R-22- 95

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A MASTER SERVICES AGREEMENT WITH EXISOR LLC FOR WEB DESIGN SERVICES; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock ("the City") issued Request for Qualifications (RFQ) #21-3747 seeking web design and hosting services for the development of a new website for the City as an efficient means to communicate to the City's employees, residents, businesses, and visitors; and

WHEREAS, the City has determined that Exisor LLC, 8925 Tournament Drive, Suite 150, Memphis, Tennessee 38125 ("Exisor"), is the most qualified applicant and should be engaged to provide web design services to the City; and

WHEREAS, the City Council has found and determined that it is necessary for the success of the economic development project and in the best interests of the citizens of the City to engage Exisor for three years.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into an agreement with Exisor LLC for web design services, said agreement being substantially similar in form and content to the agreement attached hereto as Exhibit A. Total costs for the services are estimated to be $87,080.00 and compensation and fees for all services provided under this Resolution shall not exceed that amount without authorization of the Council.

SECTION 2: That the cost of the services described herein shall be paid from the Economic Development Budget for 2022.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

_____

_____
Mayor Terry C. Hartwick

SPONSOR:

ATTEST:

Terry Hartwick ae
_____
Mayor Terry C. Hartwick

_____
Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Fields

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED 11:55 A.M. _____ P.M.

By E. Lee - Attorney's Office

DATE 5-17-22

Diane Whitbey, City Clerk and Collector
North Little Rock, Arkansas

RECEIVED BY S. Ussery

EXHIBIT
A

Master Services Agreement

EXISOR LLC
8295 TOURNAMENT DRIVE
SUITE 150
MEMPHIS, TN 38125

Customer: City of North Little Rock	
Headquarters Address:	**Billing Address:**
Primary Contact: **Office Phone #:** **Mobile Phone #:** **Email Address:**	**Secondary Contact:** **Office Phone #:** **Mobile Phone #:** **Email Address:**

Exisor LLC ("Exisor") sets forth this Master Services Agreement ("Agreement") a straight-forward and comprehensive terms pursuant to which Exisor provides the Customer managed information technology ("IT") services ("Managed Services"). This Agreement also facilitates the provision of additional technology solutions and services as may be requested by Customer in the future. Specifically, at any time the parties agree to additional solutions and services, or changes to existing services, they will execute a Work Order (Exhibit C) that references this Agreement and defines such additional solutions or services and/or changes to be provided without the need for an additional "Master" agreement. All services that at any time during the Term (defined herein) of this Agreement are provided by Exisor to Customer hereunder, including, without limitation, Managed Services and any such additional solutions or services, are referred to herein collectively as the "Services", and any work product or other deliverables provided to Customer in connection therewith are referred to herein collectively as "Deliverables".

By signing below, Customer and Exisor each acknowledge that they have read and understand this Agreement, as modified and, intending to be legally bound, agree to its terms and conditions.

Exisor LLC	**City of Little Rock**
By:	**By:**
Name:	**Name:** TERRY C. HARTWICK
Title:	**Title:** MAYOR
Date:	**Date:**

Contract Effective Date:
Upon date executed by City.

ATTEST:

_____
DIANE WHITBEY, CITY CLERK

_____
DATE

APPROVED AS TO FORM:

CITY OF NORTH LITTLE ROCK, ARKANSAS

AMY BECKMAN FIELDS
CITY ATTORNEY

BY: _____
DEPUTY CITY ATTORNEY

_____
DATE

1. Managed Services

1.1. General. Subject to the terms and conditions of this Agreement, including the Exhibits hereto, Exisor shall deliver and maintain the services, hardware and software as set forth on Exhibit A and Exhibit B at Exisor's or Customer's facility for the purpose of enabling certain employees of Customer to use and/or operate the applicable Services, which may include the conduct of business for internal purposes or the transaction of business with external parties, such as agents, vendors and its own customers. If applicable, Exisor shall provide the communications channel set forth on Exhibit A and Exhibit B between the respective facilities of Exisor and Customer (the "Communications Infrastructure") to facilitate Customer's use of the applicable Services.

