

**PROFESSIONAL SERVICES AGREEMENT
FOR
City-Wide Pavement Re-Evaluation and Assessment**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”), acting by and through its City Manager, and Data Transfer Solutions, LLC (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“City Manager” shall mean the City Manager and/or his designee.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on 4/9/2019 and terminate on 4/9/2020.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in Exhibit 1 which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager. The determination made by City Manager shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager; however, City shall have no obligation to terminate and

may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed one hundred seventeen thousand eight hundred and seventy- five (\$117,875.00) as total compensation, to be paid to Consultant as further detailed in Exhibit 2.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be the City Manager. Payment will be made to Consultant following written approval of the final work products and services by the City Manager. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by Consultant shall be at the City's sole risk and without liability to the Consultant.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such

questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* This Agreement may be terminated by either Party upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 *Termination For Cause.* Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any

other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 *Termination not sole remedy.* In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to: City of Pflugerville
Attn: Patricia Davis, P.E.
Interim City Engineer
P.O. Box 589
Pflugerville, Texas 78660

If intended for Consultant, to: Data Transfer Solutions, LLC
Attn: A. M. 'Trey' Fragala, III, AICP, PMP
Sr. Vice President, Operations Director
3680 Avalon Park Blvd., Suite 200
Orlando, FL 32828

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled “*Asset Mapping and Pavement Rating*” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Consultant’s financial integrity is of interest to the City; therefore, subject to Consultant’s right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

City of Pflugerville

Insurance Requirements

Consultant performing work on City property or public right-of-way for the City of Pflugerville shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Consultant shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor’s policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Pflugerville.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial (Public) Liability to include coverage for: Premises/Operations	General 1,000,000 per occurrence, 2,000,000 general aggregate Or	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
Contractual Liability		
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

Questions regarding this insurance should be directed to the City of Pflugerville (512) 990-6100. A contract will not be issued without evidence of Insurance. City will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Pflugerville
Capital Improvement Program
P.O. Box 589
Pflugerville, Texas 78691-0589

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the City***, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant’s performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the City may have upon Consultant’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant’s or its subcontractors’ performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Pflugerville for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT’S agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT’S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee,

consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the CITY, the CITY’S agent, the CITY’S employee or other entity, excluding the CONSULTANT or the CONSULTANT’S agent, employee or sub-consultant, over which the CITY exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming the CITY and those representatives listed above as additional insured under the CONSULTANT’S general liability insurance policy and providing any defense provided by the policy upon demand by CITY.

10.4 CONSULTANT is required to perform services to the City under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2).

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker’s compensation or other employee benefit acts.

10.6 Force Majeure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon that Consultant intends to use the following subcontractors in the performance of this Agreement: N/A any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Consultant acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it will comply with the City’s Ethics Code.

13.3 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission (“TEC”), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC’s website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and, if applicable, subject to formal approval by the City Council.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Pflugerville, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.

19.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Travis County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Attachment "A" - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIV. Amendments.

XXV. MISCELLANEOUS CITY CODE PROVISIONS

25.1 Representations and Warranties by Consultant. If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 Franchise Tax Certification. A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

25.3 Eligibility Certification. Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt

or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

25.5 Texas Family Code Child Support Certification. Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

25.6 Texas Government Code Mandatory Provision. The City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270.002) by accepting this rider, the Consultant hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Consultant hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

EXECUTED and **AGREED** to as of the dates indicated below.

**CITY OF
PFLUGERVILLE**

**DATA TRANSFER SOLUTIONS,
LLC**

(Signature)

(Signature)

Printed Name: Sereniah Breland

Printed Name: _____

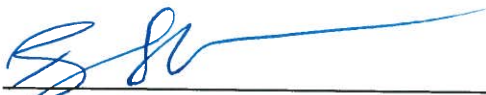
Title: City Manager

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:



