

David Makar

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered this ____ day of _____, 2023 ("Effective Date") by and between the Town of Dryden, New York. ("MUNICIPALITY"), a municipality located in New York State and David Makar ("CONTRACTOR") located at 23 Woodlane Rd., Ithaca, NY 14850.

WHEREAS, MUNICIPALITY and CONTRACTOR desire to commence and continue a relationship in which CONTRACTOR will provide services for MUNICIPALITY as an independent CONTRACTOR pursuant to the terms and conditions of this Master Services Agreement ("Agreement");

THEREFORE, in exchange for the consideration described herein, the receipt and sufficiency of which is hereby acknowledged, MUNICIPALITY and CONTRACTOR acknowledge and agree as follows:

1. SERVICES

a. SERVICES

CONTRACTOR shall provide to the MUNICIPALITY and/or any of its affiliates, when applicable (in which event the term "MUNICIPALITY" shall thereafter refer to MUNICIPALITY and such affiliates) the services that are more particularly described on Schedule A, ("SOW") or future Statements of Work signed by the parties which shall be consecutively numbered and incorporated herein by reference (the "Services").

b. TERM

This Agreement shall commence as of the Effective Date and shall remain in effect for one (1) year ("Term"). The Term of this Agreement shall automatically renew for successive thirty (30) day periods unless either party gives fifteen (15) day notice of termination in writing subject to the termination provision (if any) in any applicable SOW of one (1) year unless either party provides notice of non-renewal at least thirty (30) days prior to the expiration date.

MUNICIPALITY may terminate this Agreement or any SOW at any time upon written notice.

2. INDEPENDENT CONTRACTOR

2.1 CONTRACTOR, in the performance of the Services, is acting as an independent CONTRACTOR.

2.2 CONTRACTOR is not an employee of MUNICIPALITY and shall not hold itself or its Representatives out as such. Nothing contained in this Agreement shall be construed to create, continue, or otherwise evidence an employer/employee relationship between MUNICIPALITY and CONTRACTOR.

a. CONTRACTOR shall control the means and manner of its work to achieve the overall services to be provided, identified in any SOW.

- b. CONTRACTOR shall choose the tools and instrumentalities including all applications and software of its work;
- c. CONTRACTOR, at CONTRACTORS own expense, will provide all tools and equipment, including but not limited to laptop computers, software and cellular telephones, necessary to perform services under this Agreement;
- d. Neither CONTRACTOR nor its employees or Representatives shall be entitled to participate in any benefit plans or programs or other policies or emoluments of employment provided by MUNICIPALITY to its employees;
- e. CONTRACTOR may employ and/or otherwise retain certain individuals ("Representatives) to perform the services required hereunder, subject to the Restriction set forth in Section 9 of this Agreement;
- f. CONTRACTOR shall undergo a background check if and when requested by MUNICIPALITY;
- g. CONTRACTOR shall complete all required intake forms requested by MUNICIPALITY, including, but not limited to a W-9;
- h. CONTRACTOR shall provide all deliverables in a format reasonably acceptable to MUNICIPALITY. All files and working materials must be backed up appropriately and stored on a shared drive accessible by MUNICIPALITY.

3. FEES

3.1 CONTRACTOR shall provide MUNICIPALITY with invoices on the last day of each month during the term of any SOW detailing the time spent and work completed for the prior month (eg: services performed in January shall be invoiced on January 31st). CONTRACTOR shall keep accurate and complete accounts records of the Services, including the date and number of hours worked by CONTRACTOR and a short description of the Services provided. Such accounts and records, sign by MUNICIPALITY, including copies of receipts for any expenses agreed in writing to be paid by MUNICIPALITY, shall be part of any invoice CONTRACTOR submits. MUNICIPALITY shall not be required to pay fees for any work or Deliverables that do not comply with the specifications set for in any SOW, and/or that are not substantiated by the accounts and records required above, or any services or deliverables that are incomplete. MUNICIPALITY shall notify CONTRACTOR promptly in the event of any disputed invoice.

