

RESOLUTION R-2018-44

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH MDS TECHNOLOGIES, INC. FOR PAVEMENT CONDITION EVALUTATION SERVICES

WHEREAS, The City of Wheaton, DuPage County, Illinois finds it reasonable and appropriate to enter into an agreement for Pavement Condition Evaluation Services; and

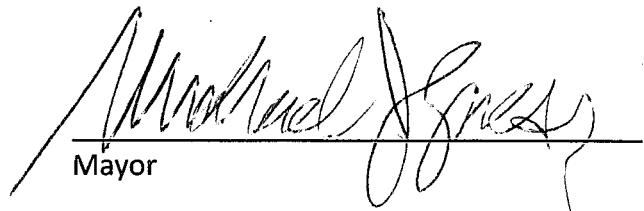
WHEREAS, the Consultant has previously evaluated the pavement conditions of City streets and allies; and

WHEREAS, it is determined by the City that the proposal received from MDS Technologies, Inc., meets the City's needs; and

WHEREAS, it is necessary for the City to enter into an agreement with MDS Technologies, Inc. to provide Pavement Condition Evaluation Services.

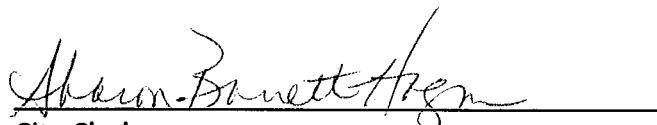
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to an agreement between the City of Wheaton and MDS Technologies, Inc., Park Ridge, Illinois, for Pavement Condition Evaluation Services attached hereto and incorporated herein as if fully set forth as Exhibit 1.

ADOPTED this 21st day of May 2018.



Mayor

ATTEST:



Aaron Bennett
City Clerk

Roll Call Vote:

Ayes: Councilman Prendiville
Mayor Gresk
Councilman Rutledge
Councilman Scalzo
Councilman Suess
Councilman Barbier
Councilwoman Fitch

Nays: None
Absent: None

Motion Carried Unanimously

This number must appear on the face of
all invoices and documents related to
this Agreement No. C 37037

**CITY OF WHEATON, ILLINOIS
PROFESSIONAL SERVICES AGREEMENT
FOR PAVEMENT CONDITION EVALUATION SERVICES**

THIS AGREEMENT is made and entered into this 21ST day of May 2018, by and between the CITY OF WHEATON, an Illinois municipal corporation ("City"), located at 303 W. Wesley Street, Wheaton, Illinois, 60189 and MDS Technologies, Inc. ("Consultant"), located at 350 S. Northwest Highway, Suite 300, Park Ridge, Illinois 60068.

WHEREAS, the City has determined that it is reasonable, necessary, and desirable to engage a professional service provider to evaluate pavement conditions of City streets and create rehabilitation programs in order to update the City's Pavement Management System; and

WHEREAS, the Consultant has previously evaluated the pavement conditions of City streets and the City has a satisfactory relationship with the Consultant for those Services; and

WHEREAS, Consultant has submitted to the City a description of the services to be provided by Consultant, a copy of which is attached hereto and incorporated herein as if fully set forth as Exhibit A and Consultant represents that it has the necessary expertise and experience to furnish such services upon the terms and conditions set forth herein below.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants, agreements, and conditions set forth in the Agreement, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES.

A. Recitals. The recitals set forth above, including Exhibit A, are incorporated herein as substantive terms and conditions of this Agreement and represent the intent of the parties. Where this Agreement is inconsistent with any provision of Exhibit A, this Agreement shall control.

B. Retention and Services. The City retains the Consultant to perform, and the Consultant agrees to perform, all necessary services and work in connection with the project services identified below ("Services"), which Services the Consultant shall provide pursuant to the terms and conditions of this Agreement:

Pavement Condition Evaluation Services, Budget Analysis and Rehabilitation Planning as more fully described in the attached proposal, Exhibit A, which shall be considered contractual requirements that must be met by Consultant.