Charles E. Zech

City Attorney

DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

Pavement and Asset
Data Collection Services
City of Pflugerville, TX

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City of Pflugerville

Pavement Condition Index Assessment and ROW Asset Inventory

Task 1 - Project Setup

1.1 *Project Initiation*

Upon notice to proceed, the CONSULTANT will arrange a kick-off meeting to review the project requirements and confirm scheduling. The kick-off meeting will include proposed key personnel and the OWNER's project members. During the meeting, the CONSULTANT will present the proposed Project Approach, which includes project equipment, software, methodology, schedules and deliverables. The proposed approach will be finalized based on the OWNER requirements and decisions during the meeting. The CONSULTANT will request that the OWNER provide any existing database, Geographic Information System (GIS) layers and aerial imagery of street conditions and road centerlines. Project communication protocol, documentation, accounting methodologies, data format and standards will be confirmed during the meeting. It is essential that the City of Pflugerville provide prompt and efficient communication in order that workflow continues as planned in the schedule. Workflow disruptions may result in a change to the project schedule and cost estimate.

1.2 *GIS Centerline/Data Import and Data Preparation*

The CONSULTANT will use the existing centerline data provided by the OWNER and create a pavement database based on the centerline layer. Each road segment record in the centerline layer will have a corresponding record in the pavement database. The OWNER represents that the City maintains approximately 233 centerline miles of roadway.

The CONSULTANT will provide the OWNER a centerline assessment which will display the roads that are included in this analysis. Data collection will be initiated once the centerline is approved. The project schedule and cost estimate may be impacted if a timely response is not received from the OWNER and/or changes are made to the centerline after data collection has been initiated.

The OWNER will provide a copy of the existing pavement database. The CONSULTANT will import the existing pavement management related data, such as pavement width, pavement type, etc. to a database and prepare for data collection.

The CONSULTANT will communicate with the OWNER to gather required information to define all the distress types and treatment selections. Based on this information, a Pavement Condition Index (PCI) rating and treatment selection manual will be created to identify and define each distress type and its severity, extent and treatment selection (based on the ASTM-D6433 testing methodology for roads and parking lots).

The CONSULTANT will provide the OWNER with a GPS "breadcrumb" file of data collection routes

and image locations containing X, Y and Z coordinates in the State Plane Coordinate System.

1.3 *Project Management*

The CONSULTANT will provide project management for the duration of the project, including coordinating and attending meetings via web meetings or in person with the OWNER, data research and collection efforts as required, preparing weekly progress reports and schedule updates.

Task 1 Deliverables:

- The CONSULTANT will deliver meeting minutes.
- The CONSULTANT will provide centerline assessment for the OWNER's review and approval.
- The CONSULTANT will deliver weekly progress reports and schedule updates.

Task 2 - Pavement Data and Image Capture

Upon receiving approval of the centerline data, the CONSULTANT will start collecting roadway data and images for the OWNER's 233 centerline miles of roadway using a Mobile Asset Collection (MAC) data collection vehicle.

2.1 *System Setup, Mobilization and Pilot Project*

The CONSULTANT will set up the data collection system and pavement management system so that all GIS and database system data are integrated and properly configured.

The CONSULTANT will mobilize one or more MAC vehicles to the OWNER's site.

The CONSULTANT will work with the OWNER to set up a pilot project so initial sample data can be collected and verified. The CONSULTANT will collect data on the pilot project area and review the result with the OWNER and acquire approval for full size project implementation.

2.2 *Field Data and Image Capture*

The CONSULTANT team includes a driver and operator who will systematically drive the MAC vehicle on the road segment listings provided by the OWNER. The CONSULTANT will collect pavement data with two-way roads receiving two passes and one-way roads receiving a single pass per lane. The CONSULTANT proposes to use its MAC vehicle line scan camera with laser illumination and four right-of-way cameras to capture pavement and ROW images to be used during the pavement rating process. Unpaved roads will not be surveyed.



A MAC Vehicle

The CONSULTANT'S MAC vehicles are equipped with:

- **High-resolution right-of-way digital cameras** – Allied Vision Prosilica GX1920C GigE, frame rate of 15 images per second and 1936 x 1456 color resolution
- **Laser Road Imaging System (LRIS) pavement imaging system** – collects high-definition pavement images used to extract distress type severity and extent measurements. 4096 pixel/line, 28,000 lines/sec, 1mm resolution
- **Applanix POS220V inertial measuring unit (IMU)** – centimeter-level positioning of MAC van during collection
- **DMI equipment** – distance measuring instrument used for system integration
- **GPS equipment** – used for mapping level positioning of the vehicle, heading information and positional tagging of images (2 positional units, 1 differential unit)
- **Servers** – on board servers for storing data, processing images and storing profiler, GPS, DMI and IMU data
- **Surface (road) profiler** – used for precise pavement ride and rut measurement

The MAC system collects all pavement and right-of-way images, IMU, DMI and profiler data concurrently as well as imagery for roadway assets including signs, sidewalks, ramps, pavement marking, pavement striping, street lights, curb and gutter, signals, fire hydrants, inlets and manholes.

