MEMORANDUM

To: Mayor and Members of the City Council

From: Eddie Buffaloe, Interim City Manager
Angela Judge, Assistant City Manager
Montique McClary, Human Resources Director
Jon Hawley, Grants Administrator

Date: September 25, 2020

Re: Consideration - Acceptance of Financial Wellness Grant

BACKGROUND:

On July 14th, the City of Elizabeth City applied to the State and Local Governments Financial Wellness Grants Program for a grant to start a Financial Wellness Program for our employees, retirees and their families. Our Human Resources Department proposed to oversee this program, building on the many services it already provides employees while providing useful, convenient, and engaging presentations and resources on financial wellness.

This grants program was offered through the Center for State and Local Government Excellence, the International Public Management Association for Human Resources, and the National Association of State Treasurers Foundation, with support from the Wells Fargo Foundation. On September 16th, the funding organizations announced that, out of a national competition, only 24 jurisdictions won funding – including Elizabeth City. The funding organizations have now asked that we execute a simple grant agreement, so we may receive funds and start our program.

ANALYSIS:

The Council will find a short Letter of Agreement attached to this memo, as well as a copy of the City's grant application. The agreement requires the City apply all grant funds towards the activities proposed in our application, and specifies that the grant shall run until September 30, 2021. It also includes simple terms related to the grant's termination (if necessary), reporting requirements, method of payment, and other terms. City staff believe this is a very reasonable agreement and ask the Council's authorization to execute it.

City staff would also like to update the Council on our next steps, provided this agreement is executed. As our grant application details, we are proposing to launch the Fund Your Future (FYF) Financial Wellness Program for our employees, retirees, and their families. Human Resources would oversee numerous educational presentations – virtual and in-person, if COVID-19 allows. To encourage attendance, we would offer small prizes and meals or meal gift cards.

However, the foundation of the FYF Proposal will be establishing a new financial wellness platform for our workforce to use. Working with a third-party vendor, we would have a website/portal that users could log into and view lessons on financial wellness topics, review comprehensive and current benefits information, and have real-time access to financial advisors.

In preparing our grant proposal this summer, the City's Information Technology and Human Resources Department already reviewed financial wellness platform providers, and we still believe the company LearnLux, of Boston, may best meet our program needs. However, City staff are still reviewing a services agreement from the company, and hope to present that for council consideration next month. Please let us emphasize that tonight's consideration – simply accepting the grant agreement – does not compel the City to accept any particular vendor.

STAFF RECOMMENDATION:

By motion, authorize the Interim City Manager, or his designee, to execute the Letter of Agreement for the City's grant award from the State and Local Governments Financial Wellness Grant Program.

Funding provided by

September 16, 2020

City of Elizabeth City, NC
Attn: Angela Judge
306 E. Colonial Ave
Elizabeth City, NC 27909

Dear Ms. Judge:

We are pleased to inform you that the International Public Management Association For Human Resources (IPMA-HR), the National Association of State Treasurers' Foundation (NASTF), the Center For State and Local Government Excellence (SLGE), with support from Wells Fargo Foundation, (henceforth known as the State & Local Government Financial Wellness partners) have authorized a grant in the amount of $22,000 to be administered by the City of Elizabeth City, NC (henceforth called the "Awardee"). This amount is to be used to fund the work of the proposal "Fund Your Future."

The Awardee of this grant is subject to the terms and conditions set forth below. The funds will cover the period from receipt of funds until September 30, 2021. In the event of any inconsistency, the terms of this letter will control.

Terms of Award:

1. **Restrictions on Funding**. All funding provided in connection with this grant award must be dedicated solely to the activities as outlined in the original State & Local Government Financial Wellness Grants Program application submitted by the Awardee. By signing this letter and returning it, the Awardee hereby acknowledges and agrees that funds will be set forth in and contemplated as described in the application.
2. **Exit of grant**. Awardee must submit a short report at the end of the grant period detailing the outcomes and KPIs as described in the original grant application. The Awardee may be considered to be featured in a report written by SLGE. Details will be sent to all Awardees regarding this process at a later date.
3. **Branding and Recognition**. Deliverables related to this grant will acknowledge the State & Local Government Financial Wellness partners. Logos will be sent to Awardees upon request.
4. **Use of Materials.** The data and content offered in the Financial Wellness Education and Support Program (nast.org/financialwellness/) are freely available for use by any party.

5. **Dissemination and Media**. The State & Local Government Financial Wellness partners, in coordination with Awardee, will conduct publicity efforts for announcement of the grant and outcomes. Please share any news clips at grants@nast.org.
6. **Schedule**. You are invited to a free webinar on Wednesday, September 30 at 3 pm ET to review the State & Local Government Financial Wellness Education and Support tools. Registration and the tools are available at: https://nast.org/financialwellness/
7. **Termination.** The terms outlined above shall survive termination/expiration of this agreement. This agreement may be terminated by either party upon written notice if the other party breaches any material term or condition of this agreement and such breach remains unresolved thirty (30) days after receipt by the breaching party of written notice identifying the breach from the other party. All unused grant funds must be returned to the State & Local Government Financial Wellness partners within thirty (30) days of notice of termination of this agreement.
8. **Payment.** Please fill out and return the attached Vender Payment Authorization Form indicating if the funds are to be sent by check or ACH payment.

