

ORDINANCE NO. 95-23

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH IamGIS FOR GEOGRAPHIC INFORMATION SYSTEMS (GIS) SERVICES FOR THE CITY OF MEDINA.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized and directed to enter into an agreement with IamGIS for GIS Services for the City of Medina.
- SEC. 2:** That a copy of the agreement is marked Exhibit A, attached hereto and incorporated herein.
- SEC. 3:** That the funds to cover this expenditure in the estimated amount of \$42,000.00 are available in Account No. 108-0610-53321.
- SEC. 4:** That in accordance with Ohio Revised Code §5705.41(D), at the time that the contract or order was made and at the time of execution of the Finance Director's certificate, sufficient funds were available or in the process of collection, to the credit of a proper fund, properly appropriated and free from any previous encumbrance.
- SEC. 5:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.
- SEC. 6:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: May 22, 2023

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: May 23, 2023

SIGNED: Dennis Hanwell
Mayor

BP



ORD.95-23
Exh.A BP

CUSTOMER AGREEMENT

Customer: City of Medina (OH)
6/1/2023 5/31/2026

Initial Term: Service to begin on: ~~5/1/2023~~ (the "Effective Date"), and shall end on: ~~4/30/2024~~, unless extended or terminated as provided in this Agreement.

Total Software Fee: \$ 42,000 (Three Years)
Total Software Fee: \$ 14,000

Payment Schedule: By signing this Agreement; Customer agrees to the following terms/conditions:
Failure to pay Net 30 invoice(s) by due date shall result in a 10% late fee and the halting of services.

- Year 1: \$14,000 (invoiced upon Signature)
- Year 2: \$14,000 (invoiced 5/1/2024)
- Year 3: \$14,000 (invoiced 5/1/2025)

THIS CUSTOMER AGREEMENT ("Agreement") is entered into as of the Effective Date, by and between Customer and *iamGIS Group, LLC* ("Provider"). In consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. **Service.** Provider is a geographic information system (GIS) service provider that provides digital inventories of assets and infrastructure, and maintenance and support thereof (the "Service"). The Service also includes: (a) importing and review of existing Customer shape files; (b) training and off-site support; (c) unlimited access to all tutorial and training videos; (d) creation of custom attributable fields and layer templates; and (e) initial setup of display settings, advance settings, and Authorized User credentials. Provider shall have sole discretion as to the form, content, design, presentation, and user interaction with regard to the Service.

2. **Term and Termination.** The Initial Term is for one (1) year and shall be automatically renewed for additional yearly intervals (each, a "Renewal Term") on the anniversary of the Effective Date, unless Customer provides thirty (30) days' prior written notice to Provider. After the Initial Term, either party may terminate this Agreement, with or without cause, upon thirty (30) days' prior written notice to the other party. If this Agreement is terminated at any time, no refund shall be provided. The Annual Software Fee for any renewal term beyond the Initial Term (the "Renewal Term Fee") shall be due within thirty (30) days after the start of each Renewal Term. The Initial Term and Renewal Term may collectively be referred to herein as the "Term."

3. **Software Support.** During the Term, Customer may contact Provider via (a) web chat accessed on the Website; or (b) email at support@iamgis.net for any support questions related to the Software, Website, or Service. Customer accepts Provider's hours of operation are Monday through Friday from 8:00 A.M. to 4:00 P.M. Eastern Standard Time and, therefore, is not guaranteed to receive support or communication outside those hours of operation.

4. **Website and Intellectual Property.** Provider shall retain all right, title, and interest in and to: (a) that certain collection of computer coding, as modified, updated, and improved from time to time, which comprises and facilitates the Service (the "Software"); (b) Provider's website located at iamGIS.net which hosts the Software and provides a platform for Customer to receive, access, and view the Service (the "Website"); and (c) Provider's trade secrets, trademarks, service marks, trade names, and other intellectual property (collectively, the "Intellectual Property") worldwide, subject to the Limited License, as defined herein and granted hereunder. Provider hereby grants to Customer a non-exclusive, limited license for the use of its Intellectual Property only as expressly provided in this Agreement (the "Limited License"). All such use under the Limited License shall be subject to and in accordance with Provider's reasonable policies regarding the Service and Intellectual Property usage as established from time to time. Upon the termination of this Agreement, Customer shall immediately cease using the Intellectual Property, and Provider shall cease the display of Customer Data on the Website, unless otherwise agreed by the parties in writing.

5. **Customer Data.** Customer shall provide to Provider all necessary data for input or transfer onto the Website via the Software, which shall detail Customer's assets and infrastructure to be displayed in connection with the Service (collectively, the "Customer Data"). Customer represents and warrants to Provider that: (a) Customer has all right, title, and interest in and to any Customer Data provided to Provider; (b) the Customer Data is accurate; and (c) Customer is not violating the intellectual property rights, title, and/or interests of any third parties by providing the Customer Data to Provider. Customer agrees that Provider shall not be liable, and Customer shall hold Provider harmless for, any errors or inaccuracies in the Customer Data in connection with the Service.

