City of Hays
Office of the City Manager

Memo

To: City Commission

From: Toby Dougherty, City Manager

Date: 6-28-16

Re: July 7, 2016 Work Session

Please find the attached agenda and supporting documentation for the July 7, 2016 Work Session.

Item 2 – Downtown Pavilion Project

On May 5, 2016, the City Commission heard a presentation by the Downtown Hays Development Corporation (DHDC) in conjunction with a group of Fort Hays State University students led by Kris Munsch regarding a potential pavilion in Downtown Hays. Since that time, City staff has asked DHDC to further clarify the City's expected participation, either financial or in-kind labor, in the project. That information has been provided and is the first attachment in the work session packet. The bulk of the packet items are from the May 5th Work Session packet. It is my understanding that DHDC does not plan to speak at the work session. They are simply awaiting further input and direction from the City Commission.

Item 3 – Pavement Condition Assessment – Award of Contract

Please refer to the attached memorandum from John Braun, Assistant Director of Public Works, regarding the Pavement Condition Assessment award of contract. The Pavement Condition Assessment is integral to Public Works developing a comprehensive Street Maintenance Program. The assessment allows us to determine which streets are the highest priority and also allows us to track progress as we continue to invest significant amounts of money in street maintenance. The Pavement Condition Assessment allows the City to utilize objective data to put together a Street Maintenance Program. This assures that dollars are spent in the most economical fashion and that the City gets the best results for its investment. Greg Sund, Director of Public Works, and John Braun will be at the work session and will have more information should you require it.

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CITY OF HAYS
CITY COMMISSION WORK SESSION
THURSDAY, JULY 7, 2016 – 6:30 P.M.
AGENDA

1. **ITEM FOR REVIEW: June 16, 2016 Work Session Notes** (PAGE 1)
   DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance

2. **ITEM FOR REVIEW: Downtown Pavilion Project** (PAGE 3)
   PERSON RESPONSIBLE: Commissioner Musil

3. **ITEM FOR REVIEW: Pavement Condition Assessment – Award of Contract** (PAGE 29)
   DEPARTMENT HEAD RESPONSIBLE: Greg Sund, Director of Public Works

4. **OTHER ITEMS FOR DISCUSSION**

5. **EXECUTIVE SESSION (IF REQUIRED)**

6. **ADJOURNMENT**

ANY PERSON WITH A DISABILITY NEEDING SPECIAL ACCOMMODATIONS TO ATTEND THIS MEETING SHOULD CONTACT THE CITY MANAGER'S OFFICE 48 HOURS PRIOR TO THE SCHEDULED MEETING TIME. EVERY ATTEMPT WILL BE MADE TO ACCOMMODATE ANY REQUESTS FOR ASSISTANCE.

City of Hays

City Commission

Work Session Notes

Thursday, June 16, 2016 – 6:30 p.m.

Present: Eber Phelps, Shaun Musil, James Meier, Lance Jones, John Bird, Toby Dougherty and Kim Rupp

Absent: Henry Schwaller IV

June 2, 2016 Work Session Notes

There were no corrections or additions to the minutes of the work session held on June 2, 2016; the minutes stand approved as presented.

Commercial Insurance Renewal – 2016/2017

The City's Commercial Insurance Policy with BRIT Insurance will expire on July 1, 2016. Arthur J. Gallagher provides for critical insurance oversight for the City as the Insurance Broker. Requested package quotes from seven carriers by Arthur J. Gallagher resulted in only one responsive and responsible bid from the incumbent in the amount of $196,220. The outcome translates into a 4.9% increase or $9,197 more than the prior period. City staff recommends pursuing the 2016/2017 Commercial Insurance renewal with the incumbent insurance companies State National Insurance Company, Hartford, Old Republic, Hanover, and BCS as per the expiring policies.

Christina Pyle, with Arthur J. Gallagher, explained that they did go out to market this year for the insurance renewal, which hasn't happened in a couple of years. She stated they wanted to make sure they were doing due diligence to be sure they were getting the most effective pricing for the City. The other six carriers that were approached declined simply because they could not compete with the pricing that BRIT is currently providing.

At the June 23, 2016 Commission meeting, Commissioners will be asked to authorize the City Manager to renew the 2016/2017 insurance coverages with

the incumbent insurers for $196,220 to be funded from the Intergovernmental Insurance and Surety line item.

Other Items for Discussion

Chairperson Phelps commented there was good attendance at the Great Plains Fly-In at the Hays Regional Airport this year with the main attraction being the B-25J Bomber.

The work session was adjourned at 6:41 p.m.

Submitted by: _____

Brenda Kitchen – City Clerk

Downtown Pavilion Project
Presented by Downtown Hays Development Corporation (DHDC) and
Fort Hays State University (FHSU)

The following is a list of items DHDC would like the City of Hays to either provide financially or through in-kind labor if this project were to be approved by the City Commission.

Union Pacific Lease
DHDC requests that the City of Hays sign and enter the lease agreement with Union Pacific Railroad however, as stated in the legal document provided, DHDC agrees to pay the yearly lease.

Public Restroom Facility
Site prep and placement of restroom - In-kind labor equalling the amount of $800. Figure provided by Jeff Boyle, City of Hays Director of Parks Department.

Placement of water and sewer lines and costs associated with them. The total for both sewer and water lines would run between $25-30,000. Figures provided by Johnny O'Connor, City of Hays Director of Utilities. Should the restroom be located further to the west, this cost could significantly decrease.

Sidewalk
By City Code, sidewalk will be required along the area developed, and to properly install sidewalk, curb & gutter should be constructed as well. This would cost about $10,400. (sidewalk = 160'x5'=800SF @ $6/SF = $4800 + C&G = 160'@$35/LF = $5,600). All information and figures provided by John Braun, City of Hays Assistant Director of Public Works.

Landscaping
Planting of provided plants and trees - In-kind labor. No dollar figure provided. We assume the City of Hays would prefer control of the landscaping in order to best utilize water conservation methods.

Installation of Aluminum fencing along tracks and east side of site - In-kind labor. A total dollar amount of $8,436 was provided by Jeff Boyle. This figure included materials and labor costs. We are unsure of the dollar breakdown but all materials would be provided by DHDC.

LEGEND:

LEASE AREA .....

FENCE .....

AREA = 10,880 SQ. FT. +/-

UPRRCO. R/W OUTLINED .....

CADD FILENAME	0290115
SCAN FILENAME	KS3ST39A-290115.TIF

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

HAYS, ELLIS COUNTY, KANSAS

M.P. 289.7 - SHARON SPRINGS SUB.

TO ACCOMPANY AGREEMENT WITH
CITY OF HAYS, KS
MAP UP V-3 / ST-39A
SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 10-21-2014

PJB FILE: 0290115

THE BRICKS IN DOWNTOWN HAYS

April 11, 2016

Toby Dougherty
City of Hays
PO Box 490
Hays, KS 67601

RE: Lease between the Union Pacific Railroad and the City of Hays

Dear Mr. Dougherty,

We are writing with reference to the letter we received from the City Attorney's office regarding the proposed lease between the City of Hays and Union Pacific Railroad of property we will refer to hays the "pavilion property". We acknowledge and understand the concerns that were brought forth but would appreciate the opportunity to address the concerns that were highlighted.

1. In the unlikely situation that Union Pacific Railroad would demand the structure be torn down, Downtown Hays Development Corporation (DHDC) would assume the liability for deconstruction and removal of the Pavilion. The area in question is a small parcel of land with limited possibilities. It is unlikely Union Pacific Railroad would decide it could utilize this piece of land. With that in mind DHDC has mitigated the risk and is comfortable.

2. Given the City of Hays leases other land sections along the rail corridor, it is our hope this issue has already been addressed in other instances. DHDC requests a copy of a lease between the City of Hays and Union Pacific Railroad so the wording can be duplicated.

3. Per discussions between Aaron White, Ellis County Coalition for Economic Development Executive Director, and Union Pacific Railroad, the type of structure we are proposing will not be an issue. The original blueprints and Pavilion designs were presented to Union Pacific Railroad at the time of the request. Since the structure is more akin to a park shelter than it is to a commercial building they found no need to address the structure further. As such they provided a minimum lease for a site with improvements. Should changes in the design occur in the future and the building would become an enclosed, climate controlled, fully wired structure the lease would need to be reviewed and approval granted from Union Pacific Railroad. However, since the concept has not changed and we are still proposing an open structure, we do not anticipate any issues.

4. Please see section 2.

5. The 6 foot safety fence proposed in our design will extend from the railway north to 10th street isolating and screening the Pavilion from the rest of the property. With that design anything Union Pacific would authorize for use to the east has no impact to the Pavilion. Neither the City of Hays nor DHDC has any plans or designs for that property. Currently the ground is home to three grain elevators. The fact that they have been unused for so long renders them unavailable for use as such. Due to the size, location and zoning of this property alternative uses are limited. It is our opinion that this third party element in this lease section was included to allow Union Pacific Railroad the potential to address the three grain elevators. We are aware that Union Pacific Railroad is investigating the cost to raze the structures.

Thank you for allowing us the opportunity to address your concerns. DHDC is appreciative of the time that has been committed to this project.

Sincerely,

Sara Bloom
Executive Director, DHDC

Sandy Jacobs
Board President, DHDC

DOWNTOWN HAYS
DEVELOPMENT
CORP.

