, due to MSG's error, any required item or component of the Project is omitted from MSG's reports, plans or construction documents, MSG shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event will MSG be responsible for any cost or expense that provides betterment, upgrade or enhancement of the Project.

23. Buried Utilities: Client will furnish to MSG information identifying the type and location of utility lines and other artificial (for purposes of this Section 23, meaning made or produced by human beings rather than occurring naturally) objects beneath the Project site's surface. Using information provided by the Client, MSG will conduct research and prepare a plan indicating the locations intended for subsurface penetration with respect to assumed locations of underground improvements. Such services by MSG will be performed in a manner consistent with the Standard of Care as defined herein. Client recognizes that the research may not identify all underground improvements and that the information of which MSG relies may contain errors or may not be complete. Client and MSG mutually agree to field validate the location of underground utilities or other artificial objects and vet final subsurface penetration locations to the satisfaction of both parties. Further, MSG reserves the right to notify local utility protection agencies or services, and to delay Project implementation until these agencies or services have identified known utility lines or other subsurface artificial objects. MSG will take reasonable precautions to avoid damaging any identified utility lines or other artificial objects. Client agrees to waive any claim against MSG, and to defend, indemnify and hold MSG harmless from any claim or liability for injury or

loss, including economic damages arising, or allegedly arising, from MSG's damaging underground utilities or other artificial objects that were not called to MSG's attention, which were not properly located on plans furnished to MSG, or were not identified or properly marked by any utility protection agency or service contracted by MSG unless damages are caused by the sole negligence or willful misconduct of MSG.

24. Disease Transmission: MSG shall have no responsibility for the transmission of communicable disease including, but not limited to, COVID-19 and other corona viruses (collectively, "Diseases"), or exposure of persons to Diseases discovered at the premises. MSG cannot prevent Client and/or Client's invitees from becoming exposed to, contracting, or spreading Diseases while utilizing MSG's services. It is not possible to prevent against the presence of Diseases. Therefore, if Client chooses to utilize MSG's services, Client may be exposing Client or Client's invitees to and/or increasing Client's and/or Client's invitees' risk of contracting or spreading Diseases. Client hereby releases, waives, discharges, and covenants not to sue MSG from any and all damages, injuries, losses, liability, claims, causes of action, litigation, or demands, including but not limited to those for personal injury, sickness, or death, as well as property damages and expenses, of any nature whatsoever which may be incurred, directly or indirectly, now or in the future, in any way related to any pandemic or public health situation, or any Disease related health issue or exposure.

25. Notification of Hazardous Materials: The Client warrants they have disclosed the location and quantity of all potential wastes, hazardous materials, including asbestos, and/or petroleum compounds (collectively, "Hazardous Materials"), whether regulated or unregulated, that are assumed or suspected to exist or may be encountered on the Project. In the event undisclosed and/or unknown materials/compounds are encountered where there is no reason to believe they could or should be present, MSG may be required to take appropriate precautions to protect the health and safety of its personnel, to comply with applicable laws and regulations, and to follow procedures MSG deems prudent to minimize risks to its employees, the public, and the environment. MSG shall notify Client as soon as practically possible in the event unanticipated Hazardous Materials or suspected Hazardous Materials are encountered. Under these circumstances, MSG shall be entitled to an equitable adjustment to the schedule and compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws.

In addition, Client understands and agrees that in seeking the professional services of MSG under this Agreement, Client may request MSG to undertake obligations involving or related to Hazardous Materials. To the fullest extent permitted by law, Client agrees to defend and indemnify MSG and its subcontractors, consultants, agents, officers, directors and employees from any claim or liability or loss, including reasonable attorneys' fees arising from or connected with the presence, discharge, release, or escape of Hazardous Materials or environmental liability of any nature or in any manner related to services performed by MSG as part of the Project, including the failure to discover any Hazardous Materials which may exist in, on, above, beneath, about or which have migrated onto, or under, the Project site except for those events caused by the sole negligence or willful misconduct of MSG.

Without limiting the generality of the foregoing, the above indemnification extends to claims resulting from:

- a. Client's violation or alleged violation of any federal, state or local statute, regulation or ordinance relating to the disposal of Hazardous Materials;
- b. Client's or MSG's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of Hazardous Materials found or identified at the site;
- c. Hazardous Materials introduced at the Project site by Client or third persons before or after the completion of services herein;
- d. Allegations that MSG is a generator, operator, treater, storer, transporter, arranger for transport, handler, or disposer under the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA) or any other federal, state or local law, regulation or ordinance.

MSG and its subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons or property to Hazardous Materials in any form at the Project site.

26. Third-Party Claims: All services provided by MSG are for the sole use and benefit of the Client. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or MSG. However, in the case of a third-party claim, the Client will compensate MSG for services performed in defense of such claim unless the claim resulted from the negligent act, error or omission of MSG.

27. Violations of Law: The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold MSG harmless from any and all violations of laws and/or failure to comply with governmental regulations, including but not limited to the Foreign Corrupt Practice Act (15 USC §78dd-1 et seq.), the False Claims Act (31 USC § 3729 et seq.), the Buy American Act (41 USC § 8301 et seq.) and the "Buy American" Provisions (Section 1605) of the American Recovery and Reinvestment Act (Pub. L. 111-5), to the extent caused by the Client or its contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the Project that is the subject of this Agreement.

28. Confidentiality: MSG will hold in confidence any information about the Client's operations that would normally be considered confidential. Such obligation shall not hold with respect to:

- a. Information which is in the public domain or which enters public domain in the future through no fault of MSG.
- b. Information known to MSG prior to disclosure by the Client or information disclosed to MSG at any time by a third party.
- c. Information that is released from its confidential status by the Client.
- d. Where disclosure is required by court order or governmental directive, provided that prior written notice is given to Client.