1.2. Hours of Availability. Exisor shall use reasonable best efforts to make the Services available twenty-four (24) hours per day, three hundred sixty-five (365) days per year. Notwithstanding the foregoing, Exisor may schedule routine maintenance for any or all such Services during off-peak hours (10:00 p.m. through 6:00 a.m. prevailing Central Time), provided, Exisor shall endeavor to perform such maintenance without any stoppage of Services. If such routine maintenance requires downtime or unavailability for any or all of such Services, Exisor shall use best efforts to provide Customer with at least one-week advance notice of such downtime/unavailability, along with an explanation on the purpose of such maintenance and an estimated length of the downtime event. In case of an emergency or other non-routine maintenance event, Exisor reserves the right to conduct such maintenance work at any time as deemed appropriate by Exisor in its sole discretion, without prior notice to Customer, but will use best efforts to notify Customer of such activity as soon as practically feasible. Exisor and Customer will agree to a patch management schedule whereby systems are able to be rebooted briefly to effect changes on workstations and servers.

1.3. Customer's Obligations.

1.3.1. Customer-Supplied Equipment. Unless otherwise negotiated and documented herein, Customer shall be responsible for obtaining all equipment, hardware and software that is required to be provided by Customer (including both Customer's own equipment, hardware and software and any equipment, hardware and software obtained by Customer from a third party) ("Customer-Supplied Equipment") in connection with the operation of the Services and/or Customer's use thereof. Furthermore, Customer (and not Exisor) shall be solely responsible for procuring and maintaining in effect insurance coverage for all such Customer-Supplied Equipment in such types and amounts as Customer shall determine in its sole discretion.

1.3.2. Cooperation. Customer shall cooperate with Exisor in connection with the performance of this Agreement by making available such personnel and information as may be reasonably requested by Exisor, and Customer shall take such other actions as Exisor may reasonably request from time to time in connection with its performance of the Services hereunder, including, but not limited to, providing Exisor with reasonable advance notice when scheduling installation and delivery of Services and/or Customer-Supplied Equipment, maintenance work and any other events where Customer may require assistance from Exisor personnel. Customer shall also cooperate with Exisor in accordance with Exisor's Security and Control Policies and Procedures (so that only authorized employees and designated agents of Customer have access to the facilities, equipment and software systems that are used in connection with Exisor's performance of or otherwise related to the Services.

1.3.3. Primary and Secondary Contact. Customer shall designate a primary contact and a secondary contact that will be responsible for all matters relating to this Agreement, and Customer shall provide Exisor with emergency contact information for both contacts (such emergency contact information shall consist of email address, cell phone number and the like and may be used by Exisor to contact such Customer designees for all appropriate purposes). Customer may change the individuals designated as primary and secondary contacts at any time by providing written notice to Exisor in accordance with section 12.7 below.

2. Internet Access Services. Customer shall provide broadband Internet access at each location whereby the Services will be used. Customer shall provide Exisor Internet access at each location to allow the Services to operate and communicate appropriately between Exisor's Remote Monitoring and Management (RMM) servers and Customer's managed workstations, servers, and network devices.

3. Changed or New Services/Deliverables. In the event that Customer desires to change the scope of Services or Deliverables originally or at any time thereafter set forth in this Agreement ("Changed Services/Deliverables"), or Customer desires Exisor to provide Customer with services ("New Services") and/or deliverables ("New Deliverables") in addition to those originally contemplated hereunder, Customer shall request that Exisor prepare a proposed project change request in the form attached hereto as Exhibit B ("Project Change Request") or proposed work order in the form attached hereto as Exhibit C ("Work Order") in respect of such Changed Services/Deliverables, New Services or New Deliverables. Each such proposed Project Change Request or Work Order shall include a detailed description of the applicable Changed Services/Deliverables, New Services and/or New Deliverables to be provided to Customer by Exisor, a list of any Customer tasks and responsibilities in respect thereof, any special terms and conditions applicable thereto and the fees/costs and schedule for performance of the Changed Services/Deliverables, New Services and/or New Deliverables to be provided, and all such proposed Project Change Requests and Work Orders shall thereafter be subject to discussion by the parties. Any estimates of fees/costs and/or performance-schedule included in a Project Change Request or Work Order shall not be binding on Exisor, and no Project Change Request or Work Order shall be binding on either party unless and until executed and delivered by both parties. Each Project Change

Request and Work Order shall be subject to the terms of this Agreement shall be effective as of the effective date set forth therein and, unless otherwise expressly specified therein, shall run coterminous with this Agreement. If any of the terms of a Project Change Request or Work Order conflict with the terms of this Agreement, the terms of the Project Change Request or Work Order shall control; provided, however, that unless expressly set forth therein, the terms of any particular Project Change Request or Work Order shall not relieve Customer of any payment obligations set forth in this Agreement or any other Project Change Request or Work Order.