109 E 11th Street | Hays, KS 67601
785.621-4171 | DHDC@DowntownHays.com
www.DowntownHays.com

DOWNTOWN PAVILION PROJECT

Presented May 5, 2016
City Commission Meeting

Presented By:
Downtown Hays Development Corporation
and
Fort Hays State University

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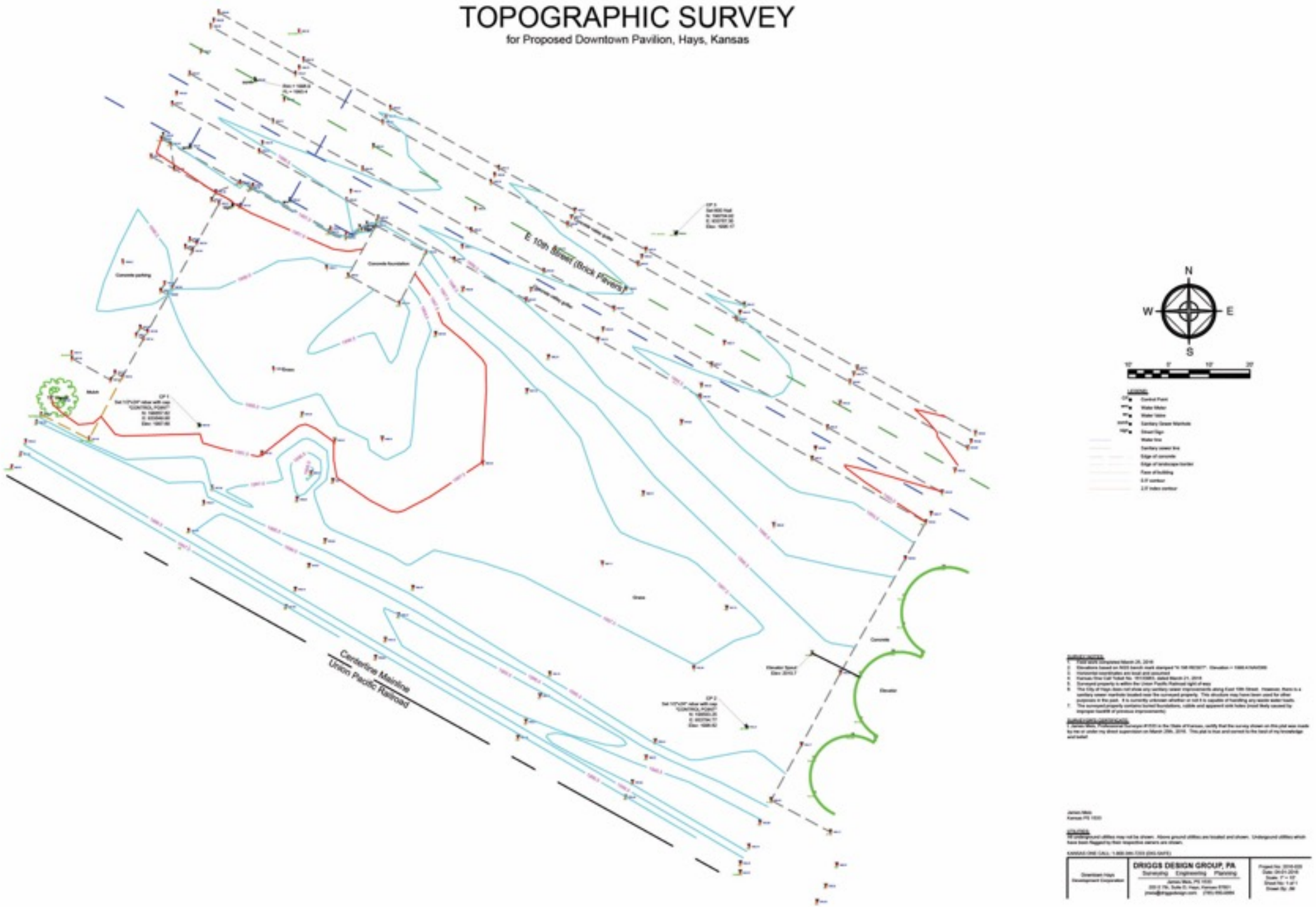
PROJECT SITE

10th Street Grassy Area (in between elevators and Union Pacific Park)

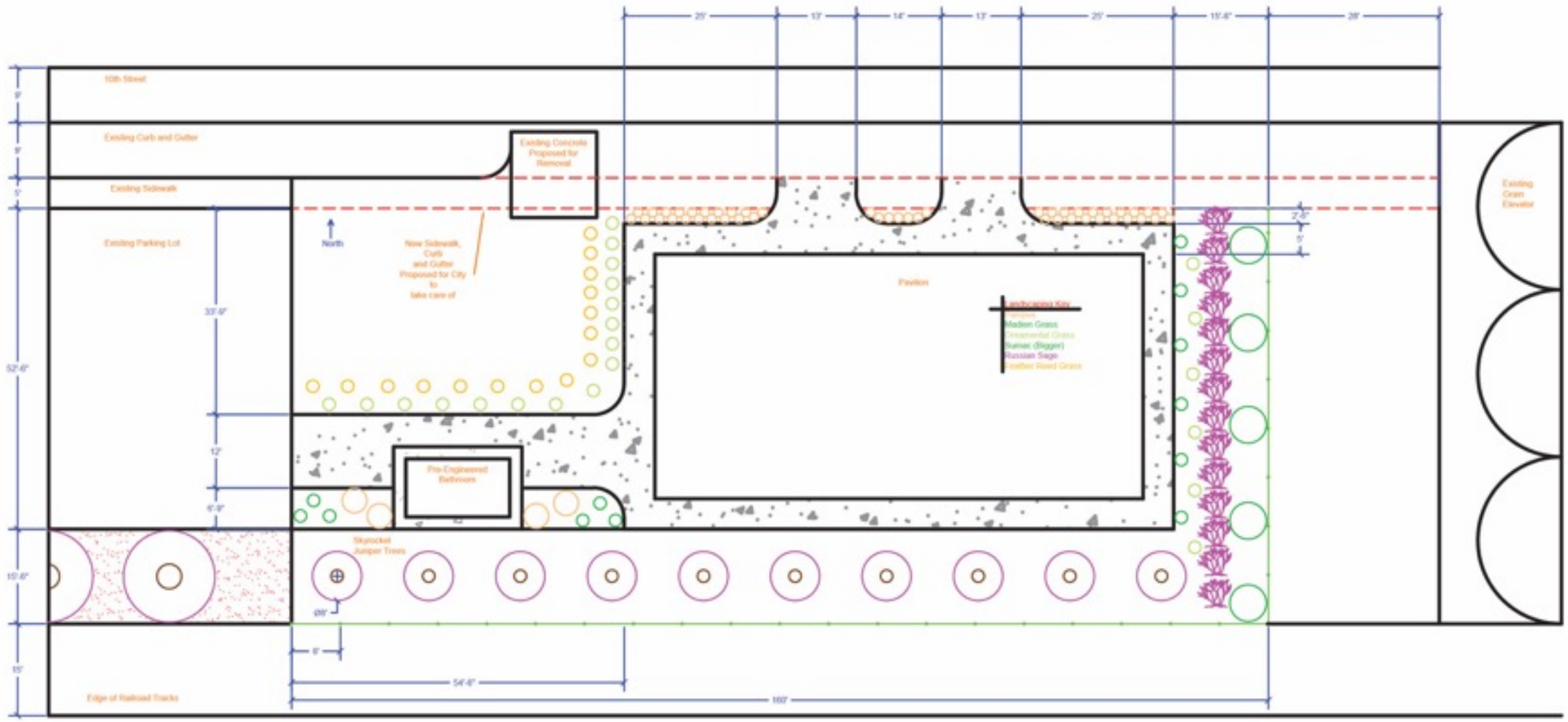
SITE SURVEY

TOPOGRAPHIC SURVEY

for Proposed Downtown Pavilion, Hays, Kansas



SITE PLAN


25'
13'
14'
13'
25'
15'-6"
28'
10th Street
Existing Curb and Gutter
Existing Concrete Proposed for Removal
Existing Sidewalk
Existing Parking Lot
North
New Sidewalk, Curb and Gutter Proposed for City to take care of
Pavilion
Landscaping Key
Miscanthus
Ornamental Grass
Sumac (Digger)
Russian Sage
Feather Reed Grass
Existing Grain Elevator
33'-9"
52'-6"
12'
6'-9"
Pre-Engineered Bathroom
Skyrocket Juniper Trees
15'-6"
15'
Edge of Railroad Tracks
54'-6"
160'

THE BRICKS IN DOWNTOWN HAYS

May 5, 2016

City of Hays Commissioners
1507 Main Street
Hays, KS 67601

Honorable City Commissioners,

It is the intention of Downtown Hays Development Corporation (DHDC) to present jointly with Fort Hays State University on the Downtown Pavilion Project.

It is not our intention to ask for any action on the part of the City Commission.

The students who will be presenting this project have worked diligently throughout their spring semester to create an impressive addition to Downtown Hays. We feel we owe the class a venue at which to share their accomplishments. Having said that, we also realize the fiscal/budgetary challenges the city will face as they look to 2017.

With this in mind DHDC requests you enjoy the presentation and interact with the students in anyway you see fit but we are not asking you to take any action on the project or the fiscal notes that accompany it. This year may not be the right time for a project of this scale but that does not mean it has no future. We at DHDC feel strongly we need this facility, along with public restrooms, in Downtown Hays but we also know everything has its time. Should the commission determine the time is now or in the near future, we continue our commitment to collaboration and to fully funding the project.

Thank you for welcoming DHDC and FHSU to the May 5th work session. We all look forward to showing you a terrific project that could someday really benefit Downtown Hays.

Thank you in advance for your understanding of this request.

Downtown Hays Development Corporation

Sara Bloom
Executive Director

Sandy Jacobs
Board President

DOWNTOWN HAYS DEVELOPMENT CORP.

109 E 11th Street | Hays, KS 67601
785.621-4171 | DHDC@DowntownHays.com
www.DowntownHays.com

October 23, 2014
Folder: 2901-15

CITY OF HAYS
PO BOX 490
HAYS KS 67601

RE: Lease Covering Use of Railroad Property at Hays, Kansas

Dear Mr. White:

Pursuant to your request, enclosed are two (2) originals of the above-referenced Lease for your execution.

In the enclosed envelope, please return the following:

1. **ALL ORIGINALS** of the Lease signed by the appropriate party. If approved by the Railroad Company, a fully-executed original will be returned to you for your records.

2. **COMPLETED** Real Estate Environmental Lessee Questionnaire.

3. **CHECK, with Folder No. 2901-15 written on the front,** in the amount of **Two Thousand Dollars ($2,000.00)** covering the rental and administrative fees, if any. Future rental will be billed and payment should be directed to the address on the invoice.

Both copies of the above-mentioned lease document, plus the questionnaire, and the check must be received by this office within 30 days of the date of this letter for consideration by Railroad Company management. You are not authorized to enter the premises until you are in possession of a fully executed copy of this Lease.

NOTHING IN THIS CORRESPONDENCE SHOULD BE CONSTRUED AS A COMMITMENT TO LEASE REAL PROPERTY AS SUCH A COMMITMENT REQUIRES FORMAL RAILROAD MANAGEMENT APPROVAL. IF SUCH APPROVAL IS RECEIVED, A FULLY EXECUTED COPY OF THE LEASE WILL BE RETURNED TO YOU.

If you have any questions regarding this Lease, please contact me at (402) 544-8554 or JDMATTER@up.com.