2.3 Pavement Surface Imaging Rating

The CONSULTANT’s MAC vehicles’ pavement imaging sensors are oriented from nadir (straight-down) to achieve the best perspective, laser-illuminated to ensure uniform image contrast and GIS-integrated to provide geospatial distress vectors (points, lines and polygons) that can be loaded and verified using GIS.

- The CONSULTANT will utilize a downward-facing, progressive line scan camera that provides high-resolution images (1mm pixel, 4,000 pixels wide, and ~12 feet width) of the pavement surface to clearly detect and quantify distresses.
- Pavement surface imaging (JPEG format) will span, at a minimum, the data collection lane from left lane stripe to right lane stripe and will provide 100% continuous pavement coverage.
- Image resolution will be such that all visual cracking distresses can be accurately identified and quantified.
- Images will have a minimum horizontal resolution of 4,000 pixels or better.
- Images will be synchronized with the OWNER’S centerline file.
- The CONSULTANT will collect the longitudinal profile and International Roughness Index (IRI) to provide a ride condition index for each segment.

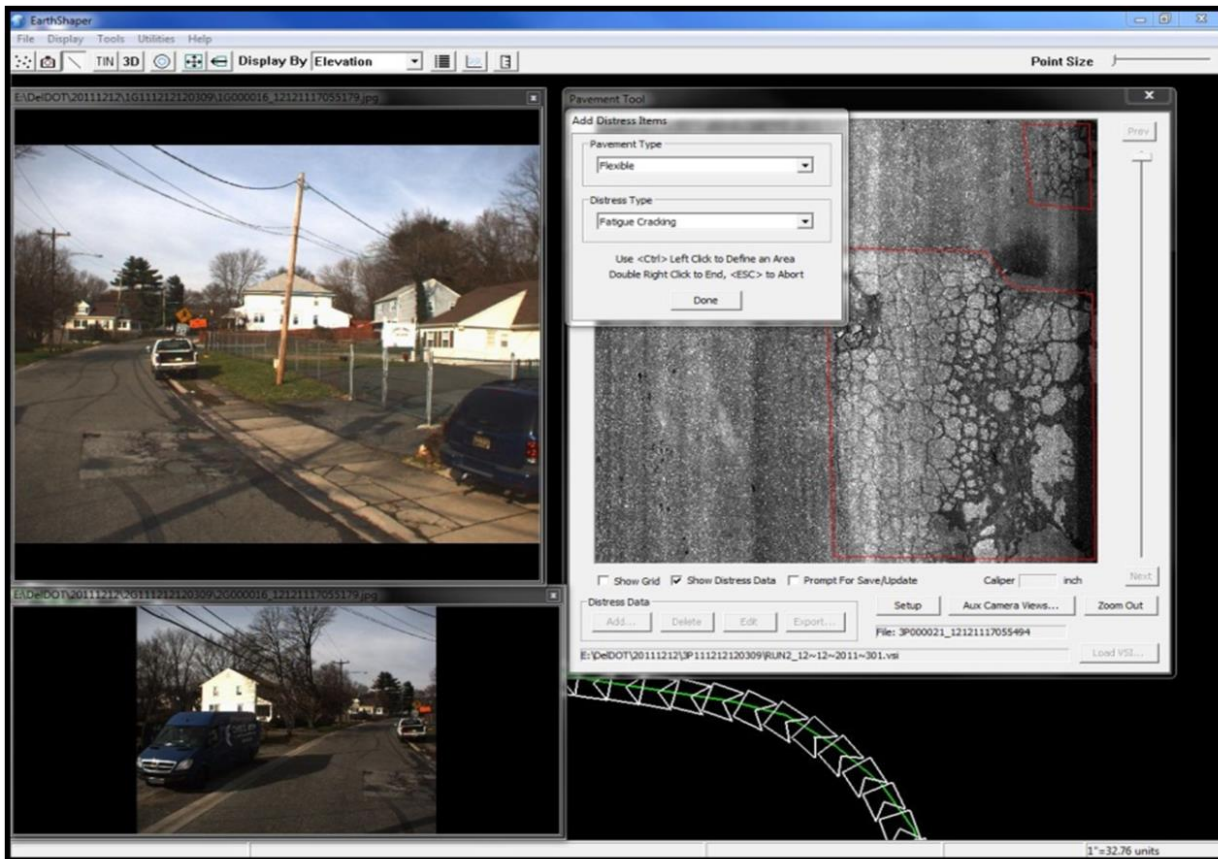


Pavement image captured with the 4K LRIS

2.4 Pavement Condition Evaluation

With the pavement image collection started, the CONSULTANT will begin processing pavement images. This allows the CONSULTANT to begin the pavement distress rating process concurrent with the image collection.

Once pavement images and distress mapping processing are complete for each collection day, the CONSULTANT'S experienced pavement evaluators will review each street segment's images for a complete and thorough evaluation of the existing pavement condition per the ASTM D6433 pavement distress rating process including the following distresses: alligator cracking, longitudinal cracking, transverse cracking, raveling, flushing and patching. The EarthShaper™ software allows distress vectors to be viewed and edited through this workflow. The CONSULTANT has designed the EarthShaper asset data extraction software by optimizing the performance of visualization/QC of the roadway condition and inventory data.



Pavement condition evaluation within the EarthShaper™ software

The IRI will be collected using profiler equipment that meets ASTM standards. The CONSULTANT utilizes a surface profiling system manufactured by International Cybernetics Corporation (ICC) for evaluating the smoothness of pavement.