Consultant shall furnish all labor, materials, and equipment to provide and perform the Services.

C. Independent Consultant Status. The Consultant shall act as an independent Consultant in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed (i) to create the relationship of principal and agent, employer and employee, partners,

or joint-venturers between the City and Consultant; or (ii) to create any relationship between the City and any sub-contractor of the Consultant. Consultant is not in any way authorized to make any contract, agreement, or promise on behalf of the City, or to create any implied obligation on behalf of the City, and Consultant specifically agrees that it shall not do so. The City shall not have the authority to control the method or manner by which Consultant complies with the terms of this Agreement.

D. Reporting. The Consultant shall regularly report to the City's Project Manager, or his designee, regarding the progress of the Services during the term of this Agreement.

E. Time Of Performance. This Agreement shall become effective as of the date Consultant is given a notice to proceed. Consultant agrees and shall complete the Services by August 27, 2018. The Consultant agrees that time is of the essence.

F. Additional Services. The Consultant shall provide only the Services specified in this Agreement and the attached Exhibit A. The Consultant acknowledges and agrees that the City shall not be liable for any costs incurred by the Consultant in connection with any services provided by the Consultant that are outside the scope of this Agreement ("Additional Services"), regardless of whether such Additional Services are requested or directed by the City, except upon the prior written consent of the City. Additional Services that have been authorized in writing by the City shall be subject to the terms and conditions of this Agreement and shall be compensated as mutually agreed upon by the parties before the commencement of any additional services.

SECTION 2. COMPENSATION AND METHOD OF PAYMENT.

A. Agreement Amount. The total amount billed by the Consultant for the Services performed under this Agreement shall not exceed \$33,750.00, including reimbursable expenses, without the prior express written authorization of the City.

B. Invoices and Payments. The Consultant shall be paid as provided in Exhibit A. Authorization of payment requires the following: receipt by the City of invoices from the Consultant containing sufficient detail of the Services performed to enable the City to properly evaluate the payout request, and receipt of other paperwork required by this Agreement. The City shall pay Consultant in accordance with the Illinois Local Government Prompt Payment Act which states that any bill approved for payment shall be paid within thirty (30) days after the date of approval. Payment will be made to the Consultant either through the City's Purchasing Card Program, MasterCard, in which payment will occur at the time of Service delivery, or through a Consultant generated invoice. Invoices shall be submitted to the City within six (6) months of completion of the Services. Any invoices submitted in excess of six (6) months from the date that Services were completed, will not be paid. Under no circumstances will a third party be reimbursed for Services performed under this Agreement.

C. Unappropriated Funds. The obligation of the City for payment to the Consultant is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to the appropriation of funds, unless otherwise authorized by law.

D. Taxes, Benefits, and Royalties. The Agreement Amount includes all applicable federal, state and City taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties, and fees arising from the use of, or the

incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claims or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by Consultant.

E. Account Records. The Consultant shall maintain records showing actual time devoted and costs incurred in connection with the Services performed under this Agreement, and shall permit the authorized representative of the City to inspect, audit and make copies of all data and records of the Consultant for the Services done under this Agreement. All such records shall be clearly identifiable. The records shall be made available to the City during normal business hours during the Agreement period, and for three years after the termination of the Agreement.

SECTION 3. REPRESENTATIONS OF CONSULTANT.

A. Standard of Care. The Consultant represents, certifies and warrants that it shall perform and complete the Services in a manner consistent with the level of care, skill, and diligence exercised by other recognized professional Consultants in the Wheaton area, under similar circumstances at the time the services are performed. Consultant agrees that all employees shall have sufficient skill and experience to perform the Services assigned to them. The representations, certifications, and warranties expressed shall be in addition to any other representations, certifications, and warranties expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City. Consultant shall perform, at its own cost and expense and without reimbursement from the City, and services or work necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

B. Solvency. The Consultant represents that it is financially solvent and has the necessary financial resources to perform the Services with the standard of care required under this Agreement.