Sincerely,

Jeffrey D. Matter
Manager - Real Estate

Union Pacific Railroad Real Estate 1400 Douglas Street Stop 1690 Omaha, Nebraska 68179-1690 fx. (402) 501-0340

Industrial Lease (Year To Year) 09-01-06
(Unimproved Property)
Form Approved, Law

Audit No. _____
Folder No. 2901-15

LEASE OF PROPERTY
(INDUSTRIAL LEASE - UNIMPROVED - YEAR TO YEAR)

THIS LEASE ("Lease") is entered into on _____, 20___, between **UNION PACIFIC RAILROAD COMPANY** ("Lessor") and **CITY OF HAYS,** a Kansas municipal corporation, whose address is Po Box 490 , Hays, Kansas 67601 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article 1. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Hays, Kansas, shown on the print dated October 21, 2014, marked **Exhibit A,** hereto attached and made a part hereof, subject to the provisions of this Lease and of **Exhibit B** attached hereto and made a part hereof. The Premises may be used for public pavilion, beautification, and purposes incidental thereto, only, and for no other purpose.

Article 2. TERM.

The term of this Lease shall commence November 1, 2014, and, unless sooner terminated as provided in this Lease, shall extend for one year and thereafter shall automatically be extended from year to year.

Article 3. FIXED RENT.

A. Lessee shall pay to Lessor, in advance, fixed rent of Two Thousand Dollars ($2,000.00) annually. The rent shall be automatically increased by Three percent (3%) annually, cumulative and compounded.

B. Not more than once every three (3) years, Lessor may redetermine the fixed rent. If Lessor redetermines the rent, Lessor shall notify Lessee of such change.

Article 4. INSURANCE.

A. Throughout the entire term of this Lease, Lessee shall maintain the insurance coverage required under **Exhibit C** hereto attached and made a part hereof.

B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Lessor, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C.**

D. All insurance correspondence shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 2901-15.

Article 5. **SPECIAL PROVISION – FENCE/BARRICADE.**

Lessee, at Lessee's sole cost and expense, shall construct and maintain, at all times during the term of this Lease, a fence/barricade of a design satisfactory to Lessor, in the location shown on the attached Exhibit A.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

Lessor:	Lessee:
UNION PACIFIC RAILROAD COMPANY	**CITY OF HAYS**
By: _____	By: _____
Manager - Real Estate	Title: _____

NOTE:

EXHIBIT B
TO
INDUSTRIAL LEASE (UNIMPROVED YEAR TO YEAR)

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS, TITLE AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Lease do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

D. Without limitation of Subparagraphs B. and C. above, Lessee shall not interfere in any manner with the use or operation of any signboards now or hereafter placed on the Premises or with any property uses in connection with such signboards (such as, by way of example and not in limitation, roadways providing access to such signboards). In no event may Lessee construct on the Premises any improvements that interfere in any manner with the visibility or operation of any signboards now or hereafter on the Premises or on property in proximity to the Premises.

Section 3. PAYMENT OF RENT.

Rent (which includes the fixed advance rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises other than the Lessor Improvements is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease, including, without limitation, any requirements for subdividing or platting the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to

any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any of the foregoing exceptions to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Lessor reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) (i) for personal injury or property damage caused to any person while on or about the Premises, or (ii) arising from or related to any use of the Premises by Lessee or any invitee or licensee of Lessee, any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease for Lessee's default by giving Lessee notice of termination, if Lessee (i) defaults under any obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given, or (ii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

B. Notwithstanding the terms of this Lease set forth in Article II, Lessor or Lessee may terminate this Lease without cause upon thirty (30) day's written notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A, at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance. **Notwithstanding anything to the contrary in this Lease, if Lessee has not complied with the requirements of Section 15 A, this Lease, together with all terms contained herein (including payment of rent) will remain in effect until the requirements of Section 15A are met, unless Lessor, in its sole discretion, elects to terminate this Lease.**

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, including all personal property and restored the surface to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration prior to termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. Lessor may change the telephone number and hours of operation by giving Lessee notice of the change. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by facsimile to (402) 501-0340, by email or by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: AVP - Real Estate, Real Estate Department, 1400 Douglas Street, Stop 1690, Omaha, Nebraska 68179; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are faxed, emailed, are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. RIGHTS AND OBLIGATIONS OF LESSOR.

If any of the rights and obligations of Lessor under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under

federal or state judicial precedent, then Lessor may require Lessee to enter into an amendment to this Lease to eliminate the negative effect on Lessor's rights and obligations to the extent reasonably possible.

Section 22. MODIFICATION, WAIVER OF DEFAULT, ENTIRE AGREEMENT.

No waiver, modification or amendment to this Lease, including specifically but not limited to, any indemnity and/or insurance requirement herein, shall be of any force or effect unless made in writing, signed by Lessor and Lessee and specifying with particularity the nature and extent of such waiver, modification or amendment. This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, including, without limitation, any other lease under which all or any portion of the Premises was leased to Lessee. Notwithstanding the prior sentence, Lessee shall retain any and all obligations and liabilities which may have accrued under any other such agreements prior to the commencement of the term of this Lease.

Approved: Insurance Group
Created: 2/10/06
Last Modified: 7/2/07

EXHIBIT C
Union Pacific Railroad
Contract Insurance Requirements

Lease of Land

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less $2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **Workers Compensation and Employers Liability** insurance. Coverage must include but not be limited to:
Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Lessee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.
In any and all Claims against Lessor by any employee of Lessee, Lessee's indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers compensation acts, disability benefits acts or other **employee benefits acts.**

D. **Pollution Liability** insurance. If permitted use as defined in this Lease includes any generation, handling, enrichment, storage, manufacture, or production of hazardous materials pollution liability insurance is required. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000.

If hazardous materials are disposed of from the Premises, Lessee must furnish to Lessor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $1,000,000 per loss, and an annual aggregate of $2,000,000.

E. **Umbrella or Excess** insurance. If Lessee utilizes umbrella or excess policies, these polieies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above must include Lessor as "Additional Insured" using ISO Additional Insured Endorsement CG 20 11 (or a substitute form providing equivalent coverage). The coverage provided to Lessor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for Lessor's negligence whether sole or partial, active or passive, and shall not be limited by Lessee's liability under the indemnity provisions of this Lease.

G. Lessee waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or commercial umbrella or excess liability insurance obtained by Lessee required by this agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by all states in which the Premises are located.

I. All insurance policies must be written by a reputable insurance company acceptable to Lessor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Premises are located.

J. The fact that insurance is obtained by Lessee, or by Lessor on behalf of Lessee, will not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor from Lessee or any third party will not be limited by the amount of the required insurance coverage.

GLASSMAN BIRD BROWN POWELL L.L.P.

Partners: Robert F. Glassman *(1922-2005)*
John T. Bird, J. Curtis Brown, Todd D. Powell

March 11, 2016

Copy sent via email to: sara@downtownhays.com
Sarah Bloom
Executive Director
Downtown Hays Development Corp.
2700 Vine
Hays KS 67601

RE: CITY OF HAYS – LEASE COVERING UNION PACIFIC PROPERTY

Dear Sarah:

I was provided a copy of the proposed Lease forwarded by Jeffrey D. Matt, Manager-Real Estate at Union Pacific Railroad. It is my understanding that Downtown Hays Development Corp. has been dealing with Union Pacific regarding a possible lease for the proposed Pavilion Project. I am required to approve any lease, as it would involve the City as Lessee. I cannot approve the Lease presented by Union Pacific for many reasons. For example:

1. The conditions placed on the City, as Lessee, are onerous and the lease is, essentially, a 30-day termination lease, with the improvements remaining ours (See Section 13, Termination, ¶ B. regarding termination without cause.) What good would that be?

2. The Lease requires unrealistic insurance in light of the City's immunity. (See Exhibit C – Contract Insurance Requirements.)

3. The Lease provides that no alterations or improvements or installations may be made on the Premises without the prior consent of Lessor, while Article 1 of the document titled Lease Property, acknowledges the pavilion. The pavilion and everything incidental to it should be acknowledged and approved in the lease. (See Section 10, ¶ A.)

4. The Release and Indemnity provisions in Section 12 of the Lease are not in accord with City Ordinances. (See copy of Hays Municipal Code, Article XI. – City Contracts enclosed.)

5. In Section 2, ¶ B., Union Pacific reserves the right not only to permit a third-party to place advertising signs on the piece of ground, but also to grant to others the right to construct new or existing facilities on this tract. There are more conditions limiting what can and cannot be done on the property. It appears that Union Pacific could, in effect, thwart the City's use of the property by allowing others the right to intrude.

Law Offices: P.O. Box 727 200 West 13th Street Hays, Kansas 67601-0727 Tel (785) 625-6919 Fax (785) 625-2473
email: jtbird@haysamerica.com

It is my recommendation that if Downtown Hays Development Corp. feels that it can negotiate a better lease and wants to re-approach Union Pacific, that the proposed lease be for a term long enough to recoup the cost of the building and other improvements, that the lease not have provisions which are clearly prohibited by our ordinances regarding contract, and the it be for a reasonable annual rent.

I would also recommend that DHDC do an investigation of the title and the boundaries, as it is possible that Union Pacific does not own the property, as was discovered in earlier situations where the City had been paying rent and there had been a reversion because of street abandonments. Of course you should not convey that information to Union Pacific as it thinks it owns all the land ever granted to it by the United States of America in the 1800's.

If I can be of any further assistance, please let me know.

Very truly yours,

GLASSMAN, BIRD, BROWN & POWELL, L.L.P.

By_____
JOHN T. BIRD
City Attorney
City of Hays, Kansas

JTB/cam
Enclosures
c: Toby Dougherty
Jacob Wood

ARTICLE XI. - CITY CONTRACTS[12]

Footnotes:

*--- (**12**) ---*

***Editor's note—** Sections 1—5 of Ord. No. 3823, adopted Oct. 14, 2010, added provisions to the Code, but did not specify manner of inclusion. Therefore, at the discretion of the editor, said provisions have been included as Art. XI, §§ 2-576—2-580.*

Sec. 2-576. - Required contractual provisions.

Unless specifically waived in its request for bids or request for proposals, or included as alternate provisions to be bid or proposed, the City of Hays, Kansas, shall not award contracts nor let bids to individuals or entities unless the vendor, contractor or individual agrees to indemnify and hold the City of Hays, Kansas, harmless from any and all losses, damages or expenses of any kind arising out of any and all claims, demands, or causes of action initiated against the City of Hays, Kansas, by competing entities bidding on the project which is the subject of the contract.

(Ord. No. 3823, § 1, 10-14-2010)

Sec. 2-577. - Prohibited contractual provisions.

Unless specifically waived in its request for bids or request for proposals, or included as alternate provisions to be bid or proposed, the City of Hays, Kansas, shall not award contracts nor let bids to individuals or entities which attempt to do any of the following or include any of the following in the proposed contract:

(1) Any diminishment of the common law or statutory standard of care, limitation of liability, or other attempt to reduce responsibility for mistake, error, or negligence of any type on the part of the vendor, contractor or individual.

(2) Attempts to limit liability for breach of contract or negligent performance to the amount of the payment to the contractor by the city.