If this agreement and proposal accurately sets forth our mutual understanding of the arrangements made regarding the State & Local Government Financial Wellness Grants Program, please sign and return a copy of the two executed documents to Kari Arfstrom at grants@nast.org.

Sincerely,

Cara Woodson Welch, Executive Director, International Public Management Association for Human Resources

Shaun Snyder, Executive Director, National Association of State Treasurers Foundation

Countersigned by Awardee:

_____

NAME, Title, Governmental Entity

State and Local Government Financial Wellness Grants Program Application

Establishing the "Fund Your Future" Program

City of Elizabeth City, NC

SECTION 1: CONTACT INFORMATION

Authorized Representative:

Angela Judge, Assistant City Manager

306 E. Colonial Ave., Elizabeth City, NC

252-337-6864, ext. 278

ajudge@cityofec.com

Recipient/Responsible Organization:

City of Elizabeth City

Total Number of Employees: 320 (Also 80 retirees)

SECTION 2: NARRATIVE

(1) The City of Elizabeth City proposes to establish a permanent Financial Wellness Program, "Fund Your Future" (FYF), under the direction of our Human Resources Department. FYF will include:

- Pre- and post- program surveys, plus midyear focus group, to assess employees' and retirees' financial wellness, and guide programming
- Promotional efforts and materials to build positive brand awareness of the FYF Program and cultivate mindfulness about financial wellness
- In-person and virtual forums (all recorded) with appropriate experts on diverse financial wellness topics
- Creating a new, web-based platform for all FYF Program content
- Sending out monthly financial wellness tips via text message and email to inform and sustain program awareness

Proposed Timeline:

October 2020: Finalize FYF Branding; Introduce FYF Program; conduct Financial Wellness Assessments (surveys); Retain web platform vendor, initiate design; Share FYF Tip 1	November 2020: Review survey data; platform design continues; hold in-person "Smart Spending for the Holidays" workshop, with lunches; Share FYF Tip 2	December 2020 (activities limited due to holidays): HR and vendor finalize initial platform content (including benefits-related resources); Share FYF Tip 3
January 2021: Launch FYF platform; Host in-person "Budgeting Workshop" session, with lunches; Share FYF Tip 4	February 2021: Promote new FYF Program and platform, present to City Council; Host "Workplace Banking" webinar; post "Benefits FAQ" video Share FYF Tip 5	March 2021: Host "Beginner's Guide to Investing" webinar; conduct mid-year focus group; promote Benefits Fair; Share FYF Tip 6
April 2021: Host Benefits Fair, including experts, promotions, refreshments; Share FYF Tip 7	May 2021: Host credit-repair and retirement webinars (for younger workers); Share FYF Tip 8	June 2021: Host in-person retirement forum (for older workers/active retirees), with lunches; Host identity theft webinar; Share FYF Tip 9
July 2021: Host health insurance webinar; HR updates platform to reflect any benefits changes; Share FYF Tip 10	August 2021: Host in-person forum on professional development, with lunches; conduct post-surveys; Share FYF Tip 11	September 2021: Review post-surveys, report findings and recommendations; plan for FYF 2021-22 Program; Share FYF Tip 12

(**NOTE:** The City acknowledges that COVID-19 may make it inadvisable or impossible to hold in-person forums as proposed. The City is prepared to adapt this schedule. In-person forums could be converted to webinars – possibly with meal gift cards for attendees – or webinars later in 2021 could be converted to in-person events, if social distancing requirements are relaxed then.)

(2) The FYF Program's purpose is to empower our workforce community to continuously enhance their personal financial wellness. A high level of voluntary, lasting participation is vital. Therefore, the City's approach is that FYF must be friendly, accessible, and sustained.

As trusted colleagues with relevant expertise, our HR staff are ideal program drivers. They will keep our workforce community engaged, including through frequent but "light-touch" activities; respond to participants' feedback; and recruit diverse financial experts for informative but relaxed discussions.

FYF will be highly accessible and convenient for its busy participants. All FYF content will be preserved and accessible any time via our web platform; the platform's features are based on promising conversations with LearnLux, of Boston. The platform will include recordings of all forums, various informative resources and tools, and complete, current benefits information. Its content and value will only grow in future years. Beyond the platform, FYF is also accessible by offering both virtual and in-person sessions, with in-person sessions following a successful "lunch-and-learn" format. The City will also strive to meet any accommodation a participant may ask due to disability.

FYF will be highly sustainable. Its primary recurring expense will be for the FYF platform; the City will assume this expense in subsequent years, as well as minor recurring expenses for promotional materials and meals. FYF is operationally sustainable as well. The FYF platform vendor will assist our HR staff in uploading and updating content, as well as with technical support. HR staff will

also continue recruiting outside speakers for our forums. These factors ensure current HR staff can easily manage the program.

