Datamax Technology Solutions Group
Consulting Services Agreement

THIS AGREEMENT is made as of <u>November 19, 2024</u> between <u>The Town of Bartonville</u> ("Client") and Datamax, Inc., dba: Datamax Technology Solutions Group ("Datamax"), a division of Datamax Office Systems.

In the event of a conflict in the provisions of any attachments hereto and the provisions set forth in this Agreement, the provisions of such attachments shall govern.

1.   Consulting Services

1.1   Subject to the terms contained within this Consulting Services Agreement, Datamax agrees to provide to the above mentioned Client consulting services (the "Services"), including any deliverables, as are described on such Statements of Work (SOW) as are executed from time to time by the parties. If the Services are performed at the Client's location, Client shall provide appropriate computer hardware, software, communications resources, system and user documentation, office space, telephone service, copying, facsimile or postage and general office supplies and support to Datamax as necessary to perform the Services. In addition, Client shall: (a) provide Datamax with specific and detailed information concerning, and reasonable access to, Client computer systems and networks as more fully set forth in the SOW; (b) make available to each Datamax employee physically located on Clients premises, access to and time upon Client's computer system sufficient for Datamax to provide the Services; (c) provide an employee of Client who shall have substantial computer systems, network, and project management experience to act as a liaison between Client and Datamax; and (d) in general, to provide all information, access, and full, good faith cooperation reasonably necessary to facilitate the Services. Statements of Work may provide certain assumptions and/ or Client responsibilities regarding the Services. Client shall assume those responsibilities, including the procurement and the evaluation of the appropriate capacity of any third party products or services, and understands that Datamax's performance is dependent on Client's timely and effective performance of its responsibilities and its timely decisions and approvals. If Client fails or delays in its performance of any of the foregoing, Datamax shall be relieved of its obligations hereunder to the extent such obligations are dependent on such performance.

2.   Price and Payment for Services

2.1   Client shall pay Datamax in accordance with the schedule(s) as set forth in each SOW. Any amount remaining unpaid after thirty (30) days shall accrue interest at a rate of the lesser of (a) one and one-half percent (1.5%) per month or (b) the highest rate allowed by law. In the event of any dispute regarding a portion of an invoice, the undisputed portion shall be paid as provided herein.

3. Taxes

3.1 Any and all taxes shall not be paid by the Client because Client is a tax exempt entity, and shall provide a tax exemption certificate to Datamax.

4. Client Representative

4.1 The following individual _____ shall represent the Client during the performance of this Agreement with respect to the services and deliverables as defined in any SOW and has authority to execute written modifications or additions to this Agreement and/ or any SOW as defined in Section 12. Any change in the scope of Services as defined in the SOW shall be agreed upon in writing by the parties, and Datamax shall have no obligation to perform services in connection with any change until the parties have agreed in writing upon the effect of such change on fees and/or schedule, which shall be specified in a formal Change Order signed by both the Client and Datamax.

5. Confidential Information

5.1 All data relating to Client's business affairs, operations, research, development, proprietary information, and customers which is acquired by Datamax as a result of performance hereunder shall be maintained as confidential by Datamax. Client shall not sell, transfer, publish, disclose, display, or otherwise make available Datamax proposals, quotations, implementation plans, white papers, reports, analysis documents, or correspondence (collectively, the "Intellectual Property") to third parties, and shall take all reasonable steps to prevent its agents, employees or independent contractors from doing any of the foregoing. Client shall protect the confidentiality of the Datamax Intellectual Property with the same degree of care that the Client uses to protect its own most confidential information, but in no event less than reasonable care. Client's obligations under this paragraph 5.1 are subject to Client's requirements and duties under the Texas Public Information Act, as amended.

5.2 Nothing in this Agreement shall restrict either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (a) that is or becomes publicly available through no breach of this Agreement, (b) independently developed by it, (c) previously known to it without obligation of confidence or (d) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information. In the event either party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other party, the recipient shall promptly notify the other party of such receipt and may, thereafter, comply with such subpoena or process to the extent permitted by law. The Confidential Information shall be returned upon on the earlier of (a) completion of the Services or (b) the discloser's request. Datamax may retain, subject to the obligations of this section, copies of the Confidential Information for recordkeeping purposes.

5.3   In recognition that Datamax personnel performing under this Agreement may perform similar services for others, this Agreement shall not prevent Datamax from providing services or developing materials that are competitive with those developed or provided hereunder regardless of any similarity to such services or materials.

6.   Staff

6.1   Datamax is an independent contractor and no employee of Datamax is or shall be deemed to be employed by Client. Client is hereby contracting with Datamax for the Services described in the Statements of Work and Datamax reserves the right to determine the method, manner, and means by which the Services will be performed. If the Services are performed at the Client's premises, then Datamax time spent at the premises is to be at the discretion of Datamax; subject to the Client's normal business hours and security requirements. Datamax shall not be required to devote Datamax consultant's full time nor the full time of Datamax staff to the performance of the Services required hereunder. The order or sequence in which the work is to be performed shall be under the control of Datamax. Client shall not provide any insurance coverage of any kind for any Datamax employee, and Client will not withhold any amount that would normally be withheld from an employee's pay.

6.2   Each of the following parties hereto agrees that, while performing Services under this Agreement, and for a period of six (6) months following the termination of this Agreement, neither party will, except with the other party's written approval, solicit or offer employment to the other party's employees or staff engaged in any efforts under this Agreement.

