

City of Niles, Ohio

SPONSORED BY: IMPROVEMENTS COMMITTEE
AUTHORIZED BY: LASTIC

DRAFT NO. 47-19

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY OF NILES TO AUTHORIZE THE TRUMBULL COUNTY ENGINEER TO DEVELOP AND ADVERTISE BID SPECIFICATIONS FOR THE CITY OF NILES 2019 STREET RESURFACING PROGRAM; AND, DECLARING AN EMERGENCY

WHEREAS, the City of Niles desires to pursue a street resurfacing program for the 2019 calendar year; and

WHEREAS, the City is able to participate in a consortium of other Trumbull County political subdivisions to authorize the Trumbull County Engineer to develop and advertise the bid specifications for the City of Niles 2019 Street Resurfacing program; and

WHEREAS, the cooperation with the Trumbull County Engineer will be to the benefit of The City of Niles;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: The Trumbull County Engineer is hereby authorized to develop and advertise the bid specifications for the City of Niles 2019 Street Resurfacing Program;

SECTION 2: The Director of Public Service and/or his designee shall provide the Trumbull County Engineer with the information on the streets to be resurfaced as part of the City of Niles 2019 Street Resurfacing Program to allow the Engineer to prepare and advertise the bid specifications;

SECTION 3: The Clerk of Council is hereby directed to forward a certified copy of this resolution to the Trumbull County Engineer to confirm the City's participation in the 2019 City of Niles Street Resurfacing Program.

SECTION 4: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council; and, that all deliberations of this Council, and any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION 5: That this Resolution is hereby declared to be an emergency measure in the interests of the public health, safety and welfare for the reason that this Resolution must be implemented in a timely manner to ensure completion of the resurfacing program immediately. As such an emergency measure, this Resolution shall take effect upon passage by Council and approval by the Mayor.

PASSED: _____

ATTEST: _____
CLERK OF COUNCIL

PRESIDENT OF COUNCIL

Received by the Mayor of the City of Niles this _____ day of _____, 2019,
and approved by me as such Mayor this _____ day of _____, 2019.

MAYOR

City of Niles, Ohio

SPONSORED BY: IMPROVEMENTS COMMITTEE
AUTHORIZED BY: LASTIC

DRAFT NO. 48-19

RESOLUTION NO. _____

PRELIMINARY PARTICIPATORY LEGISLATION RC 5521.01

Ordinance/Resolution# 98509
PID No. TRU-SR 45/VAR-
County/Route/Section 10.66/VAR

The following is a Resolution enacted by the City of Niles of Trumbull County, Ohio, hereinafter referred to as the Local Public Agency (LPA).

SECTION I - Project Description

WHEREAS, the STATE has identified the need for the described project:

Resurfacing of SR 169 from South Cleveland Avenue to the Niles Eastern Corporation Limit.

NOW, THEREFORE, be it ordained by the City of Niles of Trumbull County, Ohio.

SECTION II - Consent Statement

Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above described project.

SECTION III - Cooperation Statement

The LPA shall cooperate with the Director of Transportation in the above described project as follows:

The LPA agrees to participate in the cost of construction within the city limits at twenty percent (20%) total cost.

The LPA further agrees to pay One Hundred Percent (100%) of the cost of those features requested by the LPA which are determined by the State and Federal Highway Administration to be unnecessary for the Project.

The LPA further agrees that change orders and extra work contracts required to fulfill the construction contracts shall be processed as needed. The State shall not approve a change order or extra work contract until it first gives notice, in writing, to the LPA. The LPA shall contribute its share of the cost of these items in accordance with other sections herein.

(Optional-if required) The LPA further agrees to pay One Hundred Percent (100%) of the cost to install and/or repair curb ramps at all necessary intersections to ensure compliance with the Americans with Disabilities Act.

SECTION IV – Maintenance

Upon completion of the described Project, and unless otherwise agreed, the LPA shall:

- (1) provide adequate maintenance for the described Project in accordance with all applicable state and federal law, including, but not limited to, 23 USC 116; (2) provide ample financial provisions, as necessary, for the maintenance of the described Project; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

SECTION V - Authority to Sign

The Mayor and/or Service Director of said City of Niles is hereby empowered on behalf of the City of Niles to enter into contracts with ODOT pre-qualified consultants for the preliminary engineering phase of the Project and to enter into contracts with the Director of Transportation necessary to complete the above described project.