CONTRACTOR certified that each invoice issued by it shall be based solely on Services actually supplied by CONTRACTOR, or shall consist only of approved reasonable expenses as provided in the applicable SOW and that no part of portion of any invoice represents or is attributable to any payment, gift, gratuity or other thing of value given to any person, organization, entity or governmental body (except for those payments required by law). MUNICIPALITY reserves the right to audit all invoices submitted to it on a good faith basis, and CONTRACTOR shall afford reasonable access to all supporting documentation to enable such MUNICIPALITY to do so.

3.2 Compensation - The fees payable for any SOW, shall be specified therein. All invoices are payable within fifteen (15) days of receipt of invoice if received, as stated in Section 3.1, on the last day of the month, for acceptable Deliverables unless otherwise specified in any SOW. All invoices received after the last business day of

the month are payable within thirty (30) days of receipt. Payment is made via electronic delivery or check, unless otherwise specified in any SOW. No work outside the scope of any SOW shall be performed without MUNICIPALITY's prior written approval.

3.3 Expenses - MUNICIPALITY does not contemplate that CONTRACTOR will travel or otherwise incur any reimbursable expenses in connection with this Agreement. If the parties agree that travel or other expenses are necessary, MUNICIPALITY will reimburse MUNICIPALITY for the actual cost of same, subject to MUNICIPALITY's standard travel policies, which MUNICIPALITY shall provide upon request. All invoices are payable upon thirty (30) days of receipt of invoice, unless otherwise specified in any SOW.

4. CONTRACTOR OBLIGATIONS

4.1 CONTRACTOR agrees that it will be responsible for paying all taxes incurred as a result of its performance of the Services. MUNICIPALITY shall not be responsible for withholding or paying any applicable national or local tax on CONTRACTOR's behalf, including, but not by way of limitation, any applicable income tax or other taxes of any nature. Further, should CONTRACTOR fail to pay any such applicable tax and MUNICIPALITY be required to pay it, CONTRACTOR agrees to indemnify MUNICIPALITY for such payment and any related penalties or interest assessed against MUNICIPALITY in connection with such payment.

4.2 CONTRACTOR agrees not to assume or create any obligations or responsibility, express or implied, on behalf of or in the name of MUNICIPALITY. CONTRACTOR does not have the authority to act for or bind MUNICIPALITY in any respect.

4.3 CONTRACTOR acknowledges that MUNICIPALITY shall not provide CONTRACTOR with workers' compensation insurance or other insurance covering CONTRACTOR for any injuries or illnesses sustained while working on the Project, and CONTRACTOR shall obtain all insurance required by applicable laws.

4.4 When CONTRACTOR is in MUNICIPALITY's offices, they shall comply with MUNICIPALITY's reasonable security requirements of which they have been made aware including, but not limited to signing in at the reception desk, wearing identification badge, and not entering any areas designated restricted without a MUNICIPALITY escort.

5. REPRESENTATION AND WARRANTIES OF CONTRACTOR

CONTRACTOR represents, warrants, covenants and agrees that: (a) it is free to enter into this Agreement, to render the Services, and to grant the rights as herein provided, and there are no agreements or arrangements, whether written or oral, that would be breached by CONTRACTOR upon execution of this Agreement or that would impair or prevent CONTRACTOR from rendering the Services to MUNICIPALITY during the term hereof; (b) it has and will maintain throughout the term hereof all qualifications required to perform the services, and it has not made

and will not make any commitment or do any act in conflict with this Agreement; and (c) it has the qualifications and skill set to perform the services as required, including, but not limited to the skills and knowledge to provide the Deliverables with correct, proper, and accurate grammar, spelling, punctuation, language and the like provided MUNICIPALITY acknowledges that inadvertent immaterial errors will occur from time to time and CONTRACTOR shall have a reasonable opportunity to correct such errors promptly upon notice from MUNICIPALITY.