4. Additional Service Terms.

4.1. Third Party Components. Customer acknowledges that in order to provide certain Services and Deliverables hereunder. Exisor may be required to purchase access to third party telecommunications, energy/utility transportation and/or managed service facilities ("Third Party Facilities") and/or purchase/license and provide Customer with access to certain software applications and services provided by third parties ("Third Party Software") (Third Party Facilities and Third Party Software provided or otherwise made available by Exisor to Customer hereunder are sometimes referred to collectively as "Third Party Components"). Customer further acknowledges that availability of these Third Party Components is based solely on the best information available to Exisor as of the Contract Presentation Date, including third party representations and government regulations, and is subject to change during the Term of this Agreement with little or no advance notice. If any necessary Third Party Components are determined by Exisor to be unavailable as a result of changes to any third party availability, governmental regulations or any other condition or circumstance outside of Exisor's control, then (a) Exisor shall not be in breach hereof or otherwise liable for any failure or inability to provide Services or Deliverables hereunder as a result of such unavailability of any Third Party Components, and (b) Exisor may in its sole discretion modify, change or replace the applicable Third Party Components originally contemplated in order to fulfill its obligations under this Agreement and otherwise attempt to mitigate the impact of such unavailability of Third Party Components, provided, if any such modification, change or replacement of the original Third Party Components includes a material price increase with respect to the applicable Services enabled by such Third Party Components or impairs Customer's ability to utilize such Services in substantially the same manner as they were utilized prior to the modification, change or replacement, Customer may cancel the affected Services by providing written notice to Exisor within thirty (30) days after Customer's receipt of notification of such material price increase or discovery of such impairment.

4.2. Form of Deliverables. If any software is part of a Deliverable hereunder it shall be delivered in object code form only, unless otherwise expressly specified in this Agreement or the applicable Project Change Request or Work Order. Customer agrees that any source code applicable to a Deliverable is the Confidential Information (defined below) of Exisor or Exisor's provider of the applicable Third Party Component under section 3.1. Unless Exisor is required to and does deliver source code to Customer hereunder, Customer shall not decompile, disassemble, reverse engineer or otherwise manipulate a Deliverable in any manner so as to derive (or attempt to derive) the source code for such Deliverable.

4.3. License. Exisor hereby grants to Customer a limited non-transferable, non-sublicensable, non-exclusive license to use, during the Term of this Agreement or the applicable Project Change Request or Work Order, the Deliverables delivered by Exisor solely for Customer's internal business purposes, which may include serving its own customers and/or related parties, as set forth in this Agreement or the applicable Project Change Request or Work Order. Except as may otherwise be expressly set forth in this Agreement or a Project Change Request or Work Order and except for any Confidential Information of Customer contained therein, Exisor retains all Intellectual Property Rights in any Deliverable delivered to Customer, and in any and all derivative works thereof. As used in this Agreement, "Intellectual Property Rights" shall mean all rights with respect to inventions (whether or not patentable), trade secrets, patents, copyrights, trademarks, service marks, trade dress, know how, as well as moral rights and similar rights of any type, under the laws of any governmental authority, domestic or foreign, including rights in and to all applications and registrations relating to any of the foregoing.

5. Payment.

5.1. Initiation Fee. If applicable, in consideration of Exisor establishing the applicable Services, Exisor shall invoice Customer for the one-time fee ("Initiation Fee") for the Original Services, if any, as set forth on Exhibit A within ten (10) days after the Effective Date, and unless otherwise specified herein Customer shall pay such Initiation Fee in full within thirty (30) days after the date of such invoice.

5.2. Monthly Service Fees. In consideration of Exisor providing & maintaining the applicable Services, Customer shall pay Exisor the monthly service fees set forth on Exhibit A ("Monthly Service Fees"), as such Monthly Service Fee may be modified from time to time by mutually agreed upon and executed Project Change Requests and/or Work Orders. The first Monthly Service Fee for each Service hereunder will be invoiced on the first to occur of (a) the day Customer commences use of such Service, or (b) the one hundred twentieth (120th) day after the Effective Date, if on such one hundred twentieth (120th) day there have not been any installation or other delays by Exisor or its third party providers and the applicable Service is otherwise available for use by Customer (the first of (a) or (b) for a Service is its "Service Activation") (the parties acknowledge that different Services contemplated under this Agreement may have different Service Activations). Following the Service Activation for a given Service, subsequent Monthly Service Fees for such Service will thereafter be invoiced on a monthly basis in advance for so long as this Agreement remains in effect.