Task 2 Deliverables:

- The CONSULTANT will provide right-of-way imagery for all segments collected in a JPEG format.
- The CONSULTANT will provide downward-facing pavement imagery for all segments collected.
- The CONSULTANT will provide a geodatabase of distresses containing the type, severity and extent of distresses along the road segment as defined by the ASTM D6433 sampling methodology along with sample locations.

Task 3 - Pavement Final Report

Once the Pavement Condition Index (PCI) has been calculated, the CONSULTANT will provide the OWNER with a 5-year pavement rehab/resurfacing/repair program based on the OWNER's pavement condition evaluation. The PCI trigger levels in the decision trees will also be evaluated to determine the effectiveness of each treatment for improved PCI value and life extension, per the deterioration curves. History of the most recent treatments or construction date of streets will also be helpful in determining the effectiveness of current decision trees. The CONSULTANT will work with the OWNER on lifecycle modeling, maintenance and rehabilitation family updates, budget scenarios and reports.

The CONSULTANT will deliver a PCI final report and pavement preservation plan for the project including:

- Executive Summary
- Project methodology and pavement data
- Street segment PCI
- Annual pavement maintenance program with recommendations for improvement, repair and treatment types and development of unit cost estimates
- Budget deferral analysis with goals and priorities and guidelines for selecting treatments with ranking criteria
- Exhibits showing PCI and street segment length, lanes and pavement type

Task 3 Deliverables:

- The CONSULTANT will deliver a final GIS file geodatabase containing collected pavement data, PCI value, recommended maintenance activities and cost information.
- The CONSULTANT will deliver a PCI final report.
 - As part of the PCI final report, the CONSULTANT will provide pavement modeling, maintenance and rehabilitation updates and reports. The CONSULTANT will complete one iteration of budget scenarios, and one modification, if necessary. Additional modifications can be requested and will require adjustments to the project schedule and cost estimate.

- The CONSULTANT will help develop a presentation of PCI final report findings to the City.