SECTION 4. INDEMNIFICATION; INSURANCE; LIABILITY

A. Indemnification. To the fullest extent permitted by law, the Consultant shall, without regard to the availability or unavailability of any insurance, either of the City or of the Consultant, indemnify, save harmless, and defend the City, and its officials, directors, officers, employees, agents, and attorneys, in whole or in part from and against any and all lawsuits, claims, demands, damages, liabilities, losses, fines, judgments, settlements, penalties, costs, and expenses, including, but not limited to reasonable expert witness and attorneys' fees, as well as costs of litigation, that arise, or may be alleged to have arisen, out of or in connection with:(i) Consultant's negligent failure to meet the representations set forth in Section 3 of this Agreement, and (ii) Consultant's negligent act or omission or willful misconduct in the performance or failure to perform, the Services or any part thereof of the Agreement, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Workers' Compensation Act, or any other State or Federal law, order or decree, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of the Consultant, except to the extent caused by the sole negligence of the City.

The obligation on the part of the Consultant to defend, hold harmless, and indemnify the City shall survive the expiration or termination of this Agreement. Consultant's liability for damages shall not exceed the sum of the total fee for services performed herein. Nothing in this Agreement shall be construed as prohibiting the City, its officials, directors, officers, employees, agents or attorneys from

defending, through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them arising out of the performance of this Agreement.

In the event that any claim for indemnification hereunder arises from the negligence or willful misconduct of both the Consultant and the City, the parties agree that any and all lawsuits, claims, demands, damages, liabilities, losses, fines, judgments, settlements, penalties, costs, and expenses shall be apportioned between the parties on the basis of their comparative degrees of fault, except as otherwise herein provided.

B. Insurance. Contemporaneous with the Consultant's execution of this Agreement, the Consultant shall provide certificates and policies of insurance, all with coverages and limits acceptable to the City, and evidencing at least the minimum insurance coverages and limits as set forth by the City in the Special Provisions for: Insurance Coverage for Professional Service Providers, which is attached hereto and incorporated as if fully set forth, as **Exhibit B** to this Agreement.

C. No Personal Liability. No elected or appointed official, director, officer, agent or employee of the City shall be personally liable, in law or in contract, to the Consultant as the result of the execution, approval or attempted execution of this Agreement.

D. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of any and all privileges, immunities, or defenses provided to or enjoyed by the City under common law or pursuant to statute, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/2-101 *et. seq.*

E. Third Party Beneficiaries. There are no third party beneficiaries of this Agreement.

F. Patents. The Consultant agrees to protect, defend, and save the City against any demand for payment for the use of any patented material, process, good or device utilized or supplied in connection with the performance of the Services required or provided pursuant to the terms of this Agreement.

SECTION 5. CONFIDENTIAL INFORMATION.

A. Confidential Information. The term "Confidential Information" shall mean information in the possession or under the control of the City relating to the technical, business, or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (i) to have been rightfully in the possession of the Consultant from a source other than the City prior to the time of disclosure of said information to the Consultant under this Agreement ("Time of Disclosure"); (ii) to have been in the public domain prior to the Time of Disclosure; (iii) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Consultant or the City; or (iv) to have been supplied to the Consultant after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

B. No Disclosure of Confidential Information by the Consultant. The Consultant acknowledges that it shall, in performing the Services for the City under this Agreement, have access to or be directly or indirectly exposed to Confidential Information. The Consultant shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without express prior written consent of the City. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and sub-contractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.

C. Breach of Confidentiality. In the event of breach of the confidentiality provisions of Section 5 of this Agreement, it shall be conclusively presumed that irreparable injury would result to the City and there would be no adequate remedy at law. The City shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this Agreement. The City shall be entitled to damages for any breach of the injunction, including but not limited to, compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this Agreement survive the termination or performance of this Agreement.

SECTION 6. TERMINATION, LIMITATION OF LIABILITY and DEFAULT.