(3) Attempt to claim ownership of intellectual property created during the performance of the contract with the city.

(4) Arbitration agreements.

(5) Provision for damages for breach by owner contrary to common law or statute including, but not limited to, any attempt to provide for attorney fees as part of recoverable damages.

(6) Attempt to designate any forum or venue for resolution of disputes other than Ellis County District Court, Kansas.

(7) Any other attempted reallocation of risk contrary to common law or statute.

(8) Any attempt to eliminate the city's ability to collect consequential, exemplary or punitive damages, or any other measure of damages permitted by law, in an action against the vendor, contractor or individual for breach of contract.

(Ord. No. 3823, § 2, 10-14-2010)

Sec. 2-578. - Prohibited acts.

Unless specifically permitted to do so by the request for bids or request for proposals, no vendor, contractor or individual submitting proposals or bids to the City of Hays, Kansas, shall attempt to insert any of the contractual provisions prohibited by Section 2-577 into any contracts or agreements proposed to the City of Hays, Kansas.

(Ord. No. 3823, § 3, 10-14-2010)

Sec. 2-579. - Penalty for violation of article.

Any vendor, contractor or individual who, without the express permission of the City Manager of the City of Hays, Kansas, proposes to enter into or enters into a contract with the City of Hays, Kansas, which omits any of the contract provisions required by Section 2-576 of this article or contains any of the contract provisions barred by Section 2-577 of this article, may be found by the City Manager of the City of Hays, Kansas, to be in violation of this article and vendors, contractors or individuals found to be in violation of this article may be barred from bidding on future contracts with the City of Hays, Kansas.

(Ord. No. 3823, § 4, 10-14-2010)

Sec. 2-580. - Conflict between article and contract.

To the extent any contract entered into by or on behalf of the City of Hays, Kansas omits any of the contract provisions required by Section 2-576 of this article, the article will prevail and the required contract provisions will be read into the contract. To the extent any contract entered into by or on behalf of the City of Hays, Kansas contains any of the contract provisions barred by Section 2-577 of this article, the article will prevail and the offending provisions shall be null and void and shall be unenforceable as to the City of Hays, Kansas.

(Ord. No. 3823, § 5, 10-14-2010)

Commission Work Session Agenda Memo

From: John Braun, Assistant Director of Public Works

Work Session: July 7, 2016

Subject: Pavement Condition Assessment – Contract

Person(s) Responsible: Greg Sund, Director of Public Works

Summary

Staff has solicited proposals for automated data collection services regarding the pavement condition of streets throughout the City, and the development of a 5-year repair and maintenance program. Proposals were received from two (2) firms. Staff recommends entering into an agreement with MDS Technologies, Inc. of Park Ridge, IL for a lump sum amount of $25,950. The 2016 budget included $50,000 for this project to be funded from the Special Highway Fund.

Background

In 2005, Public Works Staff began a comprehensive street maintenance program by preparing a 5-year Street Maintenance Program, and using that as a guide for several years of street maintenance activities. In 2011, an automated pavement condition assessment was conducted by Infrastructure Management Services (IMS). That assessment has been the basis for street maintenance activities over the last 5-years. It is now time to have another pavement condition assessment performed as the basis for future street maintenance activities, and to determine whether past street maintenance has been sufficient to keep city streets at an acceptable level of repair.

Discussion

City Staff solicited proposals for professional services related to the automated collection of pavement condition data, importing that data into the City's existing Infrastructure Management Software (Lucity), calculating a Pavement Condition Index for every street within the City, developing a 5-Year Maintenance and Rehabilitation Program Report, and presenting the results to the City Commission. Proposals were received from two (2) firms and were reviewed by City Staff.

- MDS Technologies, Inc. (Park Ridge, IL) $25,950
- Infrastructure Management Services (Tempe, AZ) $35,500

Infrastructure Management Services (IMS) performed the survey in 2011, and while there would be some value in using the same firm to perform the survey, MDS Technologies presented a lower cost proposal, and references indicate that they do good work. Therefore, staff recommends entering into an agreement with MDS Technologies of Park

Ridge, IL for a lump sum fee of $25,950 for services related to the assessment of pavement condition.

Services include:

- automated data collection,
- uploading into the City's infrastructure management software (Lucity),
- delivery of a hard copy report of the findings and Pavement Condition Index (PCI),
- Recommended rehabilitation activities and cost estimates
- Visuals to include the top ten streets needing major rehabilitation or reconstruction.

Pavement condition is determined by using vehicle based technology to capture pavement condition data with high resolution digital cameras, GPS receivers and on-board computers. The severity and extent of 39 pavement distresses such as cracking, potholes, patches, rutting, shoving, raveling, bumps, depressions, etc. is recorded and uploaded into computer software that calculates a PCI for each of the over 1400 road segments within the City.

If awarded the contract, MDS has indicated that they would begin within two (2) weeks of the Notice to Proceed and complete the work within four (4) months, which would be by the end of November 2016.

Legal Consideration

There are no known legal obstacles to proceeding as recommended by City Staff.

Financial Consideration

The 2016 Budget included $50,000 from Special Highway fund for this project. The proposed amount for the contract with MDS is **$25,950**.

That leaves $24,050 that can be used for additional street maintenance.

Options

The City Commission has the following options:

- Authorize the City Manager to enter into an agreement with MDS for the services defined for a lump sum fee of $25,950.
- Provide alternate direction to City Staff.

Recommendation

City staff recommends authorizing the City Manager to enter into an agreement with MDS Technologies, Inc. for a lump sum fee of $25,950.

Action Requested

Consider authorizing the City Manager to enter into an agreement with MDS Technologies, Inc. for a lump sum fee of $25,950 to be funded out of Special Highway.

Supporting Documentation

Pavement Management Assessment Agreement
Proposal from MDS

PAVEMENT MANAGEMENT ASSESSMENT AGREEMENT

This Agreement is made this _____day of_____, 2016, by and between the **City of Hays**, a Kansas municipal Corporation hereinafter referred to as (the "City") and **MDS Technologies, Inc.,** an Illinois Corporation, hereinafter referred to as ("MDST").

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for the purposes set forth above, it is hereby agreed to as follows:

MDST agrees to perform services as described in the proposal dated June 13, 2016 from MDST, which is attached hereto as EXHIBIT A and incorporated herein as a part of this Agreement.

The City shall pay MDST the contract sum of Twenty Five Thousand Nine Hundred and Fifty Dollars and Zero cents ($25,950.00) for the services to be provided under this Agreement as detailed in the Exhibit A.

MDST shall invoice the City upon completion of the Field Work Task and on a monthly basis thereafter. Invoiced amounts shall be pro-rated based on the percent of the above tasks completed.

This Agreement represents the entire agreement between the parties and may not be modified without the written approval of both parties.

The City shall have the ability to terminate this Agreement for any reason in its sole and absolute discretion at any time after execution. Upon written notice of termination by the City, MDST shall cease all work being performed. Upon termination and subject to MDST not otherwise being in breach of its obligations under this Agreement, MDST shall be entitled to compensation for all services rendered up to the point of termination and the reimbursement of any incurred expenses up to the point of termination.

To the fullest extent permitted by Kansas law, MDST shall indemnify, defend and save harmless the City, its officers, agents, employees, representatives and assigns, from lawsuits, actions, costs (including attorneys' fees), claims or liabilities of any character as allowed by law, brought because of any injuries or damages received or sustained by any person, persons, or property on account of any act or omission, neglect or misconduct of MDST, its officers, agents and/or employees arising out of MDST's work and services performed under this Agreement, including any claims or amounts recovered for any infringements of patent, trademark or copyright.

MDST shall procure and maintain for the duration of this Agreement insurance against claims for personal injuries or death to persons or damage to property that may arise

from or in connection with the performance of the work and services hereunder by MDST, its agents, representatives, or employees. MDST shall furnish the City with certificates of insurance naming the City and its officers, officials, trustees, agents, representatives, volunteers, and employees as additional insureds on a primary and non-contributory basis. MDST's insurance required under this Agreement shall be primary coverage in all respects. Any insurance maintained or self-insurance maintained by the City or its agents shall be in excess of MDST's insurance and shall not contribute with it. Unless otherwise required by the City, MDST shall maintain no less than the following coverages:

General Liability Coverage: $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage;

Automobile Liability Coverage: $100,000 combined single limit per accident for bodily injury and property damage;

Workers Compensation and Employer's Liability Coverage: Workers' Compensation limits as required by State statute and Employer's Liability limits of $500,000 per accident;

Excess Liability Coverage: $1,000,0000 per occurrence and in the aggregate.

In the performance of its obligations pursuant to this Agreement, MDST shall comply with all applicable provisions of federal, state and local law.

MDST shall coordinate all work under this Agreement with the City's designated Project Manager.

MDS TECHNOLOGIES, INC.	CITY
By: Trevor T. Triffo Principal	By:_____
Date: June 23, 2016	Date:_____

Exhibit A: MDST Proposal

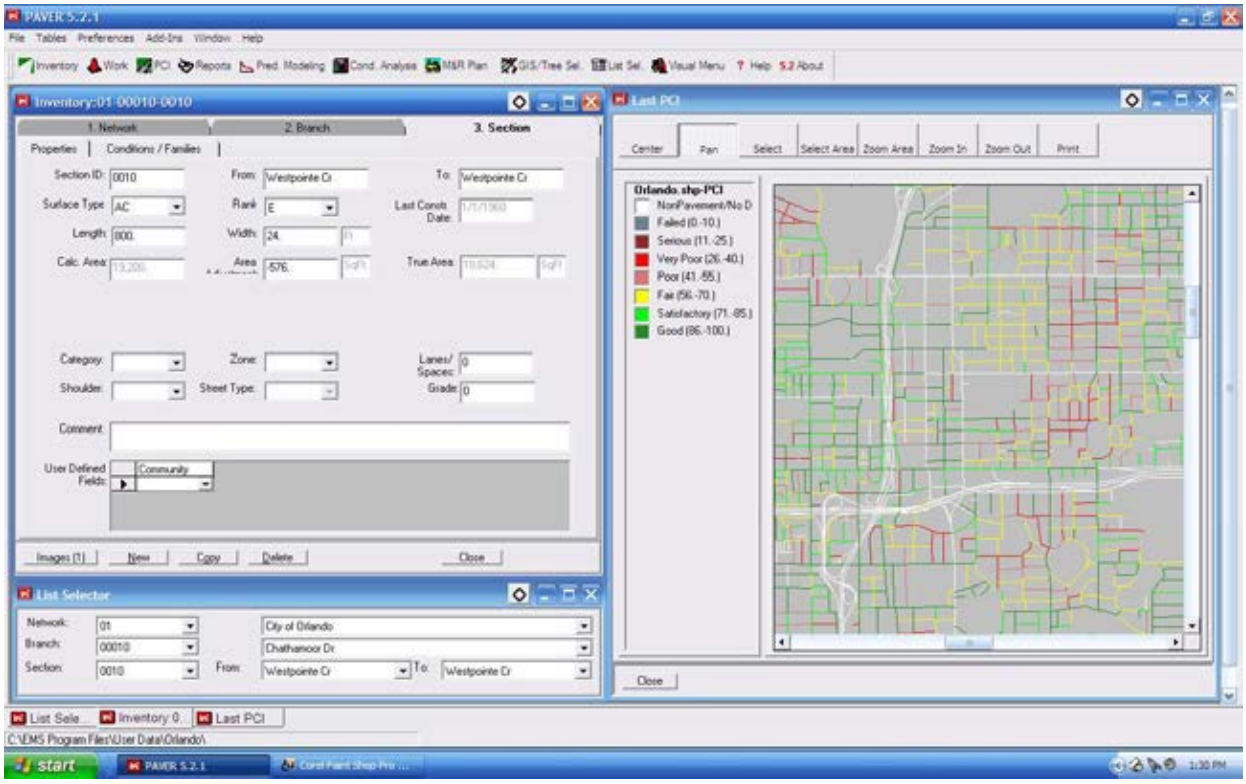
Copy

MDS Technologies, Inc.