6. **Customer Account.** Customer shall have its own, private account on the Website (the "Customer Account"), which will display the Customer Data as part of the Service. The Customer Account may be accessed pursuant to the Limited License, and only by the individual(s) designated by Customer as an "Authorized User." Customer shall not permit any other person or entity to access the Customer Account, other than an Authorized User. Each Authorized User shall have his/her own, unique login credentials for the Customer Account.

7. **Fees.** In consideration of the Service, Customer agrees to pay the Up-front Fees (collectively, the "Total Account Fee") pursuant to Payment Schedule as detailed on page one (1) of this Agreement. Each Renewal Term Fee shall increase by a rate of five percent (5%) annually, and each Renewal Term Fee payment shall be made within thirty (30) days after the

start of each renewal term. Failure to make any payment on time shall result in a ten percent (10%) late payment fee and the halting of services until required payment is made.

8. **Website Terms of Service.** In addition to the rights and obligations provided to Customer under this Agreement, Customer agrees to be bound by the Terms of Service, Community Guidelines, and Privacy Policy, if any, as amended from time to time (collectively, the "Terms of Service"), listed on the Provider Website.

9. **Confidentiality.** For the purposes of this Agreement, the term "Confidential Information" shall mean information received from the disclosing party or any of its affiliates or representatives about the disclosing party's (or its suppliers') business or activity, which shall include all information, whether written or oral, tangible or intangible, of a confidential or proprietary nature, of or concerning the other party and its business and operations, including, without limitation, all pricing and other financial data and projections, business plans, and strategies, Intellectual Property, patent and trademark technology and applications, computer software and marketing, and sales information, but shall not include any information which (i) was known by the receiving party prior to disclosure by or on behalf of the other party, (ii) becomes available to the receiving party from a source other than the other party, which source is not bound by duty of confidentiality, (iii) becomes generally available or known in the industry; or (iv) the Customer is required to disclose pursuant to law. Each party agrees (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement, and (b) that it will take all reasonable measures to maintain the confidentiality of the Confidential Information of the other party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. The terms and conditions of this Agreement shall be deemed to be Confidential Information of each party and shall not be disclosed without the written consent of the other party.

10. **Events of Default.** Each of the following shall be considered an "Event of Default" under this Agreement: (a) failure or refusal of Customer to pay any portion of the Total Account Fee (or any successive Renewal Term Fee) when due; (b) failure or refusal of Customer to pay the Asset Digitization Fee (if applicable) when due; (c) failure of Customer to abide by the Terms of Service; and (d) a material breach of Customer's representations, warranties, and/or obligations under this Agreement. Upon the occurrence of an Event of Default, Provider may, without notice: (i) immediately cease providing the Service, (ii) shut off Customer's and all Authorized Users' access to the Customer Account and the Website; and/or (iii) immediately terminate this Agreement.

B P 11. **Indemnification of Provider Reserved.** ~~To the extent allowed by law, Customer hereby agrees to indemnify, defend, and hold harmless Provider, its affiliates, members, officers, directors, employees, consultants, successors, and agents (collectively, the "Provider Released Parties") from any and all claims, cross-actions, third-party actions, and causes of action of every kind that have been or may be asserted in the future against the Provider Released Parties arising from or related to: (a) unauthorized use or access of the Customer Account; (b) Customer's material breach of this Agreement; (c) any claim that the Customer Data infringes or violates the intellectual property rights, title, and/or interests of any third parties; or (d) any claim for personal injury, property damage, negligence, product liability, breach of warranty, breach of duty, statutory violation, or other claim made with respect to the Customer Data. Without limiting the foregoing, this indemnity and hold harmless provision is specifically intended to include all forms and types of damages, losses, costs, liabilities, taxes, and expenses that may be sought against the Provider Released Parties and the costs of litigation, including, without limitation, reasonable attorneys' fees. Provider shall promptly notify Customer of any claim or demand, specifying the nature of such claim or demand and the amount demanded. Customer shall not settle any claim or demand without the prior written consent of Provider. If it so chooses, Provider shall have the right to control the handling and resolution of any claim or demand which is subject to this indemnity and hold harmless provision, including the right to engage counsel of its choice to handle any negotiations or litigation. Customer agrees to cooperate and participate in the resolution of any claim or demand. The failure of the Provider to give reasonably prompt notice of any claim shall not release, waive, or otherwise affect Customer's obligations with respect thereto. Additionally, Customer hereby understands and agrees Provider Released Parties are not responsible for damages by a third party or subcontracted entity that is not directly and specifically related to Provider's GIS Services as described in the opening "Service" paragraph of this Agreement. Customer hereby agrees to indemnify and hold harmless Provider Released Parties for any claim arising from action or inaction by a third party or subcontracted entity related to personal injury, property damage, negligence, product liability, breach of warranty, breach of duty, statutory violation, or other claim that is not directly and specifically related to Provider's GIS Services as described in the "Service" paragraph of this Agreement.~~