6. CONFIDENTIAL INFORMATION

6.1 Definition of "Confidential Information." While performing the Services, the parties have or may be given access to proprietary and confidential information of the other ("Disclosing Party), its affiliates and/or customers (collectively, "Confidential Information") which includes without limitation:

- a. Any data or information that is competitively sensitive material, and not generally known to the public, including information relating to product plans, marketing strategies, finance, operations, the method of licensing, and providing support or maintenance for software developed or licensed by the Disclosing Party to its customers, customer relationships, customer profiles, sales estimates, business plans, and internal performance results relating to the past, present or future business activities of the Disclosing Party, its subsidiaries and affiliated companies and the customers, clients and suppliers of any of the foregoing;
- b. Any scientific, technical or business information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords the Disclosing Party a competitive advantage over its competitors;
- c. All confidential or proprietary concepts, documentation, reports, data specifications, computer software, source code, object code, flow charts, data, databases, inventions, know-how, show-how and trade secrets, whether or not patentable, or copyrightable; and
- d. Any and all reports generated in the performance of Services; and all documents, inventions, substances, engineering and laboratory notebooks, drawings, diagrams, specifications, bills of material, equipment, prototypes and models, and any other tangible manifestation of the foregoing which now exist or come into the control or possession of the receiving party ("Receiving Party").

6.2 Information not considered to be "Confidential Information." Notwithstanding the foregoing, a party's Confidential information shall not include information that:

- a. Is or becomes a part of the public domain through no act or omission of the other party;
- b. is lawfully disclosed to Receiving Party by a third party without a known obligation of nondisclosure to the disclosing party;
- c. is independently developed by the other party without reference to the Confidential Information; or
- d. is obligated to be disclosed by court order or government requirement, provided that the Disclosing Party is given prompt written notice of such court

order or government requirement and an opportunity to obtain a protective order to prohibit or restrict such disclosure.

6.3 Obligations with respect to "Confidential Information." The Receiving Party agrees that the Receiving Party and the Receiving Party's employees, subcontractors, agents and affiliates ("Receiving Party Personnel") will (a) hold the Confidential Information in strict confidence; (b) not give, sell or disclose Confidential Information to its Personnel or any other third party who does not have an absolute necessity to access such Confidential Information in order to perform the Services under the terms and conditions of this Agreement, unless such party is an auditor or other consultants hired by MUNICIPALITY to perform internal audits; (c) advise each party who may be exposed to the Confidential Information under the terms of this Agreement, that it is to be kept strictly confidential and (d) ensure that neither the Receiving Party, nor the parties to who the Receiving Party legally discloses the Confidential Information will share or otherwise use the Confidential Information in violation of or in any manner inconsistent with applicable privacy laws below, and/or the Privacy or Security policies and procedures of the Disclosing Party and its affiliates.

Any copies or reproductions of the Confidential Information shall bear the patent, copyright, trademark or proprietary notices contained in the original. Upon the Disclosing Party's request, but in any event upon termination of this Agreement, the Receiving Party shall surrender to the Disclosing Party all memoranda, notes, records, drawings, manuals, computer software, and other documents or materials (and all copies of them) relating to or containing Proprietary Information.

6.4 These restrictions will apply to both parties during and after CONTRACTOR's engagement with MUNICIPALITY.

6.5 The parties acknowledge that use or disclosure of any Confidential Information of the other in a manner inconsistent with this Agreement may give rise to irreparable injury to the Disclosing Party or third parties who have entrusted information to the Disclosing Party that may be inadequately compensable in damages. Accordingly, in addition to any other legal remedies that may be available, at law or in equity, the Disclosing Party or such third parties shall be entitled to seek equitable or injunctive relief against the unauthorized use or disclosure of Confidential Information.

6.6 The Receiving Party shall return or destroy all Confidential Information (including copies) that the Disclosing Party made available to the Receiving Party under this Agreement upon written request by the Disclosing Party and shall certify in writing, if requested, that all copies have been returned or destroyed.