Proposal to Provide Pavement Condition Assessment Services

Prepared for:

City of Hays
Public Works Department



Pavement Management Systems • Right of Way Asset Management Systems • GIS
Geo-Referenced Digital Imagery

June 13, 2016

City of Hays
Public Works Department
1002 Vine Street
Hays, KS 67601

Attention: Mr. John Braun
Assistant Director of Public Works

Re: Proposal to Provide a Pavement Condition Assessment Services

Dear Sir:

MDS Technologies, Inc. is pleased to submit this proposal to provide the above referenced services to the City of Hays. We are uniquely qualified to provide these services to the City for these reasons:

- We have expert knowledge and many years of experience implementing pavement management systems for municipalities and counties throughout the country;
- We have successfully collected and loaded pavement condition data into the Lucity system to calculate PCI scores;
- We have the vehicle based technology needed to assess the condition of the City's road network quickly, accurately, and cost-effectively;
- We have a reputation for providing high quality services delivered according to schedule for a very competitive fee.

If any questions arise regarding our submission, please contact me for clarification at any time. We look forward to working with City staff on this project.

Sincerely,

MDS Technologies, Inc.

Trevor T. Triffo
Principal

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1 Executive Summary

MDS Technologies, Inc. (MDST) specializes in implementing pavement management systems for municipal governments. Our designated Project Manager has almost thirty years of experience assessing pavement condition and implementing pavement management systems. He has successfully implemented the Lucity system for another municipal client.

Our Project Manager will meet with City staff at the outset of the project to confirm the project scope and schedule. He will also acquire the data needed to perform the field work from the City. We will use our vehicle based technology to collect pavement condition data quickly, accurately, and inexpensively. Prior to evaluating pavement condition, MDST's Project Manager will work with City staff to develop a deeper understanding of the current configuration of the Lucity system, particularly with regard to the Pavement Condition Index (PCI) calculator. He will suggest any modifications that might be advantageous for the City to adopt.

Upon completion of the pavement assessment, the condition data will be formatted for upload in the Lucity system and used to calculate a PCI for each road segment. These scores will be used to develop a pavement rehabilitation program for the City. The PCI scores and other pertinent data will be supplied to the City in the form of one or more electronic tables. A map showing the location of the top ten segments requiring rehabilitation or reconstruction will be provided.

We are typically able to hold a project initiation meeting within two weeks of receiving authorization to proceed with the project. Fieldwork can be performed immediately thereafter and is expected to take about one week to complete. The entire project can be completed within a four month time frame which easily meets the City's goal of completing the project by the end of the calendar year.

2 Company Background

MDST specializes in implementing pavement and right of way asset management systems for the public works departments of county and municipal governments. MDST staff has successfully implemented upward of one hundred pavement management systems for clients throughout the United States and Canada.

We use vehicle-based technology to evaluate the condition of entire road networks quickly, accurately and systematically. MDST provides services to implement pavement management software developed by third parties. We have successfully implemented Lucity and other commercially available pavement management systems for many county and municipal governments around the country.

MDST was incorporated in 2002 as a 'C' Corporation in the State of Illinois. MDST is located in the metropolitan Chicago area and will provide services to the City from this location.

2.1 Business Philosophy

MDST's mission is to be recognized by clients and industry peers as a top provider of pavement management data collection and pavement management system implementation services. To achieve this objective, the company feels that it must excel in several key areas:

- When planning our approach to a project, first and foremost we must consider the needs of our client and devise an approach to meet those needs;
- The company must execute work effectively and provide quality services on time and on budget;
- The company must keep abreast of emerging technologies and incorporate them into our practice when appropriate.

Our goal is to provide high value services that exceed the expectations of our clients on every project that the company undertakes. In any given year, at least 75% of our work is repeat business with existing clients.

2.2 Qualifications and Experience

MDST possesses considerable experience and expertise regarding implementation of pavement management systems. This experience and expertise is highlighted below.

Pavement Condition Evaluation – MDST staff have also evaluated pavement condition for tens of thousands of miles of pavements nationwide. The severity and extent of distresses occurring on a wide variety of pavement types have been evaluated using a number of techniques including manual surveys, windshield surveys, key board surveys, and condition assessment from digital imagery.

Development of Engineering Models for Pavement Management – A key part of implementing a pavement management system is modeling the behavior of the agency's roads and decision process with regard to selection and prioritization of rehabilitation projects. Although there are often similarities between agencies, every agency is unique in some way and this should be reflected in the models developed for the pavement management system. This modeling component requires a thorough understanding of the detailed workings of pavement management software and engineering judgment that is developed through experience. MDST staff has developed this expertise and judgment through twenty years of experience performing this task for county and municipal governments throughout the United States.

Pavement Management System User Training – MDST staff has provided system administrator and user training as part of implementing pavement management systems. Training is tailored to meet the needs and experience level of the agency and can range from navigating the user interface, viewing data, and creating standard reports to modifying engineering models, performing complex analysis, creating custom reports, adding new fields, and creating new functionality.

Pavement Management System Linkage/Integration to GIS – Many of the systems implemented by MDST staff have been linked to GIS. In some cases this has been done on a fixed segment

basis, and in other cases routes have been created to take advantage of dynamic segmentation functionality in GIS.

Integration of Inertial Navigation and Digital Imagery Technology – MDST staff were early pioneers to integrate inertial navigation and geo-referenced digital imaging technology into pavement oriented data collection vehicles. This was done to provide accurate position and orientation data in the event of a GPS outage, provide roadway geometrics data such as radius of curvature and cross fall, and to provide a method of capturing spatially accurate right-of-way asset inventories.

Development of Automated Crack Detection Technology – MDST staff have been involved in efforts to automate crack detection through pixel analysis of high resolution pavement imagery.

Pavement Management Software Development – MDST staff has been responsible for the ongoing maintenance and development of pavement management software that was used by municipal and county governments throughout the country. This includes prioritizing and performing bug fixes, and planning, designing, developing and distributing systems enhancements.

2.3 Project Manager

Mr. Trevor T. Triffo will function as MDST's **Project Manager** for this project. Mr. Triffo holds a Master of Science Degree in Civil Engineering specializing in pavement and geotechnical engineering. He has worked in the pavement management field in roles of increasing responsibility over his twenty-eight year professional career and is a recognized leader in the industry. He has participated in literally hundreds of pavement and right-of-way asset management system implementation projects as field engineer, data analyst, project manager, and principal in charge. These projects have been located throughout the United States, Canada, and the Middle East. Clients include municipal and county governments, metropolitan planning organizations, DOTs, and foreign governments.

Mr. Triffo has worked hands-on evaluating pavement condition and has supervised large groups of people performing this task. He has developed quality control procedures to maximize data quality and ensure that data delivered to clients is complete and accurately represents the conditions in the field.

Mr. Triffo is currently functioning as Project Manager of pavement management implementation projects for the City of Nashua, NH, and the City of South Jordan, UT. Also, he has recently functioned as Project Manager of successful pavement management implementation projects for:

- City of Wheaton, IL
- City of Boulder, CO
- York County, SC
- Summit County, CO
- City of Moscow, ID
- City and County of Honolulu, HI
- Village of Mt. Prospect, IL

- Village of Glen Ellyn, IL
- Village of Bartlett, IL
- Village of Wheeling, IL
- Village of Bensenville, IL
- Village of Carpentersville, IL
- City of Carmel, IN
- Chatham County, GA
- Anderson County, SC
- City of Orlando, FL

Mr. Triffo has made numerous presentations to senior staff and elected officials of municipal and county governments to provide/summarize the results of pavement management studies. He has also conducted numerous training sessions to transfer knowledge to new and experienced users of pavement management applications. A detailed resume for Mr. Triffo is provided in Appendix A.

2.4 Project Manager Role and Involvement

As Project Manager, Mr. Triffo will be intimately involved in all aspects of the work for the duration of the project. Any work not done specifically by Mr. Triffo will be directly overseen, reviewed for quality, and ultimately approved for release to the City by Mr. Triffo.

As MDST's Project Manager of this project, Mr. Triffo will:

- function as the project team's point of contact for City staff;
- implement a Project Communication Plan to facilitate effective communication between the City and MDST;
- personally attend all project meetings at the City;
- manage the activities of the MDST field crew;
- oversee office based data capture/pavement condition assessment activities;
- personally perform quality checks required as part of company standard operating procedures;
- monitor the status of the project from a cost and schedule perspective and take action as required to keep the project on track.

3 Responses to Functional Requirements

The City wants to capture pavement condition data for the entire City maintained road network. This corresponds to roughly 120 centerline miles of roads, of which 54% have an AC surface, 37% have a PCC surface, and 9% have a brick paver surface. The consultant must provide all necessary field inspectors, vehicles, tools, and equipment required to perform the work.

The pavement condition data must be collected in a sound, systematic, and reproducible manner to accurately reflect the condition of the road network and facilitate comparison between road segments. This data must be loaded into the City's Lucity pavement management system and used to calculate a PCI score for each segment. A pavement maintenance and rehabilitation program must be created based on this data. A hard copy report summarizing the finds of the project and a database containing the PCI scores and certain other data elements must also be provided.