5.3. New Service Fees. In consideration of any Changed Services/Deliverables, New Services and/or New Deliverables provided pursuant to a mutually agreed upon and executed Project Change Request or Work Order, Customer shall pay to Exisor the fees set forth in such Project Change Request or Work Order, as applicable. Unless otherwise specified in a Project Change Request or Work Order, fees for Changed Services/Deliverables, New Services and New Deliverables described in such Project Change Request or Work Order will be added to Customer's account and will be reflected on the next regularly scheduled invoice after the delivery date thereof and on each subsequent regular invoice thereafter for so long as this Agreement remains in effect.

5.4. Late Payments. Except for any Initiation Fee invoiced under section 5.1 above, all invoices for fees hereunder shall be payable (and paid) by Customer within thirty (30) days after the invoice date, without any right of set-off or deduction. Any amount that is not paid within thirty (30) days after the invoice date shall be considered "late". If Customer payment is late during the Term of this Agreement, Exisor reserves the right to apply interest to Customer's unpaid balance at the rate of eighteen percent (18%) per annum, or the maximum rate allowed by law, whichever is less. Exisor shall also be entitled to recover its costs and expenses incurred in collecting any past due amounts owed hereunder, including reasonable attorneys' fees and costs. If payment in full of all amounts at any time owed to Exisor hereunder, which are not in dispute, is not made within ten (10) business days after Customer's receipt of written notice that payment is late and suspension of Service is pending, then in addition to and not in limitation of any other available remedies, Exisor may restrict or suspend Customer's access to all Services without any further notice or liability to Customer.

5.5. Credit Card Surcharge. As a convenience to Customer, Exisor provides the option to pay by Credit Card. If Customer elects to use this option for payment, Customer agrees to pay the applicable Credit Card Surcharge as calculated and identified on the Invoice.

5.6. Taxes. [Deleted]

5.6.1. Tax Exempt Documentation. City gives no direction related to sales or other tax exemption to Exisor or others regarding the Services or any portion thereof.

5.6.2. Confirmation & Attestation of Direct Payment. In certain tax jurisdictions, applicable law may allow Customers to administer, report and remit Applicable Taxes directly to the taxing authority. In such cases, Customer may submit to Exisor a legally valid and acceptable "Confirmation and Attestation of Direct Sales and Use Tax Form" with respect to any such Applicable Tax, in order to relieve Exisor from any obligation for collecting any such Applicable Taxes from Customer. Exisor will accept any appropriate certificate or similar document provided for by state or other applicable law validly excusing Exisor from collecting such taxes and Exisor will in turn refrain from collecting any such Applicable Taxes.

5.6.3. Multiple Points of Use. If Services or Deliverables provided to Customer are subject to sales or use tax in multiple jurisdictions, Exisor shall have the right to require Customer (A) to furnish Exisor a Multiple Points of Use Certificate, or similar document applicable in the jurisdiction(s) in question and (B) to administer, report and remit among those jurisdictions all Applicable Taxes payable.

6. Confidentiality.

6.1. Definition. "Confidential Information" shall mean confidential or other proprietary information that is disclosed in writing by one party (the "Disclosing Party") to the other party (the "Receiving Party") under this Agreement, including, without limitation, designs, drawings, models, prototypes, software designs and code, bit-map files, product specifications and documentation, business and product plans, and other business information. Confidential Information shall not include information which: (i) is or becomes publicly-available without any action by, or involvement of, the Receiving Party; (ii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; (iii) is already known to the Receiving Party at the time of disclosure under this Agreement; (iv) is disclosed to the Receiving Party by a third party without any obligation of confidentiality; or (v) is disclosed pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party sufficient prior notice to contest such order.

6.2. Protection of Confidential Information. Neither party shall transfer or otherwise disclose to any third party the Confidential Information of the other party. Each party shall (i) give access to Confidential Information of the other party solely to those of its employees with a need to have access thereto for purposes of this Agreement, and (ii) take the same security precautions to protect against disclosure or unauthorized use of such other party's Confidential Information that the party takes with its own confidential information, but in no event shall a party apply less than a reasonable standard of care to prevent such disclosure or unauthorized use.