7. PROPRIETARY RIGHTS

7.1 The Services performed and Work created hereunder, including, without limitation, development, conversion, modification or enhancement of systems, source codes, object codes, operating instructions, processes, techniques, writings, works of authorship, information, data, formulae, algorithms, models, drawings, photographs,

designs and design concepts (whether or not copyrightable or patentable), and all other documentation developed for or relating to MUNICIPALITY, and all data and other information of any kind, including information incorporating, based upon, or derived from the foregoing, and all deliverables developed or prepared for MUNICIPALITY by CONTRACTOR hereunder, shall all constitute "MUNICIPALITY Property" and are, shall be and shall remain the sole and exclusive property of MUNICIPALITY, except for the following items which shall not constitute MUNICIPALITY Property: (1) software, including but not limited to any proprietary code (source and object), which is subject to third-party license agreements; (in) those portions of the Work or deliverables which include information in the public domain; and (III) those portions of the Work which are generic ideas, concepts, know-how and techniques within the computer design, support and consulting business generally; and (iv) any software or code that is not specifically developed for MUNICIPALITY. To the extent that any portion of the Work includes information or material that falls within the exceptions to MUNICIPALITY Property described in this Section, CONTRACTOR shall be deemed to have granted MUNICIPALITY a non-exclusive, worldwide, royalty-free, perpetual, sub-licensable and transferable right and license to exploit, exercise, use, reproduce, copy, modify and enhance any such information or material imbedded in the Work or MUNICIPALITY Property.

7.2 All Services and Deliverables shall be the property of and solely owned by MUNICIPALITY. The Services and Work shall be a work made for hire under the Copyright Act of 1976 and any subsequent replacement legislation. CONTRACTOR will promptly disclose to MUNICIPALITY all MUNICIPALITY Property made or conceived or reduced to practice or developed by CONTRACTOR, either alone or jointly with others, during the term of this Agreement in connection with the Services and the Work or which relate to any MUNICIPALITY Property. CONTRACTOR will promptly assign and convey and deliver its entire right, title, and interest in the Work and all MUNICIPALITY Property, including all rights in and to copyright, patent, trade secret, trademark, derivative works and other intellectual property rights and all other rights of exploitation throughout the world to MUNICIPALITY upon request, without further consideration, free from any claim, lien or retention or rights. For clarity, all works in progress and or deliverables are the property and solely owned by MUNICIPALITY regardless of the place or platform upon which they are developed (for example, a Deliverable created on CONTRACTOR'S Vizio software shall be the property of MUNICIPALITY. CONTRACTOR shall immediately upon request of MUNICIPALITY deliver any complete Deliverables and/or any works in progress without any right of demand for compensation or otherwise or set off provided MUNICIPALITY is not in monetary breach of this Agreement beyond any applicable cure period.

7.3 CONTRACTOR agrees to perform, during and after the term of this Agreement, all acts reasonably necessary or desirable by MUNICIPALITY to permit and assist it in evidencing, perfecting, obtaining, maintaining, defending and enforcing MUNICIPALITY's ownership rights in and to the Work and/or MUNICIPALITY Property and/or CONTRACTOR's assignment with respect thereto in any and all countries.

7.4 If any Services, the Work or MUNICIPALITY Property assigned hereunder are based on, or incorporate, or are improvements or derivatives of, or cannot be reasonably made, used, reproduced and distributed without using or violating technology or property rights owned or licensed by CONTRACTOR ("Pre - existing Work) which are not assigned hereunder, CONTRACTOR hereby grants MUNICIPALITY a non-exclusive, worldwide, royalty-free, perpetual, sub-licensable and transferable right and license to exploit, exercise, use, reproduce, copy, modify and enhance such Pre - existing Works in support of MUNICIPALITY's exercise or exploitation of the Services, Work or MUNICIPALITY Property (including any modifications, improvements and derivatives thereof).