- e. Where disclosure is required to comply with a professional code of conduct or ethics.
- f. Where disclosure involves a dispute resolution proceeding between the parties.

The Client agrees that the technical methods, techniques and pricing information contained in any proposal submitted by MSG pertaining to this Project or Agreement or any addendum thereto, are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of MSG.

29. Dispute Resolution: In the event of a dispute between MSG and Client arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. The Client and MSG shall endeavor to resolve claims, disputes and other matters in question during a meet and confer session. A meet and confer session shall be attended by the Client and MSG or their authorized representatives who shall have the authority to bind the parties. Prior to the meet and confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute or controversy. If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation.

Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. Any court action required to enforce the terms of this Agreement and/or any legal proceeding to enforce, enter judgment upon, vacate and/or modify the dispute award shall be filed in the Court of Common Pleas, Lucas County, Ohio. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

30. Suspension of Work: The Client may suspend services performed by MSG upon fourteen (14) calendar days written notice. MSG shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay MSG all outstanding invoices for accepted services within fourteen (14) calendar days. MSG shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

MSG may suspend services if Client fails to make payments to MSG in accordance with Section 12 of this Agreement or fails to meet its other material responsibilities under this Agreement. Such failure shall be considered substantial nonperformance and cause for termination or, at MSG's option, cause for suspension of performance of services under this Agreement or as otherwise set forth in Section 12 hereof. In the event of a suspension of services, MSG shall have no liability to the Client for delay or damage because of such suspension of services. Before resuming services, MSG shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of MSG's services. MSG's fees for the remaining services and the time schedules shall be equitably adjusted.

31. Termination for Default or Breach: Except as otherwise provided herein, in the event of a Default (as defined herein) by either party, the non-Defaulting or non-breaching party shall give written notice to the Defaulting party of the Defaulting party's obligation to cure the Default with diligence and promptness. If the Defaulting party fails to cure such Default within seven (7) days after receipt of written notice, then the other party without prejudice to other remedies it has, may terminate this Agreement for cause. In the event of a termination, MSG shall submit an invoice for services performed up to the effective date of termination and the Client shall pay MSG all outstanding invoices for accepted services within fourteen (14) calendar days. For purposes of this Agreement, "Default" means (i) a party fails to perform any of its material duties or obligations under this Agreement, (ii) the occurrence of an event that with or without the passage of time or the giving of notice, or both, would constitute a material breach of this Agreement or default, or (iii) a party files a petition or otherwise commences or authorizes the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors or has any such petition filed or proceeding commenced against it or its assets, or otherwise become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due.

32. Termination Without Cause. Client may terminate this Agreement at any time without cause upon providing at least fourteen (14) days prior written notice to MSG.

33. Assignment: The Client may not assign any of its rights or obligations under this Agreement, by operation of law or otherwise, without first obtaining MSG's written consent. Any attempt to assign the Client's rights or obligations under this Agreement in breach of this paragraph shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. MSG's consent to an assignment is contingent upon the Client's compliance with the following: prior to any assignment, the party proposing to assign its rights and responsibilities under this Agreement and that party's proposed assignee shall furnish to the other party reasonable evidence that arrangements have been made by the proposed assignee to fulfill the assigning party's obligations, including financial obligations, under this Agreement. If the non-assigning party has no reasonable objection to the proposed assignment, the proposing party may then assign the Agreement. Any expense incurred by MSG because of the assignment shall be considered as an additional service and compensated in accordance with this Agreement. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

34. Waiver of Rights: The failure of either party to enforce any provision of these Terms shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

35. Headings: The headings contained herein are inserted for convenience only and do not define, limit, or construe the contents of the articles, sections, or subsections to which they refer.

36. Governing Law: The terms of this Agreement shall be governed by the laws of the State of Ohio without regard to any choice of

law principles. Nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the State of Ohio.

37. **Integration:** This Agreement constitutes the entire agreement between the parties and may only be amended by written agreement by both parties.

38. **Severability:** Any provision of these terms later held to violate any law shall be deemed void and all remaining provisions shall continue in full force and effect. In such event, the Client and MSG will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

39. **Survival:** All provisions of these terms that allocate responsibility or liability between the Client and MSG shall survive the completion or termination of services for the Project.

40. **Notice:** Any notice to MSG or Client that is required or permitted by this Agreement shall be in writing and shall be deemed

Updated as of January 1, 2022

effectively given to the other party when personally delivered, upon confirmation of receipt or upon sender's receipt of a read receipt when sent by e-mail to the MSG representative or Client representative expressly designated in the Proposal or Scope of Work, or upon actual receipt when mailed by first class postage prepaid, registered or certified mail, return receipt requested, or when sent by overnight courier service to the address expressly designated in the Proposal or Scope of Work, or to such other person or address as either party may otherwise specify in writing.

41. **Changes to these Terms:** MSG reserves the right, from time to time, to change these Terms in its sole and absolute discretion. The most current version of the Terms will supersede all previous versions and shall continue to be binding on the Client in its revised form.

42. **Conflict:** In the event of a conflict between the Proposal or Scope of Work and these Terms, then these Terms shall control unless otherwise expressly identified or designated in the Proposal or Scope of Work as controlling.



Outlook

FW: Brookpark Road Resurfacing - Updated Ordinance Information

From Tony D'Amico <tdamico@cityofbrookparkohio.gov>

Date Mon 9/28/2026 2:01 PM

To Carol Johnson <CJohnson@cityofbrookpark.com>

 2 attachments (391 KB)

Brookpark Road Resurfacing Ordinance Packet.pdf; Brookpark Road Resurfacing Ord PID 113598.doc;