Upon the request of ODOT, the Mayor and/or Service Director is also empowered to assign all rights, title, and interests of the City of Niles to ODOT arising from any agreement with its consultant in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

The LPA agrees that if Federal Funds are used to pay the cost of any consultant contract, the LPA shall comply with 23 CFR 172 in the selection of its consultant and the administration of the consultant contract. Further the LPA agrees to incorporate ODOT's "Specifications for Consulting Services" as a contract document in all of its consultant contracts. The LPA agrees to require, as a scope of services clause, that all plans prepared by the consultant must conform to ODOT's current design standards and that the consultant shall be responsible for ongoing consultant involvement during the construction phase of the Project. The LPA agrees to include a completion schedule acceptable to ODOT and to assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.

Passed: _____, 2019
(Date)

Attested: _____
(Clerk) (Officer of LPA – title)

Attested: _____
(Title) (President of Council)

This Resolution is hereby declared to be an emergency measure to expedite the highway project(s) and to promote highway safety. Following appropriate legislative action, it shall take effect and be in force immediately upon its passage and approval, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

**CERTIFICATE OF COPY
STATE OF OHIO**

City of Niles of Trumbull County, Ohio, Nicole Bacak, as Clerk of the City of Niles of Trumbull County, Ohio, do hereby certify that the forgoing is a true and correct copy of the Resolution adopted by the Legislative Authority of the said City of Niles on the _____ day of _____, 2019, that the publication of such Resolution has been made and certified of record according to law; that no proceedings looking to a referendum upon such Resolution have been taken; and that such Resolution and certificate of publication thereof are of record in _____ Page _____
(Ordinance/Resolution Record No.)

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, if applicable, this _____ day of _____, 20_____

Clerk
City of Niles of Trumbull County, Ohio
(If the LPA is designated as a City then the "City Seal" is required. If no Seal, then a letter stating "No Seal is required to accompany the executed legislation.)

The foregoing is accepted as a basis for proceeding with the project herein described. For the City of Niles of Trumbull County, Ohio
Attest: _____, Date _____

For the State of Ohio

Attest: _____, Date _____
Director, Ohio Department of Transportation

PRESIDENT OF COUNCIL

PASSED: _____

ATTEST: _____
CLERK OF COUNCIL

Received by the Mayor of the City of Niles this _____ day of _____, 2019,
and approved by me as such Mayor this _____ day of _____, 2019.

MAYOR

City of Niles, Ohio

SPONSORED BY: IMPROVEMENTS COMMITTEE DRAFT NO. 49-19
AUTHORIZED BY: LASTIC

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO CONTRACT WITH MS CONSULTANTS, INC. FOR THE PURPOSE OF ADMINISTRATION OF AND IMPLEMENTATION WORK RELATED TO THE 2019 CITYWIDE RESURFACING PROGRAM; AND DECLARING AN EMERGENCY

WHEREAS, MS Consultants has the ability to administer and implement work related to the 2019 Citywide Resurfacing Program and ensure compliance with all law and regulations; and,

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: That Council hereby authorizes the Mayor to enter into contract with MS Consultants, Inc. to administer and implement work related to the 2019 Citywide Resurfacing Program and ensure compliance with all law and regulations.

SECTION 2: This Resolution is hereby declared to be an emergency measure in the interest of the public health, safety and welfare, and to allow the City to begin the resurfacing project at the earliest possible date. As such an emergency measure, this Resolution shall take effect upon passage by Council and approval by the Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio on the _____ day of _____, 2019 and signed by me as such Mayor on the _____ day of _____, 2019.

MAYOR

CITY OF NILES
2019 CITYWIDE RESURFACING PROGRAM
A/E SERVICES AGREEMENT

This Agreement (the "Agreement") is entered into and made effective as of the _____ day of _____ 2019, by and between ms consultants, inc., 333 East Federal Street, Youngstown, Ohio 44503 ("CONSULTANT") and the City of Niles, 34 West State Street, Niles, Ohio 44446 ("CLIENT"). The CONSULTANT and the CLIENT are referred to collectively as the "Parties" and individually as a "Party."

In consideration of the mutual promises, covenants, and agreements contained herein, which the Parties acknowledge are good, valuable and sufficient consideration for this Agreement, the Parties, intending to be legally bound, promise, covenant and agree as follows:

1. Scope of Services. CONSULTANT shall perform administrative and implementation work related to the **2019 Citywide Resurfacing Program** (the "Services") as assigned to the CONSULTANT via this signed agreement. Such Services are further described in this document attached as Exhibit A.
2. Standard of Care. CONSULTANT shall perform the services under this Agreement with the care and skill ordinarily used by members of the profession practicing under similar conditions at the same time and in the same or a similar locality.
3. Term. CONSULTANT shall complete its obligations within a reasonable time and, in any event, no later than the dates set forth in any exhibit or amendment to this Agreement. Refer to Exhibit A.
4. Compensation & Payment- OPWC Funded Streets. For the Services described in Paragraph No. 1 above and in more detail in Exhibit A, CLIENT agrees to compensate CONSULTANT the **Not-To-Exceed fee of Eleven Thousand Eight Hundred Fifty Dollars and 00/100 (\$11,850.00)** ("Compensation"). Labor costs shall be billed at the actual hourly Direct Salary Expense (DSE) times a multiplier of 3.22 plus reimbursable expenses at cost. CONSULTANT shall invoice CLIENT on a monthly basis for the Services and shall include supporting documentation as may be requested by CLIENT. Payments are due and payable upon presentation of the CONSULTANT's monthly statement. Amounts unpaid thirty days after the invoice date shall bear interest at the rate of 2.0% per month on the unpaid balance.
5. Compensation & Payment- CDBG Funded Streets. For the Services described in Paragraph No. 1 above and in more detail in Exhibit A, CLIENT agrees to compensate CONSULTANT the **Not-To-Exceed fee of Two Thousand Dollars and 00/100 (\$2,000.00)** ("Compensation"). Labor costs shall be billed at the actual hourly Direct Salary Expense (DSE) times a multiplier of 3.22 plus reimbursable expenses at cost. CONSULTANT shall invoice CLIENT on a monthly basis for the Services and shall include supporting documentation as may be requested by CLIENT. Payments are due and payable upon presentation of the CONSULTANT's monthly statement. Amounts unpaid thirty days after the invoice date shall bear interest at the rate of 2.0% per month on the unpaid balance.

6. Independent Contractor. The Services of the CONSULTANT will be provided as an independent contractor and CONSULTANT will not be entitled to compensation as an employee, including but not limited to employee retirement benefits, vacation and sick leave and CONSULTANT is not an employee of the CLIENT.

7. Ownership of Documents. All documents, including original drawings, estimates, specifications, field notes, and data shall, upon payment therefore, become the property of the CLIENT. CLIENT acknowledges that such documents are not intended or represented to be suitable for use on any project unless completed by CONSULTANT, or for use or reuse by CLIENT or others on extensions of the project, on any other project, or for any other use or purpose, without written verification or adaptation by CONSULTANT and that any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by CONSULTANT, as appropriate for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to its officers, directors, members, partners, agents, employees, and subconsultants.

8. Confidentiality. The CLIENT agrees to keep confidential and not to disclose any data or information provided by CONSULTANT which is not otherwise in the public domain or required to be disclosed by order of a court or as required by law.

9. Insurance.

8.1 CONSULTANT shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or death of any and all employees or of any person other than such employees, and from claims for damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by law or as set forth herein. Commercial general liability and automobile insurance in an amount not less than Two Million Dollars (\$2,000,000.00) for injuries, including those resulting in death, to any one person, and in an amount not less than Two Million Dollars (\$2,000,000.00) on account of any one accident or occurrence; non-owned and hired auto coverage combined single limit of \$1,000,000 per occurrence; uninsured motorist coverage in the amount of \$1,000,000 per occurrence. Professional Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence.

8.2 All policies of insurance relating to this Agreement shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against the parties, or any insureds, additional insureds, or loss payees thereunder.

8.3 The CLIENT acknowledges and agrees that the CLIENT has asked CONSULTANT to provide certain professional services and CONSULTANT has agreed to provide such services, and as such, shall have, to the extent necessary and permitted by applicable law, such governmental immunities statutory or common law as the CLIENT may have from suit and from liability to third parties in connection with the providing of such services. Nothing herein shall or be construed to constitute any waiver by CONSULTANT of any claim or defense of immunity of any kind permitted by law

against any third party, and CONSULTANT expressly intends to preserve and does preserve and retain all such rights.

10. Indemnification. To the fullest extent permitted by law, the CONSULTANT shall indemnify and hold harmless CLIENT from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Services, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the project itself), but only to the extent caused by the negligent acts or omissions of the CONSULTANT, its subconsultant, anyone directly or indirectly employed by them or anyone for whose acts the CONSULTANT may be liable.
11. Consequential Damages. The CLIENT and CONSULTANT waive indirect and consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement.
12. Successors. All provisions herein contained shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the CLIENT and of CONSULTANT.
13. Severability. Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONSULTANT, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
14. Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.
15. Modification. No modification or waiver of any of the terms of this Agreement will be effective against a Party unless set forth in writing and signed by or on behalf of a Party. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Agreement, constitute the waiver or modification of any such terms. The Parties acknowledge that no person has authority to modify this Agreement or to waive any of its terms, except as expressly provided in this paragraph.
16. Termination. This Agreement may be terminated by either Party upon written notification to the other party and effective as of the date set forth in such notification. In the event the CLIENT terminates the Agreement, the CONSULTANT shall immediately cease all Services and CLIENT shall immediately compensate CONSULTANT for Services rendered.
17. Applicable Law: Rights Cumulative. This Agreement shall be construed in accordance with the laws of the State of Ohio, without reference to a state's conflict of law rules. All rights of the Parties hereunder shall be cumulative with all rights which the Parties hereto may have at law or in equity.