MDST has created a Task-driven Work Plan to meet the needs of the City in an expeditious and cost effective manner. The main Tasks in the Work Plan are as follows:

Task 1: Initiate Project
Task 2: Network Referencing
Task 3: Survey and Data Protocols
Task 4: Pavement Data Collection
Task 5: Data Processing and QA/QC
Task 6: Data Formatting and Loading
Task 7: Maintenance and Rehabilitation Program Development
Task 8: Deliver Report and Database

Each of these Tasks is discussed in detail below. Optional approaches that the City might consider are also provided in this section.

Task 1: Initiate Project

This task involves holding a project initiation meeting between MDST's Project Manager and County staff, acquiring the data needed to perform field work, and mobilizing our data collection crew and equipment to the City.

MDST's Project Manager will meet with City staff at the outset of the project to review the project goals, scope and schedule, establish communication protocols, and discuss the pertinent technical and administrative details of the project. These discussions will include the Lucity PCI calculation protocol, the handling of brick surfaced streets, previous condition surveys, the City's history with pavement management, and the City's pavement maintenance and rehabilitation policies.

We will also acquire the necessary information to prepare for field activities. The roads to be included in the project need to be identified. The two main sources of this information are the GIS pavement centerline file and the existing Lucity database. We will work with City staff to acquire this

data in advance of the meeting. If any questions arise about this data, MDST will seek clarification from City staff.

Task 2: Network Referencing

In this Task we will confirm that all streets segments to be included in the system existing in the Lucity database and the GIS pavement centerline file. The linkage between these two systems will also be evaluated and confirmed. We understand that the existing Lucity database contains about 1,400 road segments.

Task 3: Survey and Data Protocols

MDST will develop the data requirements for the City's current version of Lucity. MDST has performed this task for another municipal government that uses Lucity. MDST can adjust the weightings assigned to each distress so that the calculated PCI matches the City's expectations and approximates the PCI score that would result from the ASTM 6433 PCI model.

Lucity uses a "predominant severity" approach in which the predominant severity level (i.e. low, moderate, or high) is identified for each type of distress that exists on a segment. Then, an "extent range" (e.g. 0 to 4% of paved area, 4 to 10% of paved area, etc.) is assigned to each distress based on the total area affected by the distress at all three severity levels.

This data is then used to calculate a numeric Pavement Condition Index (PCI) for a road segment. This involves using a matrix to determine an appropriate deduct value from the maximum score of 100. For example, if moderate severity Alligator Cracking occurs "Intermittently", a deduct value of 25 can be assigned, resulting in a PCI score of 75.

The PCI model in the Lucity system can be configured to match the ASTM model as closely as possible. The advantage of this approach is that the road condition in the City of Hays can be compared to similar municipalities that use the ASTM model. This approach also means that the City will not be tied to single firm for future surveys as the ASTM model is non-proprietary.

Task 4: Pavement Data Collection

MDST will use our vehicle based approach to collect pavement condition data on approximately 120 centerline mines (240 lane miles) of City maintained roads. The approach used by MDST is specifically designed to provide consistent and accurate results for visual condition surveys of the type required by the Lucity system and ASTM D6433.

<u>Data Collection Technology:</u>

MDST proposes to utilize vehicle-based technology to capture the required pavement condition data quickly, safely, and cost-effectively. The main components of the system are high resolution digital cameras, GPS receivers and related technology, and on-board computers. A software application manages and coordinates the flow of digital imagery from the cameras and ties each frame to position and orientation data obtained from the GPS receiver.

The digital cameras are precisely located and mounted to the roof of the data collection vehicle. Two cameras are required for pavement condition evaluation. A forward-looking camera captures a pavement-oriented view of the streetscape. A downward-looking camera is used to capture detailed imagery of the pavement surface. A third camera can be angled forward and to the right to capture imagery of assets such as traffic signs, sidewalks, storm drains, etc.

MDST uses industrial grade cameras that are capable of outputting images up to 4 Megapixels in size at rates up to 15 frames per second. Each frame is written to on-board, high-capacity hard disk drives in AVI or JPG format. Images are typically captured at approximately 15 foot intervals to ensure complete coverage of the pavement surface.

MDST uses a Trimble Ag132 GPS receiver to capture position and orientation data. This data is corrected in real-time and typically positions the vehicle to within three feet of its actual location under open sky conditions. Each frame/digital image is tied to position and orientation data so that it can be used to position objects visible in the imagery and mapped in GIS.

Camera views can be displayed inside the vehicle and are constantly monitored by MDST field crews to confirm that high quality imagery is being captured at all times.

Data Collection Procedures and Quality Control:

MDST has developed standardized procedures that dictate how the data collection vehicle is to be configured and operated to maximize the consistency and quality of the data. Some of these are:

- Fieldwork does not proceed if the pavement surface is obscured by standing water or other substances/debris.
- The sun must be sufficiently high off the horizon in order to collect quality imagery. This is because a certain amount of light is required to prevent under-exposure. Also, images captured looking into the sun when it is too low on the horizon are subject to a "flash" effect that results in sub-standard images. These problems are avoided by starting fieldwork at least one hour after sunrise and finishing at least one hour prior to sunset.
- Camera settings such as aperture, shutter speed, and color parameters are reviewed and adjusted at the start of every day to reflect the current weather conditions. Once initialized, the cameras continually self-correct to account for instantaneous changes in lighting conditions. In addition, the vehicle operator can view the images as they are being captured and make any manual adjustments as required.

We also have standard procedures to review the data on an on-going basis while the fieldwork is progressing. Each image is tagged to spatial data that defines the location at which the image was obtained. This data is forwarded to our office on a daily basis so that office based

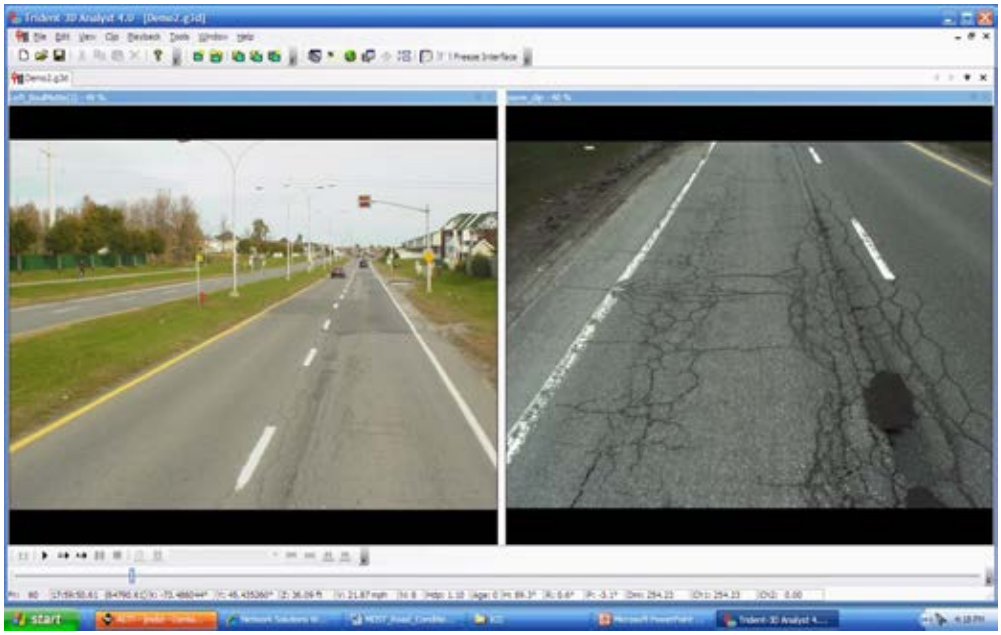
staff can monitor progress and confirm that all roads to be included in the system have digital imagery associated with them. This is done by loading the spatial data into GIS and performing analysis to compare the image locations to the road network to be tested to determine if any roads have not been driven. The result of this analysis is passed back to our field crew so that any roads that may have been missed initially are included in the fieldwork effort. A thorough final review is performed at the end of the fieldwork before the vehicle is de-mobilized from the City.

Task 5: Data Processing and QA/QC

Pavement condition will be assessed through analysis of the sequential digital imagery captured with the data collection vehicle. Both the forward-looking streetscape view and the downward-looking detailed pavement view will be used to assess the severity and extent of up to 20 distresses for asphaltic concrete (AC) and 19 distresses for Portland Cement Concrete (PCC) surfaces. We will discuss and confirm a method of handling brick surfaced roads with City staff. In the past we have used a modified version of the asphalt method that concentrated on the distresses that typically occur on brick surfaced roads – rutting, depression/distortion, bumps and sags, and patching.

A sample image pair is shown below. Because each frame is tied to positioning data acquired from GPS, the location of each image pair can be easily tied to a road segment.

The severity of a distress is related to the width of cracking for cracking-type distresses and the degree of deviation from the plane of the original surface for distortion-type distresses. For asphalt surfaced pavements, the extent of distress is determined by area (e.g. alligator cracking), length (e.g. longitudinal cracking), or occurrence (e.g. potholes) depending on the type of distress encountered. For PCC surfaced pavements, extent is determined based on the number of slabs affected by a distress.



Pavement Evaluation QA/QC:

As part of our standard operating procedures, the condition of a random set of road segments is re-assessed. The results of the two assessments are compared to each other to identify any significant differences. The results are not expected to be identical, but should result in PCI scores within about five (5) points of each other. Differences in PCI scores larger than this are reviewed in detail and any adjustments as to how distresses are quantified are made at that time. If a systematic error is uncovered related to correctly identifying distress types (accuracy) in or identifying severity levels (resolution), then any previously evaluated segments are re-evaluated to correct the problem.

To minimize data input errors, MDST also performs certain integrity and logic checks on the input data to identify missing or erroneous data. For example, if the extent of a particular distress is quantified on an area basis, then the sum of all the areas in a segment containing this distress cannot be greater than the total area of the segment. The data set must be reviewed and revised until every record passes this and other logic tests. At that point the data set is considered ready for upload.

Task 6: Data Formatting and Loading

The Lucity system has the capability to bulk import data. MDST will provide upload files containing the pavement condition data in the required format so that the data can be imported into the Lucity database. MDST will assist City staff in performing the upload. Creating this upload file requires several steps as described below:

- A new Inspection record must be created to house the new inspection data. Since an Inspection occurs at a point in time, an inspection date must be assigned to each new Inspection. In this case, the Inspection Date is the date that the data collection vehicle traveled the road and captured the digital imagery.
- The type, severity, and extent of the observed distresses are loaded for each Inspection.
- Once loaded, the Lucity system calculates a numeric Pavement Condition Index (PCI) score based on this data for each road segment. This score can range from 100 (no distresses present) to zero (very heavily distressed).

Task 7: Maintenance and Rehabilitation Program Development

MDST can create rehabilitation programs and analyze the effectiveness of various budget streams using the Lucity application. Hays-specific pavement performance models can be developed if this has not been done already.