Task 4 – Traffic Sign Inventory

The CONSULTANT’s MAC vehicles will collect right-of-way asset inventories simultaneously with data that are collected for the pavement management system. The vehicles will capture images at an interval of approximately 10 to 15 feet for both forward and side-facing directions and geo-referenced to the pavement inventory by segment. The CONSULTANT will collect traffic signs (point feature) with the following attributes:

- Asset ID
- X, Y location
- Sign type (MUTCD code)
- Sign text
- Photo image link
- Physical condition rating
 - Good: sign has minor to no visual defects with good reflectivity, not faded, straight/upright, legible, no graffiti = sign that may need replacement after 5 or more years
 - Fair: sign is visible, faded in image, may be at a slight angle (not excessive), may have small graffiti, legible
 - Poor: sign has many visual defects with poor reflectivity faded, bent or pushed over (sign panel or post), heavy graffiti, obstructed, not visible or legible = sign needs immediate replacement
- Location (street name asset located on)
- Comments
- Support structure type
 - Wood pole
 - Bridge
 - U-channel
 - Utility pole
 - Mast arm
 - Pipe
 - Steel square
 - Street light
 - Traffic signal
 - Other

Task 4 Deliverables:

- The CONSULTANT will deliver a sign inventory with attributes identified above in a GIS file geodatabase along with corresponding extracted asset images.



Sample MAC van imagery of signs

Task 5 – Sidewalk Inventory

The CONSULTANT’s MAC vehicles will collect right-of-way asset inventories simultaneously with data that are collected for the pavement management system. The vehicles will capture images at an interval of approximately 10 to 15 feet for both forward and side-facing directions and geo-referenced to the pavement inventory by segment. The CONSULTANT will collect sidewalks with the following attributes:

- AssetID
- Location (line representing sidewalk location)
- Location (street name asset located on)
- Photo image link
- Physical condition rating
 - Good = sidewalk is level with no uprooting or cracking
 - Fair = sidewalk has minimal uprooting or cracking
 - Poor = sidewalk has major uprooting or cracking and poses a hazard to pedestrians
- Comments



Sample image of sidewalks collected with MAC system

Task 5 Deliverables:

- The CONSULTANT will deliver a sidewalk inventory with attributes identified above in a GIS file geodatabase along with corresponding extracted asset image

Task 6 - Curb and Gutter Inventory

The CONSULTANT's MAC vehicles will collect right-of-way asset inventories simultaneously with data that are collected for the pavement management system. The vehicles will capture images at an interval of approximately 10 to 15 feet for both forward and side-facing directions and georeferenced to the pavement inventory by segment. The CONSULTANT will collect curb and gutter (linear feature) with the following attributes:

- AssetID
- Location (line representing curb location)
- Location (street name asset located on)
- Photo Image link

- Physical condition rating
 - Excellent = like new condition
 - Good = no visible cracking or deficiencies
 - Fair = minor cracking/concrete breakage with no change in elevation
 - Poor = major cracking/concrete breakage visible, change in elevation, rubble
- Color
 - None
 - Yellow
 - Red
 - Green
 - Other
- Comments



Sample image of curb and gutter collected with MAC system

Task 6 Deliverables:

- The CONSULTANT will deliver a curb and gutter inventory with attributes identified above in a GIS file geodatabase along with corresponding extracted asset images.

Task 7-Quality Assurance and Quality Control

The CONSULTANT will perform quality assurance and quality control on all data collected.

The CONSULTANT has a proven Quality Assurance/Quality Control (QA/QC) procedure for all MAC image collection projects. The CONSULTANT'S QC procedures begin with the MAC vehicle collection process. For the OWNER, MAC calibration sites will be established that consist of up to ten point locations nailed, painted and surveyed in a location easily accessible to the vehicle. This calibration site will be recorded in at least two perpendicular directions at the beginning and end of each collection day.