7.   Use of Work Product

7.1   Client shall own, upon payment of all fees incurred, any deliverables, including software programs, source and object code, files, tapes, disks, and related user documentation, originally developed solely for Client under this Agreement. Such deliverables shall be owned by Client for its own internal use. Datamax does not convey nor does Client obtain any right in materials proprietary to Datamax, which Datamax may utilize or provide pursuant to the Services, or other materials not developed solely for and paid in full for under this Agreement, except as otherwise agreed upon in writing by the parties. Except as specifically set forth in writing and signed by both Client and Datamax, Datamax shall have all copyright and patent rights with respect to all materials developed under this Agreement, and Client is hereby granted a non-exclusive license to use and employ such material within the Client's business.

8.   Warranty

8.1   Datamax warrants to Client that during the term of this Agreement and for a period of ninety (90) days from the completion of Services that the Services shall (a) be performed in a workmanlike manner in accordance with applicable commercial standards; (b) comply

with any applicable law, rule or regulation, and Datamax will have obtained all permits required to comply with such laws and regulations and (c) not violate or infringe upon any presently issued United States copyright, patent, trade secret or other property, contractual, employment or confidentiality right of a third party.

8.2   The foregoing warranties shall apply provided that (a) any software or other materials developed by Datamax have not been modified, unless authorized by Datamax in writing; (b) there has been no change in the computer equipment on which Datamax installed any software, unless authorized by Datamax in writing; (c) the computer equipment has sufficient capacity, is in good operating order and is installed in a suitable operating environment; (d) the nonconformity was not caused by Client or its agents or other third party; (e) Client promptly notifies Datamax of the nonconformity after discovery and (f) all fees due to Datamax have been paid.

8.3   Client accepts sole responsibility for the use of any software or other materials delivered hereunder to achieve Client's intended results and the results actually obtained from such software or materials. Client's sole and exclusive remedy is for Datamax to use commercially reasonable efforts to cause the Services to comply with the foregoing warranties. In the event that such services cannot be provided within a reasonable time after notification, Client's sole and exclusive remedy is to terminate this Agreement and to receive a refund of any fees paid to Datamax for the non-conforming Services.

ALL OF THE SERVICES ARE PROVIDED "AS IS". THE FOREGOING WARRANTY IS DATAMAX'S ONLY WARRANTY CONCERNING THE SERVICES AND ANY DELIVERABLE, AND IS MADE IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.

9.   Limitation of Liability

9.1   Datamax' s liability (whether in contract, tort, negligence, strict liability, or by statute or otherwise) to Client or to any third party concerning performance or non-performance or otherwise related to this Agreement shall in the aggregate be limited to the fees received by Datamax hereunder for the portion of the services giving rise to such claim.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGE OR EXPENSES (INCLUDING LOST PROFITS OR SAVINGS) EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

10.   Termination

10.1   Either party may terminate this Agreement, or any other formally agreed and executed statement of work, without cause upon giving the other party thirty (30) days written

notice. During the thirty (30) day termination period, Client shall maintain Datamax staffing levels existing at the time of the notice of termination.

10.2 Either party may terminate this Agreement, or any other formally agreed and executed statement of work, for a breach of a material term upon giving the other party written notice identifying specifically the alleged breach. Upon receiving written notice, the breaching party shall have twenty-one (21) days to cure the alleged breach.

10.3 Either party may terminate this Agreement by written notice if the other party makes an assignment for the benefit of creditors, becomes subject to a bankruptcy proceeding, or is subject to the appointment of a receiver.

10.4 Upon termination of this Agreement by either party, each party shall promptly return to the other all data, materials, and other properties of the other held by it; provided, however, if Client has not satisfied all outstanding invoices for Services performed by Datamax prior to the date of termination, Datamax shall be entitled to retain such materials until payment is made.

10.5 [Intentionally Deleted]

11. Liquidated Damages

11.1 [Intentionally Deleted]

12. Scope of Agreement

12.1 If the scope of any of the provisions of the Agreement or any SOW is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law.

13. Additional Work

13.1 After receipt of a SOW which adds to the Services, Datamax may, at its discretion, take reasonable action and expend reasonable amounts of time and money based on such SOW. Client agrees to pay Datamax for such action and expenditure as set forth in the SOW.

14. Assignment

14.1 Neither party shall assign this Agreement without the other party's prior written consent.

15. Complete Agreement

15.1 This Agreement, including any SOW and any Addendum, constitutes the entire understanding between Datamax and Client and supersedes all prior agreements, arrangements, representations and communications, whether oral or written, regarding

the subject matter hereof. Client is entering this Agreement solely based upon the agreements and representations contained herein for its own purposes and not for the benefit of any third party.

16. Applicable Law

16.1 This Agreement shall be governed by the laws of the State of Texas without application of conflict of laws principles. Any suit relating to this Agreement may be instituted in any state or federal court in Denton County, Texas, and the parties submit to the jurisdiction of any such court.

17. Independent Contractor

17.1 Each party is an independent contractor and the parties shall not have the authority to bind, represent or commit the other. Datamax may use Client's name in its resumes client list, case studies or press releases. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose.

18. Survival

18.1 The terms of 2, 5, 6, 8 and 9 shall survive termination of this Agreement for any reason.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and represent that the person(s) whose signatures appear below are duly authorized to execute this Agreement.

Town of Bartonville
_____
Company

_____
Client Signature

Kirk H. Riggs
_____
Print Name

Acting Town Administrator / Chief of Police
_____
Title

November 19, 2024
_____
Date