18. Third Party Beneficiaries. There are no intended third party beneficiaries to this Agreement.
19. Dispute Resolution. All disputes arising out of this Agreement shall be subject to mediation as a condition precedent to arbitration as administered in accordance with the then current rules for arbitration as established by the American Arbitration Association.
20. Waiver. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
21. Construction. The parties acknowledge that each party has reviewed this Agreement and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, or any amendments or exhibits to it.
22. Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, effective as of the date set forth in the recitals above:

WITNESS:

ms consultants, inc.



Steve Preston, P.E.
Municipal Services Manager

ATTEST:

CITY OF NILES

Steven Mientkiewicz
Mayor

EXHIBIT A

SCOPE OF SERVICES

City of Niles 2019 Citywide Resurfacing Program

March 5, 2019

Project Understanding
The ENGINEER understands that the City of Niles (OWNER) intends to enter into an agreement with a consultant for the 2019 Citywide Resurfacing Program. ENGINEER can be retained by the OWNER because the total project design fee is less than \$50,000 resulting in OWNER's compliance with the State of Ohio Qualification Based Selection Laws.

The Scope of Services for the project consists of the following:

The proposed project will consist of planing, tack coating, and resurfacing 15 streets within the City of Niles (CLIENT). The streets are as follows:

- OPWC Funded Streets
 - Belmont (Robbins to Mason/Thomas to Bridge)
 - Henry Street (Belmont to Mahoning)
 - Clinton Street (Cedar to Washington)
 - Niles Vienna (422 to Nob Hill)
 - Taft (North Rhodes to Roosevelt)
 - Lantern Lane (Niles Vienna to Pepperwood)
 - Brentwood (Andrea Blvd. to Kennedy Park)
 - Morningside (North Road to Trumbull Drive)
 - Emmet Street (North Road to City Limits)
 - Washington (SR 46 to Frederick)
 - Lakeview (North Road to Trumbull Drive)
 - West Street (East Federal to George Street)
 - Church Street (State Street to Main Street)
 - Brown Street (Third Street to First Street)
 - Shaker Boulevard (422 to Mines Road)

- CDBG Funded Street
 - Belmont (Mason Street to Thomas Street)

This project is funded in part by a grant received from the Ohio Public Works Commission (OPWC) and in part by a grant received from the Community Development Block Grant (CDBG). A copy of each application is attached to this agreement.

1. Design Phase

- A. Prepare specifications relative to the resurfacing of the above streets. The specs shall include pavement planing, tack coat, and asphalt surface course. Construction drawings showing the location of the roadway section to be resurfaced shall be provided.
- B. Conduct one review meeting with the CLIENT during the design phase.
- C. Produce a set of contract documents that will include proposal sheets, notices to Contractors, general and special conditions and construction specifications.
- D. Provide a detailed construction cost estimate based on current prices calculated from items of work to be performed.
- E. Prepare the necessary documents and submit the final set of plans and specifications to the CLIENT for approval.

2. OWNER's Responsibilities

- A. Designate in writing a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the CLIENT's policies and decisions with respect to CONSULTANT's services for the project.
- B. Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the project including previous reports and any other data relative to design or construction of the project.
- C. Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform services under this Agreement.
- D. Furnish approvals, pay for and secure all permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
- E. If the CLIENT designates a person to represent the CLIENT at the site who is not CONSULTANT or CONSULTANT's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of CONSULTANT will be set forth in an exhibit that is to be identified, attached to and made part of this Agreement before such services begin.

- F. Attend the preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- G. Give prompt written notice to CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect or non-conformance in the work of any Contractor.
- H. Furnish, or direct CONSULTANT to provide additional services as stipulated in this Agreement or other services as required in a timely manner.
- I. Bear all costs incidental to compliance with the requirements of this Section 3.

3. Assumptions/Exclusions

- A. The scope of work does not include any survey or field work.
- B. Any permits or coordination required for resurfacing within the existing Norfolk Southern tracks right-of-way is not included.
- C. ENGINEER shall prepare construction drawings and contract documents for project which will be turned over to OWNER for bidding and construction.
- D. Bidding services are not included as part of the project. This includes attendance at bid opening, verification of bids, preparation of the bid tabulation, and any other bidding related activities.
- E. Construction Administration/Inspection services are not included within this scope of work.
- F. Asphalt core samples will not be taken as part of the project.

4. Period Of Service

- A. The ENGINEER agrees to commence work within (10) days after written authorization to proceed and to complete the work within sixty (60) days of the notice to proceed.