A. Termination. Notwithstanding any other provision hereof, the City may terminate this Agreement, with or without cause, at any time upon fifteen (15) days prior written notice to the Consultant. In the event that this Agreement is so terminated, the City shall pay Consultant for the Services performed and reimbursable expenses actually incurred as of the effective date of termination, less any sums attributable, directly or indirectly, to Consultant's breach of this Agreement. The written notice required under this subsection shall be either (i) served personally during regular business hours; (ii) served by facsimile during regular business hours (iii) served by certified or registered mail, return receipt requested, addressed to the address listed at the end of this Agreement with postage prepaid and deposited in the United States mail or (iv) by e-mail sent to the Consultant's Key Project Personnel. Notice served personally, by facsimile transmission or e-mail shall be effective upon receipt, and notice served by mail shall be effective upon receipt as verified by the United States Postal Service. Consultant shall provide the City with its Key Project Personnel's e-mail address upon its execution of this Agreement. On receiving such notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement. As soon as practicable after receiving the termination notice, Consultant shall submit an invoice to the City showing in detail the Services performed under this Agreement up to the termination date. Consultant's receipt of payment for Services rendered upon City's termination of this Agreement, is Consultant's sole and exclusive remedy for termination for convenience by the City. City's termination for convenience does not constitute a default or breach of this Agreement.

B. Limitation of Liability. CITY SHALL NOT BE LIABLE TO CONSULTANT FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS (DIRECT OR INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT OR OTHER THEORY OF LIABILITY, EVEN IF CITY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.

C. **Default.** If it should appear at any time that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("Event of Default"), then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. **Cure by Consultant.** The City may require the Consultant, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all action necessary to bring the Consultant and the Services into compliance with this Agreement.

2. **Termination of Agreement by City.** The City may terminate this Agreement as to any or all Services yet to be performed, effective at a time specified by the City, and shall pay Consultant for the Services performed or reimbursable expenses actually incurred as of the effective date of termination.

3. **Withholding of Payment by City.** The city may withhold from any payment, whether or not previously approved, or may recover from the Consultant, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by the Consultant or as a result of actions taken by the City in response to any Event of Default by the Consultant.

SECTION 7. COMPLIANCE WITH LAWS AND GRANTS.

A. **Freedom of Information Act.** The Consultant shall, within four (4) business days of the City's request, provide any documents in the Consultant's possession related to this Agreement which the City is required to disclose to a requester under the Illinois Freedom of Information Act ("FOIA"). This provision is a material covenant of this Agreement. Consultant agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to an FOIA request. Should Consultant request that the City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Consultant agrees to pay all costs connected therewith (such as reasonable attorneys' fees and witness fees, filing fees, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Consultant agrees to defend, indemnify, and hold harmless the City, and agrees to pay all costs in connection therewith (such as reasonable attorneys' and witness fees, filing fees, and any other expenses) to defend any denial of a FOIA request by Consultant's request to utilize a lawful exemption to the City.

B. **Generally: Permits/Codes/Business Laws/Safety Standards/Grants.** Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and will comply with all applicable municipal, county, state and federal statutes, ordinances, rules, and regulations, including without limitation all applicable building and fire codes, now in force or which may hereafter be in force, any statutes regarding qualification to do business, and all local, state and federal safety standards. Consultant shall comply with all conditions of any federal, state, or local grant received by Owner or Consultant with

respect to this Agreement or the Services. Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Consultant's, or its sub-Consultants', performance of, or failure to perform, the Services or any part thereof. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

C. **No Delinquent Taxes.** The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax, or has entered into an agreement with Department of Revenue for payment of all taxes due and is currently in compliance with that agreement, as set forth in 11-42.1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 et seq.

D. **No Collusion.** The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 2012, 720 ILCS 5/33E-1 et seq. The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Consultant shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

E. **Sexual Harassment Policy.** The Consultant shall certify that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 755 ILCS 5/2-105(A)(4).