6.3. Confidential Information Not Related to the Performance of this Agreement. Customer acknowledges that (i)Exisor does not wish to receive any Confidential Information from Customer except Confidential Information that is necessary for Exisor to perform the Services and provide the Deliverables under this Agreement, and (ii) unless the Parties specifically agree otherwise, Exisor may reasonably presume that any information received from Customer that is not necessary for Exisor to

perform the Services and provide the Deliverables hereunder does not and shall not constitute Confidential Information of Customer.

7. Reservation of Rights. Except as expressly set forth herein, Exisor reserves all right, title and interest in, to and under, and grants no rights whatsoever with respect to the Managed Services, Deliverables, Changed Services/Deliverables, New Services, New Deliverables or other property of Exisor or its suppliers, or any Intellectual Property Rights therein.

8. Term and Termination.

8.1. Term. This Agreement shall commence on the Effective Date and continue for a period of 36 Months (the "Initial Term") from the Contract Effective Date, upon approval of the North Little Rock City Council. Thereafter, unless either party gives the other party written notice of its intention to renew this Agreement not less than thirty (30) days prior to expiration of the Initial Term or then current Renewal Term, as applicable, this Agreement shall terminate on the expiration date. The Initial Term, together with any Renewal Term, constitutes the "Term" of this Agreement.

8.2. Termination for Cause. In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Term by giving ten (10) days' prior written notice to the breaching party; provided, however, that this Agreement shall not terminate if the breaching party has cured the breach prior to the expiration of such ten-day period. Notwithstanding, if the material breach results in an interruption of Managed Services to Customer, the Monthly Service Fees shall be prorated equitably so that Customer is not charged for such Managed Services during such period of interruption.

8.3. Termination for Insolvency. If (i) insolvency, receivership or bankruptcy proceedings are instituted by or against a party, (ii) a party makes an assignment for the benefit of creditors or (iii) a party admits an inability to pay its debts as they come due, then in any such event the other party may in its sole discretion terminate this Agreement without notice.

8.4. Termination for Convenience. Customer may terminate this Agreement at any time prior to the end of the Term, for any reason whatsoever, upon giving no less than ninety (90) days' prior written notice of Customer's desired early termination date.

8.5 Non-appropriation. Due to this Agreement being a multi-year Agreement, notwithstanding any other provision of this Contract, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of availability of sufficient funds for the performance of fiscal obligations arising under this Contract.

8.6 Effect of Termination. Upon the expiration or sooner termination of this Agreement, all Services and Deliverables provided by Exisor and any and all license rights of Customer under this Agreement shall automatically and immediately cease. In the event Customer terminates this Agreement prior to the end of the Term in a manner not expressly permitted hereunder, half of all Monthly Service Fees and other amounts that would have otherwise been payable to Exisor hereunder during the remaining Term of this Agreement shall become immediately due and payable by Customer. In the event Customer terminates this Agreement prior to the end of the Term in a manner permitted hereunder, the Monthly Service Fees shall be equitably prorated for any partial month. Articles 6, 7, 9, 10, 11 and 12 and this Section 8.6 shall survive any expiration or termination of this Agreement.

9. Warranty Disclaimer. EXCEPT AS OTHERWISE PROVIDED FOR ANY UNEXPIRED PASS THROUGH THIRD PARTY WARRANTIES, IF ANY, (i) THE MANAGED SERVICES, DELIVERABLES, CHANGED SERVICES/DELIVERABLES, NEW SERVICES, NEW DELIVERABLES, THIRD PARTY COMPONENTS AND ANY AND ALL OTHER SERVICES PROVIDED BY OR ON BEHALF OF EXISOR HEREUNDER ARE PROVIDED "AS-IS", WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND (ii) EXISOR HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Limitation of Liability. EXCEPT FOR LIABILITY IN RESPECT OF THE PARTIES' RESPECTIVE INDEMNIFICATION OBLIGATIONS UNDER SECTION 11 BELOW OR RESULTING FROM OR ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST BUSINESS OR LOST SALES, AND DAMAGES DUE TO LOSS OR DISCLOSURE OF DATA OR OTHER INFORMATION) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROVISION OR USE OF ANY SERVICES OR DELIVERABLES HEREUNDER, THE DELAY OR INABILITY TO USE ANY SERVICES OR DELIVERABLES, OR OTHERWISE ARISING FROM THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (ii) THE TOTAL LIABILITY OF EACH PARTY FOR ANY CLAIM BY THE OTHER PARTY HEREUNDER, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID TO EXISOR HEREUNDER IN THE