A list of the rehabilitation activities (and associated unit costs) that are used on various types of roads at various stages of their life cycle is needed for this task. We assume that this information can be provided by City staff.

We expect that the creation of rehabilitation programs to be an iterative process in which first-cut results are provided to City staff for review and comment. The analysis can then be

modified based on feedback from City staff. We anticipate creating rehabilitation programs for four or five budget scenarios as part of the project.

This work can be performed through remote access from our office. We have successfully used this approach in the past with numerous other clients.

An alternate approach involves identifying an appropriate treatment for each segment based on PCI ranges outside of the Lucity system. In this approach, pavements are slotted into groups based on PCI scores. In general, pavements with a PCI score below 55 are candidates for some form of rehabilitation (e.g. milling with fabric and overlay). Pavements with PCI scores below 20 are typically candidates for reconstruction. Pavements with a PCI score above 55 may be candidates for preventative maintenance (e.g. slurry seal).

In our experience, however, these thresholds vary for each of our clients and depend somewhat on the City's policies and practices. These thresholds can also vary by traffic level/functional classification/strategic importance and by pavement type. MDST will work with City staff through an interview process to understand the City's decision making process in this regard. This logic will be used to generate the rehabilitation program. The resulting document will be provided to the City in both hard copy and electronic format (i.e. Excel, Access, or other mutually agreeable format).

Task 8: Deliver Report and Database

MDST will create a hard copy report after the above Tasks have been completed. The report will describe the work performed and the present the major findings of the project. The report will also include the PCI data for each segment. Recommended rehabilitation activities and estimated costs for each segment will also be provided. One (1) hard copy of the report will be provided. An electronic copy of the report can also be provided in PDF format. Additional hard copies can be provided at additional cost.

After the PCI scores are calculated in Lucity, they can be exported from the system. Other data such as Segment ID, street name, from/to descriptors, pavement length, width, functional classification, etc. can also be exported.

This information will be loaded into data tables and will be provided to the City in a mutually agreeable format (e.g. Excel, Access). These tables will include the data requested in the RFP as a minimum. The exact structure and contents of the data tables will be determined in conjunction with City staff.

A drawing showing the top ten streets needing major rehabilitation or reconstruction will be supplied to the City. This drawing will be created using ArcMAP. A SHP file or geo-database containing this information can also be supplied.

4 Client References

MDST has significant experience implementing pavement management systems for municipalities and evaluating pavement condition. Project Profiles and contact information for some sample projects are provided below.

Project: Lucity Pavement Management System Implementation
Client: City of Wheaton, IL
Timeframe: 2012, 2015/16

MDST was retained in 2012 to implement a pavement management system developed by Lucity Systems for the City. Wheaton is located in suburban Chicago and has a 135 mile road network.

MDST used its vehicle based data collection technology to capture sequential digital images of the County's road network. MDST staff captured the severity and extent of various pavement distresses that were present on each road segment through a review of the digital imagery. This pavement condition data was uploaded into the pavement management database and a numeric pavement condition score was calculated for each segment.

MDST modified the pavement condition model used by the Lucity system to better reflect the actual road conditions in the City and approximate the values that would be generated by the ASTM standard PCI model.

Using historical construction/pavement rehabilitation data and the condition data for each road segment, MDST developed pavement deterioration models that are specific to the City of Wheaton. Additional analysis was performed to estimate the impact that various budget scenarios would have on the overall condition of the City's road network over the upcoming 10 years. A written report was created that summarized the work performed and the major finding of the study. MDST staff provided support to senior staff as they prepared a presentation to City council.

MDST was re-hired in 2015/16 to re-assess the condition of the City's roads, load the data into Lucity, calculate PCI scores, update the budget analysis and provide a new report.

Contact Info: Mr. Sarang A. Lagvankar, P.E.
Tel: 630.260.2067
E-mail: slagvankar@wheaton.il.us

Project: Pavement Management System Implementation
Client: City of Boulder, CO
Timeframe: 2007, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016

This ongoing work involves collecting pavement condition data and to keep the City's pavement management system up to date. The City maintains approximately 360 centerline miles of roads with both AC and PCC surfaces. MDST was originally hired in 2007 to implement the system for the City. The initial project involved providing pavement condition data for the entire road network so that the database contained current data for all road segments. The City was divided into three geographic areas with roughly equal road mileage for purposes of keeping the data current going forward. The pavement condition data in one area is updated annually every year since 2009 so that the data for the entire City is updated on a three year cycle.

MDST uses its vehicle based data collection technology to capture geo-located digital images of the City's road network. Using a specially designed software tool, MDST staff performs a 'virtual drive' of these pavements in an office environment to capture the severity and extent of various pavement distresses that are present on each road segment. This pavement condition data is uploaded into the pavement management database and a Pavement Condition Index (PCI) score is calculated for each segment. MDST also provided training to City staff to manually perform PCI inspections.

MDST also integrated the pavement management system to the City's GIS. Through this linkage, the City can graphically display pavement condition and other data from the pavement management system thematically as shown in the adjacent image. Each color represents a different pavement condition range (e.g. Dark blue represents pavements with PCI scores ranging from 85 to 100, meaning these roads are in very good condition).

<u>Contact Info:</u> Mr. Rod Rindal, P.E.
Tel: 303.441.3266
E-mail:rindalr@bouldercolorado.gov

Project: Pavement Management System Implementation
Client: York County, SC
Timeframe: 2014/15

York County, SC is located adjacent to the North Carolina State Line and is a collar county to Charlotte, NC. The County maintains approximately 460 centerline miles of paved roads. MDST was retained to implement a pavement management system for the Public Works Department. MDST built a pavement management database based on data contained in the County's GIS. MDST assessed the condition of the road network, uploaded the data into the pavement management database, and calculated PCI scores for each road segment. The system was also linked to the County's GIS so that pavement condition data can be thematically displayed in the County's GIS.

MDST also configured the system to generate multi-year pavement rehabilitation programs and perform funding impact analysis. Training was provided to County staff so that they would have the knowledge and skills needed to maintain the system going forward. We also provided digital imagery of each road linked to the County's pavement centerline file. This allows County staff to view the condition and other aspects of the County road network from the office.

Contact Info: Mr. Ryan Blancke, Transportation Manager
Tel: 803-628-3199
E-mail: ryan.blancke@yorkcountygov.com

Project: Pavement Management System Implementation
Client: City of Moscow, ID
Timeframe: 2013, 2015

The City of Moscow, ID is located in western Idaho adjacent to the Washington State line. The City maintains 83 centerline miles of both AC and PCC surfaced roads. MDST implemented pavement management system to help staff manage the City's road network. The road network was segmented primarily on an intersection to intersection basis based on data acquired from the City's GIS. MDST assessed the condition of the road network and uploaded the data into the pavement management database. Pavement evaluation training was provided to City staff. Software user training was also provided.

MDST was retained in 2015 to configure the budget analysis module of the pavement management system so that City staff could use it to create multi-year rehabilitation programs and determine the effect that various pavement rehabilitation budget streams would have on the future condition of the City's road network. MDST worked in conjunction with City staff to configure the system to reflect the City's pavement rehabilitation policies and practices. Re-inspection of the City's roads is planned for 2016.

Contact Info: Mr. Kevin Lilly, P.E., City Engineer
Tel: 208.883.7023
E-mail: klilly@ci.moscow.id.us

Project: Pavement Management System Implementation
Client: Summit County, CO
Timeframe: 2012/13

Summit County is located west of Denver on the continental divide and contains several municipalities including Breckenridge. The County maintains 175 miles of AC, PCC, and gravel surfaced roads and multi-purpose recreation paths. MDST was hired to perform pavement inspections on all these roads, load the data into the County's pavement management system, and calculate PCI scores for each segment.

MDST also provided geo-located digital imagery of the County's roads. A general streetscape view and an angled view designed to capture right of way assets such as traffic signs, guiderail, curb and gutter, sidewalk, drainage pads, mailboxes, and other items of interest were provided at approximately ten (10) foot intervals. MDST provided a GIS point feature class file showing the location of the images. Imagery at any location can be accessed quickly and easily by County staff through the use of the GIS Hyperlink tool. An update of the pavement condition data and digital imagery is planned for 2016.

Contact Info: Mr. Eric Cottingham, Asset Manager
Tel: 970-668-4199
E-mail: ericc@co.summit.co.us

Project: Pavement Management System Implementation
Client: Chatham County, GA
Timeframe: 2009, 2011, 2013

This project involved implementing a pavement management system for Chatham County, GA. Chatham County is located in southeast Georgia and contains the City of Savannah. The County maintains approximately 325 centerline miles of roads.

In the initial phase of the project, MDST built a pavement management database based on the County's GIS pavement centerline file. The pavement management database contained road segments that typically ran block to block. The end points of segments were defined by the centerline of intersecting streets.

MDST used its vehicle based data collection technology to capture sequential digital images of the County's road network. MDST staff captured the severity and extent of various pavement distresses that were present on each road segment through a review of the digital imagery. This pavement condition data was uploaded into the pavement management database and a Pavement Condition Index (PCI) score was calculated for each segment. The pavement management system was linked to the City's GIS so that pavement condition and other data can be displayed in a map format.

Contact Info: Mr. Marc Ginsberg
Tel: 912-652-6867
E-mail: MBGinsbe@Chathamcounty.org

Project: Pavement Management System Implementation
Client: Village of Mount Prospect, IL
Timeframe: 2011, 2016

This project involved implementing a pavement management system for the Village of Mount Prospect, IL. The Village maintains approximately 135 centerline miles of roads and alleys and is located in the suburban Chicago area.

MDST built a pavement database that defined the Village's road network as a number of road segments. The segments typically ran block to block and the end points of segments were defined by the centerline of intersecting streets. This was done to facilitate a linkage to GIS through a pavement centerline file provided by the Village.

MDST collected geo-referenced digital imagery using vehicle based technology. Using a specially designed software tool, MDST staff performed a 'virtual drive' of these pavements in an office environment and captured the severity and extent of various pavement distresses that were present on each road segment. This pavement condition data was uploaded into the pavement management database and a Pavement Condition Index (PCI) score was calculated for each segment. MDST installed the pavement management system on Village computers and provided user training to Village staff.

Digital imagery in AVI format was linked to GIS so that Village staff can access imagery of interest simply by selecting the desired road segment using the Hyperlink tool.

Contact Info: Mr. Joel Michalik
Tel: 847.870.5640
E-mail: jmichalik@mountprospect.org

Project: Pavement Management Training
Client: City and County of Honolulu, HI
Timeframe: 2014

In this project MDST provided in-depth training on the use of MicroPAVER for a large number of staff in the County of Honolulu Department of Facility Maintenance to use the MicroPAVER pavement management system. The training was also attended by engineers from the Hawaii Department of Transportation. The training sessions were typically attended by 15 to 20 people.