8. DEFAULT & REMEDIES

In the event that either CONTRACTOR or MUNICIPALITY materially breach any term or condition of this Agreement or any SOW and fail to cure such breach within ten (10) days (five(5) days for payment only) after receiving written notification of the alleged material breach, the non-breaching party may terminate this Agreement and/or any SOW at any time upon not less than five (5) days prior written notice to the breaching party and the non-breaching party hereto shall have those rights and remedies permitted under the substantive laws of New York. In the event of termination except for termination due to material, uncured breach by CONTRACTOR) of this Agreement and/or any SOW, MUNICIPALITY shall be liable for payment for services completed, as provided for herein or in any SOW, on or prior to the effective date of termination, on a prorated basis, plus authorized expenses (if any), subject to any rights of set-off which may exist. If so requested in such written notice of termination, CONTRACTOR shall use commercially reasonable efforts to complete any Services specified in the notice, and the terms of the applicable SOW and this Agreement shall continue to govern such Services; otherwise, CONTRACTOR shall use commercially reasonable efforts to conclude its Services and minimize any charges prior to the effective date of termination.

9. ASSIGNMENT

Neither party shall assign, sublicense, or otherwise transfer this Agreement to subcontract for any of the Deliverables without the prior written consent of the other party, which may be withheld by such party in its sole discretion

10. AUTHORITY

Each party hereby certifies that it has all necessary authority to execute and deliver this Agreement and to perform its obligations hereunder. Upon execution, this Agreement will be a valid and binding obligation of each party and enforceable in accordance with its terms.

11. CONTRACTOR & MUNICIPALITY CONTACTS

Other than notices pursuant to 14.9, the parties shall address all questions regarding this Agreement or any SOW to and shall submit all reports and other Deliverables to the designated Contact who shall be until written notice is provided otherwise:

MUNICIPAL Contact:

Jason Leifer
Town Supervisor, Town of Dryden

CONTRACTOR Contact:

David Makar
dmakar@gmail.com
607-342-3009

12. NON-SOLICITATION

During the term of this Agreement and for one (1) year afterward, neither party shall solicit, for itself or others, the employees of the other party unless the other has consented in writing.

CONTRACTOR shall not use the names, addresses, logos, trademarks, trade names or any facsimile thereof of MUNICIPALITY, or of MUNICIPALITY's customers or prospective customers ("Additional Confidential Information") in publicity releases, promotional material, advertising, marketing or business generating efforts without MUNICIPALITY's prior, written consent.

13. LIABILITY

13.1 CONTRACTOR agrees to indemnify and hold MUNICIPALITY harmless from and against any and all loss, liability, damage, claim, demand, or suit and related costs and expenses (including but not limited to reasonable outside attorney's fees) that arise from (i) gross negligence or willful misconduct of CONTRACTOR or CONTRACTOR's Representative, and (ii) the material, uncured breach of any term or condition of this agreement by CONTRACTOR or its Representatives.

13.2 MUNICIPALITY agrees to defend, indemnify and hold CONTRACTOR and/or its Representatives harmless from and against any and all loss, liability, damage, claim, demand, or suit and related costs and expenses (including but not limited to reasonable outside attorney's fees) that arise from (i) gross negligence or willful misconduct of MUNICIPALITY or MUNICIPALITY's representatives, and (ii) the material, uncured breach of any term or condition of this Agreement by MUNICIPALITY or its Representatives.

13.3 Notwithstanding anything herein to the contrary, each party's total liability pursuant to this Agreement or pursuant to any SOW shall not exceed the amount actually received by Contractor pursuant to the applicable SOW. **IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE BASIS OF THE CLAIM.**

13.4 Each party shall ensure that adequate insurance is maintained with regard to its obligations in this Agreement, including, but not limited to this section 13.

14. QUALITY OF DELIVERABLES AND CONTINUITY OF SERVICES

14.1 The CONTRACTOR acknowledges that time is of the essence with regard to its required deliverable due dates and milestones and failure to comply with the same can result in adverse consequences to MUNICIPALITY. Penalties for failing to comply with delivery dates or milestones shall be set forth in the applicable SOW. In addition, failure to meet any deadlines or timelines may result in a reduction in the fees or rejection of the Deliverables in whole or part as set forth in the applicable SOW.