SIX (6) MONTH PERIOD ENDING ON THE DATE THAT SUCH CLAIM OR DEMAND IS FIRST ASSERTED, PROVIDED, NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE FOREGOING LIMITATION ON LIABILITY SHALL NOT APPLY TO ANY FEES OR OTHER AMOUNTS OWED BY CUSTOMER TO EXISOR BUT NOT YET PAID. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. Indemnity. [Deleted]

11.1. Exisor shall indemnify and hold harmless Customer and its affiliates, and its and their directors, officers, employees and agents, from and against any and all claims, demands, actions and proceedings asserted by any third party, and all Losses incurred in connection with such third party claims, arising out of or resulting from (i) any breach by Exisor of this Agreement, and/or (ii) any claim that Exisor's performance of the Services or the exercise by Customer of its rights granted under this Agreement in accordance with the terms hereof, infringes, misappropriates or violates the intellectual property rights of any third party.

12. General Provisions.

12.1. No Lease. This Agreement is an agreement for services and is not intended to and shall not constitute a lease of any real property, unless specified in a specific scope of work.

12.2. Relationship of the Parties. The relationship established between the parties by this Agreement is that of independent contractors, and nothing contained herein shall or shall be construed to: (i) give either party the power to direct and/or control the day to day activities of the other, (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow a party to create or assume any obligation on behalf of the other party for any purpose whatsoever, except as expressly contemplated by this Agreement.

12.3. Publicity and Relationship Reference. Each party may reference this Agreement and/or the relationship contemplated hereunder (including through public announcements, press releases, electronic/email publications and notices, and other collateral or marketing materials) for any legitimate commercial purpose, including vendor or customer referral.

12.4. Non-Solicitation. During the Term of this Agreement and the six (6) month period following any expiration or termination of this Agreement, each party agrees that without the prior written consent of the other party it will not directly or indirectly solicit for employment or employ any person employed by the other party; provided, notwithstanding the foregoing, any employee who has been dismissed by or resigned from a party at least six (6) months prior to any solicitation or employment by the other party shall not be subject to the prohibition on solicitation and employment hereunder.

12.5. Complete Understanding; Modification. This Agreement (including all Exhibits hereto and any Project Change Request or Work Order hereafter entered into hereunder) constitutes the complete and exclusive agreement of the parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. No modification of or amendment to this Agreement shall be effective unless in writing signed by both parties hereto.

12.6. Severability. In the event that any provision in this Agreement shall be found by a governmental authority or court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be construed and enforced as if it had been narrowly drawn so as not to be invalid, illegal or unenforceable, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

12.7. Assignment. Neither party shall assign this Agreement to any third party without the prior written consent of the other party; provided, however, that Exisor may, without notice to or the consent of Customer, grant a security interest in this Agreement to a lender pursuant to a lending arrangement and/or assign this Agreement to any entity that at that time controls, is controlled by or is under common control with Exisor. For purposes of this Agreement, "assignment" shall exclude: (i) the sale of all or substantially all of the assets of a party, (ii) a merger, consolidation or reorganization, or (iii) the sale or transfer of more than fifty (50%) of the voting stock (as measured by assuming all convertible securities converted into common stock) to an individual or entity or group of individuals or entities acting in concert that immediately prior to such sale or transfer did not own more than fifty percent (50%) of the then outstanding voting stock. Subject to the foregoing, the Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

12.8. Notices. Except where otherwise contemplated herein, all notices and other communications required to be provided hereunder shall be in writing and shall be deemed effective (i) upon receipt, when delivered by hand, (ii) three (3) business days after mailing when mailed by registered or certified mail (return receipt requested), postage prepaid, (iii) one(1) business day after deposit with a nationally-recognized overnight express mail service or (iv) upon "confirmed receipt" of facsimile, email or electronic correspondence through Exisor's customer service portal, in any such case to the parties at the addresses first listed above (or at such other address for a party as shall be specified by like notice).