The training was provided over five (5) days and included all aspects of the MicroPAVER system. This included:

- A senior level overview of the system for director level staff and members of the mayor's office;
- A classroom review of pavement distresses that can occur AC and PCC surfaced pavements and how they are classified in the Pavement Condition Index model;
- Field training on how to perform pavement evaluation;

- Accessing and editing road segment data in MicroPAVER;
- Adding new pavement inspection data and calculating PCI scores;
- Creating pavement performance models within MicroPAVER;
- Configuring MicroPAVER to reflect the City and County's policies and practices regarding pavement rehabilitation;
- Generating rehabilitation programs and performing budget analysis for a variety of budget scenarios and interpreting the results;
- Linking the system to GIS; and,
- Creating standard and user-defined reports including filtering and sorting data.

Contact Info: Ms. Cyndy Aylett
Tel: 808-768-3475
E-mail: caylett@honolulu.gov

5 Contract Terms and Conditions

MDST takes no exception to any of the terms or conditions in the RFP, except that we do not currently carry professional liability insurance. Our practice is limited to implementing pavement management systems and related services. We do not provide design or construction inspection or testing services so this type of insurance is not required. Our other municipal and county government clients have not required this type of insurance for this reason.

A sample agreement that we have used in the past is provided in Appendix B.

6 Project Schedule

MDST typically performs project of this size and complexity over roughly four (4) months. If MDST is authorized to proceed with the project July 14, 2016, the project can be completed by November 14, 2016 as desired by the City.

The project initiation meeting can be performed within two (2) weeks of receiving authorization to proceed. The field work would proceed with one week after this meeting and we anticipate that the field work will take approximately one (1) week to complete. The pavement evaluation task is an office based task that will be initiated immediately after the field work is completed and is expected to take a maximum of two (2) months to complete. The rehabilitation program, report, and database tables can be created after the pavement evaluation task is complete. These tasks can be completed over a three week time frame.

7 Cost Quotations

MDST is prepared to provide our services for an all-inclusive lump sum fee as shown in the table below. A lump sum contract relieves the City of any risk related to cost overruns. MDST will submit an invoice to the City upon completion of the field work and on a monthly basis thereafter. Invoiced amounts will be pro-rated based on percent complete by Task. Payment terms are Net Thirty (30) days. These fees are is valid for one hundred and twenty (120) days.

Project Fee Schedule

Task	Fee
Project Initiation and Prepare for Field Work	$1,950
Network Referencing	$850
Survey and Data Protocols	$450
Pavement Data Collection	$7,750
Data Processing and QA/QC	$8,750
Data Formatting and Loading	$1,450
Maint. and Rehab. Program Development	$2,400
Deliver Report and Database	$2,350
Total:	**$25,950**

Appendix A: Resumes

Trevor T. Triffo
Principal, MDS Technologies, Inc.

Introduction

Mr. Triffo is Principal of MDST Technologies, Inc. In this position, Mr. Triffo is responsible for all aspects of company operations. Mr. Triffo has spent his twenty eight year career in the pavement and transportation infrastructure asset management industry. He has participated in several hundred initial implementation and data update projects for clients at the municipal, county, regional, and state level throughout the United States and Canada. On these projects, he has functioned in a variety of positions including Project Engineer, Project Manager, and Principal in Charge. Mr. Triffo has also functioned as co-Project Manager of a comprehensive infrastructure asset management system for the State of Kuwait.

Pavement Inventory and Condition Assessment Experience

Mr. Triffo has designed, participated in, and supervised data collection programs for numerous agencies ranging from small municipalities to state DOTs. Mr. Triffo has extensive experience with a variety data collection technologies and techniques.

- *Automated Condition Data Collection* – Mr. Triffo has been involved in over 200 projects in which non-contact technology was used to acquire pavement roughness, and wheel track rutting. A significant percentage of these projects also required collection of automated geometric information such as grade, cross-fall, and radius of curvature. This data was collected using a combination of laser cameras, accelerometers, inclinometers, and rate gyroscopes.
- *Surface Distress Surveys* – Mr. Triffo has been involved in roughly an equal number of projects that involved collection of surface distress data. Mr. Triffo is very familiar with numerous ways to collect this data including manual methods and semi-automated (windshield) methods. Mr. Triffo has also been involved in research efforts to develop a totally automated optical crack detection system that utilized high resolution digital cameras, a strobe lighting system, and a parallel process computing system to perform pixel analysis/crack detection in real time.
- *Non-Destructive Deflection Testing* – Mr. Triffo is intimately familiar with non-destructive deflection (NDT) testing of pavements. Mr. Triffo has analyzed deflection data acquired by a Dynaflect device and Falling Weight Deflectometer (FWD) on thousands of miles of pavements of all types and in all areas of the United States and Canada.

Mr. Triffo is trained as an engineer and with an emphasis in soils, materials, and pavements. His Master's research Thesis involved the study of concrete pavement deterioration due to exposure to freeze/thaw cycles. The combination of Mr. Triffo's academic training and practical experience put him in a very strong position to understand an Agency's unique pavement issues and address them in the pavement management application.

Pavement Management System Implementation Experience

The vast majority of the data collection projects mentioned above involved loading data and/or implementation of a pavement management system for client Agencies. Mr. Triffo has vast experience with all aspects of system implementation including:

- Agency needs analysis to determine the required functionality of the system;
- Design of appropriate data collection programs that meet the technical needs and budget constraints of the agency;
- Design and implementation of appropriate quality control plans to ensure data integrity;
- Development of Agency specific models so that the output of the system reflects the Agency's unique combination of conditions, policies, and practices; and
- Training of Agency staff on field data collection, principals of pavement management, and use of the selected system so that the Agency does not need to rely on outside sources to maintain the system.
- Design interfaces between the pavement management application and other systems such as GIS and Work/Maintenance Management.
- Presentation to senior staff and/or elected officials to communicate findings, conclusions, and recommendations resulting from implementation of the system.

System Design and Development

Mr. Triffo has successfully led the design and development of pavement management applications for the private and public sector. For the public sector, systems were designed to meet the specific needs of municipalities, counties, and DOT agencies.

Mr. Triffo also designed and managed the development of a comprehensive right of way asset management system. This system utilized a generalized analytical engine that enabled users to inventory and assess the condition of a wide range of infrastructure assets. The types of assets that can be accommodated by this system are signs and supports, sidewalks, curb and gutter, pavement markings, sound and retaining walls, traffic signals, lighting systems, drainage inlets and manholes, fire hydrants, underground utilities such as storm sewer, sanitary sewer, and water distribution networks.

Work History

MDS Technologies, Inc. *Founder/Principal*	Park Ridge (Chicago), IL June 2003 to Present
IMS Infrastructure Management Services, Inc. *Senior Vice President*	Arlington Heights (Chicago), IL January 1998 to June 2003
Stantec, Inc. *Manager, Implementation Department*	Cambridge, ON, Canada 1989 to December 1997
Shiplake Management, Ltd. *Construction Engineer*	Toronto, ON, Canada 1988 to 1989
Trow Geotechnical, Ltd. *Pavement Engineer*	Brampton, ON, Canada 1987 to 1988
Pavement Management Systems, Ltd. *Data Analyst*	Cambridge, ON, Canada 1986 to 1987

Education

York University 1989- 1992
Toronto, ON, Canada
Coursework toward MBA

University of Manitoba 1984 - 1987
Winnipeg, MB, Canada
M.Sc. Civil Engineering (Geotechnical/Pavements)

University of Manitoba 1980 - 1984
Winnipeg, MB, Canada
B.Sc. Civil Engineering

Appendix B – Sample Agreement

PAVEMENT MANAGEMENT ASSESSMENT AGREEMENT

This Agreement is made this _____day of_____, 2011, by and between the _____, an Illinois municipal Corporation hereinafter referred to as (the "City") and **MDS Technologies, Inc.,** an Illinois Corporation, hereinafter referred to as ("MDST").

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for the purposes set forth above, it is hereby agreed to as follows:

MDST agrees to perform services as described in the proposal dated _____ from MDST, which is attached hereto as EXHIBIT A and incorporated herein as a part of this Agreement.

The City shall pay MDST the contract sum of _____ Dollars and _____ cents ($xx,xxx.xx) for the services to be provided under this Agreement as detailed in the Exhibit A.

MDST shall invoice the City on a monthly basis. Invoiced amounts shall be pro-rated based on the percent of the above tasks completed.

This Agreement represents the entire agreement between the parties and may not be modified without the written approval of both parties.

The City shall have the ability to terminate this Agreement for any reason in its sole and absolute discretion at any time after execution. Upon written notice of termination by the City, MDST shall cease all work being performed. Upon termination and subject to MDST not otherwise being in breach of its obligations under this Agreement, MDST shall be entitled to compensation for all services rendered up to the point of termination and the reimbursement of any incurred expenses up to the point of termination.

To the fullest extent permitted by Illinois law, MDST shall indemnify, defend and save harmless the City, its officers, agents, employees, representatives and assigns, from lawsuits, actions, costs (including attorneys' fees), claims or liabilities of any character as allowed by law, brought because of any injuries or damages received or sustained by any person, persons, or property on account of any act or omission, neglect or misconduct of MDST, its officers, agents and/or employees arising out of MDST's work and services performed under this Agreement, including any claims or amounts recovered for any infringements of patent, trademark or copyright.

MDST shall procure and maintain for the duration of this Agreement insurance against claims for personal injuries or death to persons or damage to property that may arise

from or in connection with the performance of the work and services hereunder by MDST, its agents, representatives, or employees. MDST shall furnish the City with certificates of insurance naming the City and its officers, officials, trustees, agents, representatives, volunteers, and employees as additional insureds on a primary and non-contributory basis. MDST's insurance required under this Agreement shall be primary coverage in all respects. Any insurance maintained or self-insurance maintained by the City or its agents shall be in excess of MDST's insurance and shall not contribute with it. Unless otherwise required by the City, MDST shall maintain no less than the following coverages:

General Liability Coverage: $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage;

Automobile Liability Coverage: $100,000 combined single limit per accident for bodily injury and property damage;

Workers Compensation and Employer's Liability Coverage: Workers' Compensation limits as required by State statute and Employer's Liability limits of $500,000 per accident;

Excess Liability Coverage: $1,000,0000 per occurrence and in the aggregate.

In the performance of its obligations pursuant to this Agreement, MDST shall comply with all applicable provisions of federal, state and local law.

MDST shall coordinate all work under this Agreement with the City's designated Project Manager.

MDS TECHNOLOGIES, INC.	CITY
By:_____	By:_____
Trevor T. Triffo Principal	
Date:_____	Date:_____