14.2 In the event that CONTRACTOR halts, ceases, discontinues the Services prior to completion for reasons other than termination of the Agreement or any SOW pursuant to Sections 1 or 8 of or as otherwise set forth in this Agreement, MUNICIPALITY shall not be required to make any additional payments to CONTRACTOR regardless of the any Deliverables completed or submitted and also reserves the right to a refund of a reasonable portion of any fees already paid pursuant to the applicable SOW.

15. DELIVERABLE STATUS REPORTS AND MEETINGS

Except as may be otherwise set forth in any SOW, CONTRACTOR shall provide to MUNICIPALITY the status of any Deliverable along with electronic copies of the same on Friday of each week and the parties shall also meet on each Friday in person or via audio visual application (Zoom, or Skype) so that MUNICIPALITY may review the work in progress. In addition, on Friday of each week CONTRACTOR shall provide MUNICIPALITY with a status report of any actual or issues discovered while rendering the Services.

16. MISCELLANEOUS

16.1 The covenants in this Agreement shall bind and insure to the benefit of, and be enforceable by and against, MUNICIPALITY and CONTRACTOR, and their respective successors, heirs, and assigns.

16.2 Both parties shall comply with all applicable laws, rules, and regulations in the performance of the services to be provided hereunder.

16.3 Any waiver of any terms and conditions hereof must be in writing and signed by the parties hereto. The waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other terms and conditions hereof.

16.4 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and, except as provided herein, supersedes all prior agreements between the parties. The parties have executed this Agreement based upon the express terms and provisions set forth herein and have not relied on any communications or representations, oral or written, which are not set forth in this Agreement. The covenants or provisions of this Agreement may not be modified by a subsequent agreement unless the modifying agreement: (i) Is in writing; (ii) contains an express provision referencing this Agreement; (iii) is signed and executed on behalf of MUNICIPALITY by a duly authorized officer of MUNICIPALITY; and (iv) is signed by CONTRACTOR. In the event of a conflict between the terms of this Agreement and any SOW, the terms of the applicable SOW shall control.

16.5 MUNICIPALITY and CONTRACTOR agree that this Agreement is governed by the laws of New York, and that any action to enforce or interpret the terms of this Agreement will be brought in a court of competent jurisdiction in Tompkins County, New York.

16.6 The provisions of this Agreement shall be deemed severable, and if any portion is held invalid, illegal, or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties, provided that the substance of the economic relationship created by this Agreement remains materially unchanged. Neither party will be held liable for loss or damage for failure to do so, nor shall the other party thereby be released from any of its obligations under this Agreement and or any Project, where such failure by the non-performing party arises due to Force Majeure. A Force Majeure Delay shall mean strikes, lockouts, labor difficulties, explosions, sabotage, accidents, riots, civil commotions, acts of war, results of any warfare or warlike conditions in this or any foreign country, fire or casualty, legal requirements, energy shortage or other causes beyond the reasonable control of the non-performing party.

16.7 Both parties have been afforded a reasonable opportunity to review this Agreement with legal counsel prior to executing this Agreement.

16.8 This Agreement may be executed in multiple counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

16.9 A notice shall be effective shall be deemed received (i) upon delivery by a nationally recognized overnight courier or (ii) three (3) days after deposit in the U.S. mails, postage prepaid, and certified mail return receipt requested. Either party may change its address at any time by giving written notice of the change. Any notice of default to MUNICIPALITY shall be copied via regular U.S. Mail to: 93 E. Main Street, Attn: Town Supervisor Jason Leifer, Dryden, NY 13053

IN WITNESS WHEREOF, CONTRACTOR and MUNICIPALITY have caused this Agreement to be executed on the day and year indicated below to be effective on the day and year first written above.

By: Town of Dryden, NY

By: David Makar

Name: Jason Leifer

Name: David Makar

Title: Town Supervisor

Title: Marketing Consultant

Date:

Date:

Signature

Signature