12. **Indemnification of Customer.** Provider hereby agrees to indemnify, defend, and hold harmless Customer, its affiliates, members, officers, directors, employees, consultants, successors, and agents (collectively, the "Customer Released Parties") from any and all claims, cross-actions, third-party actions, and causes of action of every kind that have been or may be asserted in the future against the Customer Released Parties arising from or related to: (a) Provider's material breach of this Agreement; (b) any claim that the Provider's software infringes or violates the intellectual property rights, title, and/or interests of any third parties; or (c) any claim for personal injury, property damage, negligence, product liability, breach of warranty, breach of duty, statutory violation, or other claim made with respect to Provider's performance of its duties hereunder. Without limiting the foregoing, this indemnity and hold harmless provision is specifically intended to include all forms and types of damages, losses, costs, liabilities, taxes, and expenses that may be sought against the Customer Released Parties and the costs of litigation, including, without limitation, reasonable attorneys' fees. Customer shall promptly notify Provider of any claim or demand, specifying the nature of such claim or demand and the amount demanded. Provider shall not settle any claim or demand without the prior written consent of Customer. If it so chooses, Customer shall have the right to control the handling and resolution of any claim or demand which is subject to this indemnity and hold harmless provision, including the right to engage counsel of its choice to handle any negotiations or litigation. Provider agrees to cooperate and participate in the resolution of any claim or demand. The failure of the Customer to give reasonably prompt notice of any claim shall not release, waive, or otherwise affect Provider's obligations with respect thereto. Provider hereby agrees to indemnify and hold harmless Customer Released Parties for any claim arising from action or inaction by a third party or subcontracted entity related to personal injury, property damage, negligence, product liability, breach of warranty, breach of duty, statutory violation, or other claim that is not directly and specifically related to Customer's services or obligations under this Agreement.

13. **Authority.** Customer represents and warrants that Customer has full approval and authority to enter into this Agreement, and the individuals executing this Agreement on behalf of Customer have been duly authorized.

14. **Amendment and Waiver.** No modification, variation, or amendment of this Agreement shall be effective unless agreed to in writing by both parties. A failure of either party to enforce at any time any of the provisions of this Agreement, or to require at any time performance of any of the provisions hereof, shall in no way affect the full right to require such performance at any time thereafter. No waiver shall be deemed a waiver of any other breach of the same or any other terms or conditions hereof.

15. **Assignment.** Customer may not assign this Agreement without the prior written consent of Provider.

B P 16. ~~**Attorneys' Fees Reserved.** In the event any legal action is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover all costs and expenses including, without limitation, reasonable attorneys' fees.~~

17. **Notice.** All notices required to be given under this Agreement shall be deemed delivered: (a) immediately upon hand-delivery; or (b) three (3) business days after sending the notice via U.S. Certified Mail, return receipt requested, addressed to the receiving party at the address provided by the receiving party from time to time; or (c) via email.

18. **Miscellaneous.** Nothing in this Agreement shall be deemed or construed by the parties or any other entity to create an employer-employee relationship, agency, partnership, or joint venture between the parties. This Agreement shall be subject to and governed by the laws of the State of ~~Indiana~~Ohio, without consideration of any conflicts of laws principles. The parties agree that the proper venue and jurisdiction for any dispute under this Agreement shall be the state and/or federal courts located in ~~Marion-Medina~~ County, ~~Indiana~~Ohio. If any of the provisions of this Agreement are for any reason held by any court or tribunal of competent jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions herein shall remain in full force and effect. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single Agreement.

IN WITNESS WHEREOF, this Agreement contains the entire agreement of the parties. Customer agrees that this Agreement includes all terms on all pages/sides hereto. Customer has read, understands, and voluntarily agrees to all terms stated herein. This Agreement supersedes all prior agreements or understandings between Customer and Provider. By executing below, Customer agrees to be bound by all the terms and conditions of this Agreement, and any addendums hereto, as of the Effective Date noted above. This Agreement is not valid unless signed and accepted by Provider below.

“Customer”

“Provider”

City of Medina (OH)

iamGIS Group, LLC

By: Dennis Hanwell

By: Brittany Patterson

Printed: Dennis Hanwell

Printed: Brittany Patterson

Title: Mayor

Title: Interim COO

Date: May 25, 2023

Billing Email
(For invoice): bpatt@mediniah.org