Calibration site checked daily to ensure the accuracy of collection

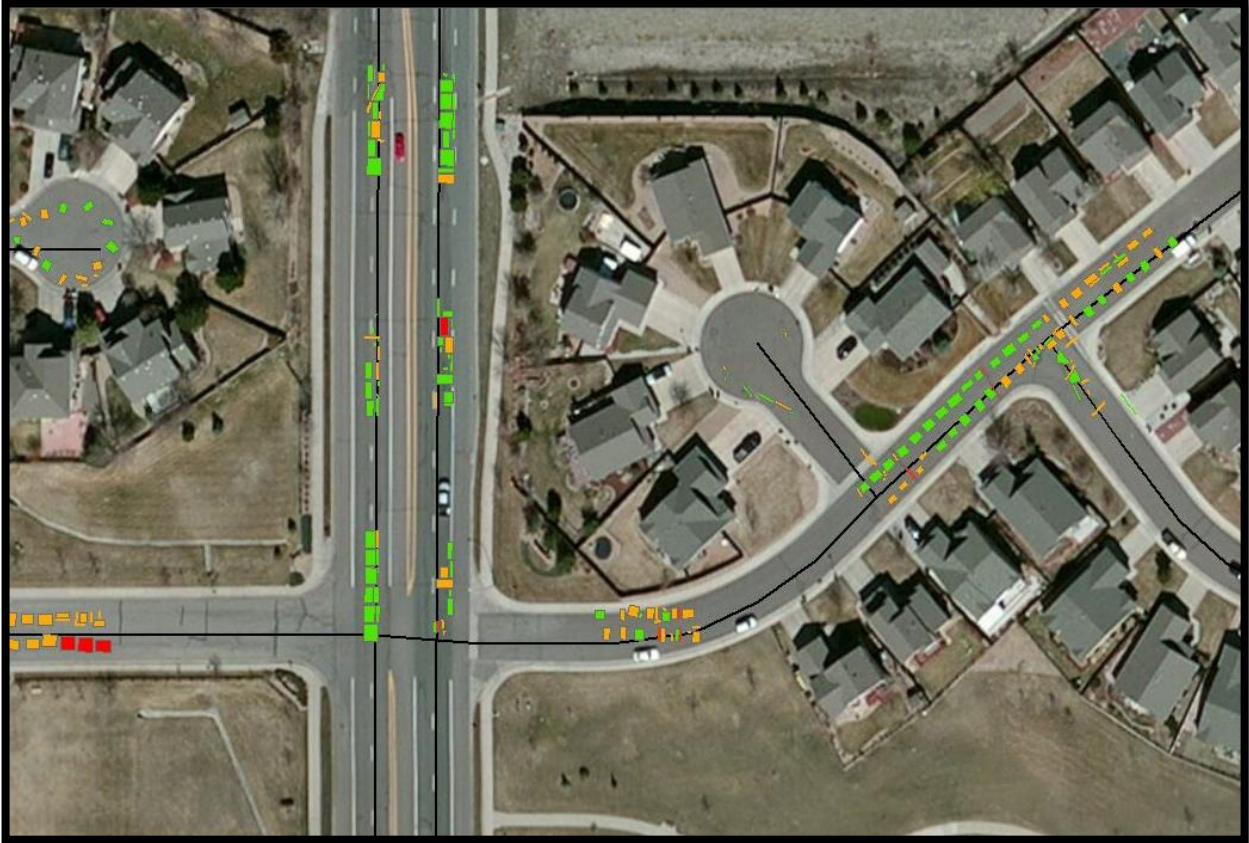
The MAC technician will check each camera's exposure rate, image quality, GPS and IMU to ensure the system is recording the image, GPS, DMI and IMU data and that the GPS location is within the stated project tolerance. Each collection day's calibration collection will be documented in a collection log book. The collection log book also contains information such as date, location, technician, driver, any issue that developed during the collection day and DMI calibration runs. The CONSULTANT will maintain a Microsoft Access database of any collection or other project issues. All project team personnel including OWNER personnel will have access to the database to log comments, check the status of issues and have one central repository to track project progress.

The MAC technician will review the images collected on-screen as they are collected. Any issue with image clarity would require the collection run to end and the image quality issue to be resolved. Once resolved, the collection run can resume from the beginning for the road segment collected. The MAC technician also monitors GPS reception during collection. In any case where the GPS reception is lost (measured using positional dilution of precision [PDOP]), the MAC

technician will stop the collection and resolve the GPS reception issue. Collection can resume once the GPS reception issue is resolved. All issues resulting in the collection run being stopped will be recorded in the collection log book along with the resolution.

Completed collection drives will be delivered to the CONSULTANT’s headquarters in Orlando for post-processing. The image QC Officer will perform quality control checks on each delivery provided. The QC Officer will also visually review the collection routes for image quality. Any collection runs that are considered low quality will be marked for recollection before the MAC vehicle is permitted to leave the City of Pflugerville.

Additionally, the CONSULTANT will provide independent quality checks via field verification to confirm accuracy of automated data collection. The CONSULTANT utilizes walk-out maps that display pavement distress data for field confirmation and acceptance.