F. **Patriot Act (USA Freedom Act) Compliance.** The Consultant represents and warrants to the City that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly for or on behalf of a Specially Designated National and Blocked Person. The Consultant further represents and warrants to the City that the Consultant and its principals, shareholders, members, partners, or affiliates, as applicable, are not directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Consultant hereby agrees to defend, indemnify and hold harmless the City, its corporate authorities, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

G. **Anti-Discrimination Laws.** Consultant shall comply with all federal and state laws prohibiting discrimination because of, or requiring affirmative action based on race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service, and shall execute the Equal Employment Opportunity Clause compliance certification attached to this Agreement in Group Exhibit C.

H. **Americans with Disabilities Act.** Consultant shall utilize standards and/or methods that do not discriminate against the disabled in compliance with the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq.

I. **Drug Free Workplace Act.** Consultant shall comply with all conditions of the Illinois Drug Free Workplace Act, 30 ILCS 580/3 et seq.

J. **Public Works Employment Discrimination Act.** Consultant shall comply with all conditions and requirements of the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq.

K. **Execution of Certifications.** Consultant shall execute the legal certifications and compliance with laws documentation which is attached hereto and incorporated herein as if fully set forth as Group Exhibit C.

SECTION 8. GENERAL PROVISIONS.

A. **Work Products.** Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, studies, logbooks, instructions, manuals, models, recommendations, printed and electronic files, and any other data or information, in any form, prepared, collected, or received by the Consultant in connection with any or all of the Work to be performed under this Agreement ("Documents") shall be and remain the exclusive property of the City. At the City's request, or upon termination of this Agreement, the Consultant shall cause the Documents to be promptly delivered to the City.

B. **News Releases.** The Consultant shall not issue any news releases or other public statements regarding the Work without prior approval from the City Manager.

C. **Integration.** The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement.

D. **Amendment.** No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

E. **Subcontractors; Assignment or Transfer.** Consultant shall not subcontract any portion of the Work required under this Agreement, except as expressly authorized herein, without the prior written approval of the City. Subcontracts, if any, shall include a provision making them subject to all provisions of this Agreement. Consultant shall also not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to subcontract or take any other action not authorized herein shall be null and void, and any subcontractors, assignees, hypothecates or transferees shall acquire no right or interest by reason of such action.

F. **Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the parties hereto and their agents, successors, and assigns.

G. **Waiver.** Any failure of either the City or the Consultant to strictly enforce any term, right or condition of this Agreement, whether implied or express, shall not be construed as a waiver of such term, right or condition, nor shall it be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

H. **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

I. **Governing Laws/Jurisdiction.** This Agreement shall be interpreted according to the laws of the State of Illinois. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

J. **Force Majeure.** No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as the result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.

K. **Headings.** The headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference and are in no manner intended to define, limit or describe the scope of intent of any provision of this Agreement, nor shall they be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

L. **Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

M. **Counterpart Execution.** This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

N. **Notice.** Unless otherwise expressly provided in this Agreement, any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidence by a return receipt. By notice complying with the requirements of this Subsection, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received. Notices and communications shall be addressed to, and delivered to as follows:

If to the Consultant:

MDS Technologies, Inc.
Attn: Trevor Triffo
350 S. Northwest Highway, Suite 300
Park Ridge, IL 60068
E-Mail:
Fax: 847-656-5201

If to the City:

City of Wheaton
Attn: City Clerk
303 W. Wesley Street, Box 727
Wheaton, IL 60189-727
E-Mail: cyclerk@wheaton.il.us
Fax #: 630-260-2017

O. Contract Numbering. The faces of all invoices and documents shall contain the following contract number C 37037 for reference purposes.

P. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

IN WITNESS WHEREOF, the parties have entered into this Agreement this 21ST day of May, 2018.

CITY OF WHEATON, an Illinois municipal corp.

By: Sharon Barrett-Hagen Date: 5/22/18

ATTEST:

BY: Sharon Barrett-Hagen
Sharon Barrett-Hagen, City Clerk

MDS TECHNOLOGIES, INC.

BY: Trevor Triffo Date: 5/30/2018
Signature

Its: PRESIDENT.

ATTEST:

BY: J. Campbell

Title: ADMIN. ASSISTANT.