12.9. Force Majeure. Neither party shall be in breach or default under this Agreement or otherwise liable for any failure to perform or delay in the performance of its obligations under this Agreement (other than its obligation to pay any monies owed hereunder) or for any losses hereunder resulting from a cause over which it does not have direct control, including, but not limited to, failure or unavailability of any third party or external facilities, software or services, failure or unavailability of any electronic or mechanical equipment, failure or unavailability of any third party or external communication lines, or telecommunications or telephone facilities or other interconnect problems, computer viruses, unauthorized access, theft, operator errors, severe weather, earthquakes, or natural disasters, strikes or other labor problems, wars, or governmental restrictions.

12.10. Waiver. No failure or delay on the part of any party in exercising any right hereunder, irrespective of the length of time for which such failure or delay shall continue, will operate as a waiver of, or impair, any such right. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. No waiver of any right hereunder will be effective unless given in a signed writing.

12.11. Governing Law; Dispute Resolution. This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas , U.S.A., without regard to any provision that would make the laws of any other jurisdiction applicable. Each party irrevocably consents to the exclusive jurisdiction and venue of any state or federal court that is located in Little Rock, Arkansas in connection with any dispute, claim or controversy arising out of or relating to this Agreement, and each party hereby waives any objections in the nature of jurisdiction or venue. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT.

12.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement.

EXHIBIT A

LIST OF ORIGINAL SERVICES AND PRICING

Project Scope:

- Analyzing the current site data, traffic, feedback from stakeholders
- Designing and building a new site with wireframes and UI based off City brand standards
- Migrating existing information / content
- Incorporating new information / content
- Easy for City staff to add / edit / delete content
- Easy access to City digital services for users
- Responsive Web Design: Fit all screen sizes
- Address Government basics: Agenda / Minutes Manager, Bid / RFQ Manager, Calendar, Events / News Feature
- Forms that are easy for users to fill out, easy for staff to create and manage, and the ability to submit documents / photos
- Social Media Integration
- Multiple page templates or easy to customize templates for different levels/departments (Parent/Child pages)
- Document / File repository
- Scheduled Publishing
- ADA compliance / WCAG 2.1 Accessibility Guidelines
- URL customization with redirects
- Google Analytics Integration
- Reports: Broken links, activity report (last time page was edited), spelling errors.
- WordPress (WP) Open-Source CMS
- Preventative maintenance on Core WP and WP Plugin
- Staged major updates to WordPress prior to deploying into production
- You own the site, the code, the content
- Public communications and design strategy

- Accessibility and mobile-first philosophy
- Easy to follow navigational systems
- Easy to read typography systems
- Responsive Web Design is standard
- Major browser compatibility

Timeline:

Design and Build New Website – 14-24 Weeks to Complete	
Meeting and Planning	2-4 Weeks
Design	3-6 Weeks
Migration of Content and Formatting	3-6 Weeks
Development and Deployment	6-8 Weeks
Training	2-5 Days

Payment Table:

Project Table

Start of Project/Software Plugins*	$22,880.00
Completion of Design	$22,100.00
Go Live/Pool Hours**	$42,100.00
Total	$87,080.00

*Software Plugins are an annual charge of $780. The City of North Little Rock will have the option to pay for these directly after year 1; and
**192 discounted hours in year 1 must be used within one year of going live.

On Demand Services

Hourly Rate for non-pool hours	$135.00
Refresh Training (Hourly Cost)	$110.00

EXHIBIT B

PROJECT CHANGE REQUEST

This Project Change Request dated the date of _____, is issued pursuant to Master Services Agreement date _____ (the "Agreement") between Exisor LLC ("Exisor") and the customer identified above in the Agreement ("Customer"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement.

COMPANY NAME	ACCOUNT #	CONTACT	ACCOUNT MANAGER

By Component	Description of Equipment & Services	One Time Cost	Monthly Recurring Cost
SERVICES			
EQUIPMENT			
MAINTENANCE			
INSTALLATION			
	TOTAL		
	EXCLUDES APPLICABLE TAXES AND REGULATORY FEES		

EXHIBIT C

WORK ORDER

This Work Order is issued pursuant to Master Services Agreement dated _____ (the "Agreement") between Exisor LLC ("Exisor") and the customer identified above in the Agreement ("Customer"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement.

1. **Services to be Provided.**

2. **Deliverables to be Developed.**

3. **Customer Tasks.**

4. **Additional Payment Terms.**

5. **Estimated Schedule.**

6. **Additional Terms and Conditions.**