Field maps utilized by the CONSULTANT for verification of pavement distress data

TASK 7 Deliverables:

- The CONSULTANT will perform field verification of pavement condition scores with OWNER staff

ACCEPTANCE CRITERIA

The results of the data collection shall be quality checked for rating consistency by the CONSULTANT to ensure the accuracy and quality of deliverables. Additionally, deliverables will be checked for missing and/or duplicate assets. A 97% accuracy rate is expected. QC checks will be based on the batch/sample size of the delivery (see Table A below to determine sample size for the appropriate accuracy rate).

For any measurement that is needed, it must be accurate to the nearest foot. If the data has more errors than allowable, the set of data will be corrected. This process will be repeated until each set of data is within the allowable limits.

Acceptable Quality Level (AQL)

Each attribute captured for an asset counts as one unit of measure. Each physical measurement required for an asset location counts as one attribute or unit of measure. The following location information also counts as an attribute or unit of measure for each asset: Physical presence (when captured as per source = correct, not captured or missed = incorrect). In the event of a duplicate capture of an asset, the total number of attributes or units of measure for the duplicate asset(s) will be deducted from the total units of the sample set, and one error or unit of measure (incorrect physical presence) is charged.

Batch size			Sample Size (Normal)	Acceptance Rate (%)				
				99.0	98.5	97.5	96.0	93.5
2	to	8	2	≤ 0	≤ 0	≤ 0	≤ 0	≤ 0
9	to	15	3	≤ 0	≤ 0	≤ 0	≤ 0	≤ 0
16	to	25	5	≤ 0	≤ 0	≤ 0	≤ 0	≤ 1
26	to	50	8	≤ 0	≤ 0	≤ 0	≤ 1	≤ 1
51	to	90	13	≤ 0	≤ 0	≤ 1	≤ 1	≤ 2
91	to	150	20	≤ 0	≤ 1	≤ 1	≤ 2	≤ 3
151	to	280	32	≤ 1	≤ 1	≤ 2	≤ 3	≤ 5
281	to	500	50	≤ 1	≤ 2	≤ 3	≤ 5	≤ 7
501	to	1,200	80	≤ 2	≤ 3	≤ 5	≤ 7	≤ 10
1,201	to	3,200	125	≤ 3	≤ 5	≤ 7	≤ 10	≤ 14
3,201	to	10,000	200	≤ 5	≤ 7	≤ 10	≤ 14	≤ 21
10,001	to	35,000	315	≤ 7	≤ 10	≤ 14	≤ 21	≤ 21
35,001	to	150,000	500	≤ 10	≤ 14	≤ 21	≤ 21	≤ 21
150,001	to	500,000	800	≤ 14	≤ 21	≤ 21	≤ 21	≤ 21
500,001 +			1250	≤ 21	≤ 21	≤ 21	≤ 21	≤ 21

For example, a delivery results in 100 assets. Each asset has been determined to have ten attributes to be captured (including the physical presence attribute for each asset). Thus, the total units of measure for the batch size = $100 \times 10 = 1,000$. Based on the table above, to attain an expected accuracy of 97.5%, the allowable number of errors for a sample size of 80 units is ≤ 5 .

City of Pflugerville Professional Asset Management Services Data Transfer Solutions, LLC				
Task	Description	Units	Unit Cost	Fee
	Project set-up, GIS centerline file review, project initiation, mobilization ¹	1	\$6,500	\$6,500
	Pavement data and image capture (centerline miles)	233	\$120	\$27,960
	Pavement condition rating per ASTM D6433-11 (centerline miles)	233	\$100	\$23,300
	Pavement Width (centerline miles)	233	\$20	\$4,660
	Traffic Sign Inventory (centerline miles)	233	\$50	\$11,650
	Curb and Gutter Inventory (centerline miles)	233	\$45	\$10,485
	Sidewalk Inventory (centerline miles)	233	\$40	\$9,320
	Software integration ³	1	\$0	\$0
	Pavement modeling/ final report ⁴	1	\$24,000	\$24,000
Based on 233 centerline miles ²				
Total Fee				\$117,875

¹Assumes centerline file will be provided in GIS.

²Cost estimate is subject to change if units change.

³Optional based upon configuration. Not applicable currently as the City does not have pavement management software

⁴Includes one iteration of budget scenarios, and one modification, if necessary.

⁵DTS will bill lump sum based on percent complete for each task item.