(3) The proposed FYF Program will be open and promoted to our entire workforce community, including 320 employees, more than 80 retirees, and their families. Our workforce community is also diverse in age, race, professional training, lifestyles and personal goals; FYF's wide-ranging, accessible programming ensures inclusivity.

Our HR staff work diligently to assist our workforce community with their pay and benefits, but the City lacks a true financial wellness program. In harmony with the National Financial Educators Council's definition of financial literacy, and the Consumer Financial Protection Bureau's definition of financial well-being, the City considers financial wellness to encompass: proactive management of spending for quality, sustainable living; the ability and action to save for emergencies and a better future; and diligent preparation for later life. Understood this way, financial wellness is not a "one and done" accomplishment – it takes continuous education and effort.

The City also needs the FYF Program because much of our workforce community likely experiences financial stress. The City provides regular cost-of-living raises to our employees, but we remain an impoverished community with limited means. Many of our newer or entry-level employees cannot easily afford market-value housing. Additionally, the City often shops for the best value in health insurance, but our child and family coverages remain unaffordable to most. These local realities occur against a national backdrop of Americans increasingly struggling with high costs of living, excessive debt, and inadequate savings.

The FYF Program is a reasonable, right, and cost-effective response to these challenges. The City acknowledges the proposed web platform will be a significant expense, but it is essential to FYF's growth and sustainability. Our small Information Technology Department lacks the capacity to

create it, so a third-party solution is necessary to offer the robust, intuitive, and secure experience our workforce community deserves.

(4) The FYF Program offers a highly replicable template. FYF will present comprehensive financial wellness in simple, convenient, and fun ways, fostering a high level of participation. We will employ existing, customizable web solutions for our platform. We will leverage partnerships common to local governments, such as with credit unions and benefits advisors, for our expert speakers. Finally, our activities are simply structured and external partners are responsible for most content delivery. It is easily implemented and scalable to organizational size.

(5) Our key outcomes and key performance indicators will be:

Goal:	Goal:	Goal:	Goal:	Goal:
Pre- and post-Financial Wellness Assessments	Widespread, sustained participation in forums	Establish interactive, content-rich web platform	Achieve widespread usage of web platform	While respecting privacy, collect platform usage metrics
Target:	Target:	Target:	Target:	Target:
75-percent response rate from workforce	75 percent of workforce attends at least three forums	Complete, deploy no later than Jan. 31, 2021	50 percent of workforce sign up by March 1; 75 percent by April 1	To be defined; examples may be average use time, most-used features

SECTION 3: BUDGET AND BUDGET NARRATIVE

FYF Line Item Budget (All Numbers "Not to Exceed") Workforce Community Served: 320 employees, 80 retirees	
Web Platform Mobilization Justification: Set up service, compile and customize content, on-board users	$5,000
Web Platform Annual Service Justification: Maintain content (including user tools and advisor chat feature), tech support	$12,000
Speaker Fees Justification: Free speakers used when possible, minor allowance for travel or meals	$600
Meals, "lunch and learn" forums (four forums, 50 attendees each, $8 per meal) Justification: Lunch breaks offer best window for participation, meals proven to improve attendance, engagement	$1,600
Food and refreshments, Benefits Fair (open to all employees, plus vendors) Justification: Meals, drinks needed for all-day event; allows employees to attend during lunch breaks; supports festive, inviting atmosphere	$800
Promotional Printings, Small Prizes (workplace posters, FYF-branded folders and pamphlets, small prizes such as coasters, magnets, stress balls) Justification: Ensure program is professionally, attractively presented; build and sustain positive awareness of FYF program and financial wellness	$2,000
TOTAL	$22,000

CITY OF ELIZABETH CITY

July 14, 2020

City Manager's Office
Gardner Municipal Building
306 E. Colonial Ave.
Elizabeth City, NC 279009

Dear Financial Wellness Grant Reviewers,

On behalf of the City of Elizabeth City, I approve and authorize the submission of this grant. If we receive this grant, this office will fully support the "Fund Your Future" Financial Wellness Program proposed for our employees and retirees in this application.

Sincerely,

Richard C. Olson
City Manager

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("Agreement") is made as of the latest date set forth on the signature page hereto (the "Effective Date") by and between LearnLux Inc., a Delaware corporation ("Licensor") and **City of Elizabeth City** ("Customer"). Customer and Licensor are individually hereinafter referred to as a "Party" and collectively as the "Parties". This Agreement incorporates by reference the Order Forms issued hereunder.

1. SCOPE OF AGREEMENT

1.1 **Scope of Services.** In accordance with the terms of the applicable Order Form, Licensor's proprietary financial wellness platform (the "Software") will be hosted and distributed online by Licensor and made available to Customer as a software as a service, which consists of an online tool to help people learn personal finance and enable them to talk with a financial advisor. Licensor will be responsible for configuring and hosting of the software, communications systems, network and other infrastructure necessary to host the Software. Customer or Customer's Designated Users (as defined below) will be responsible for providing the computer hardware or mobile devices necessary to interface with the Software or interact with the Services (as defined below). In some instances Customer may desire Licensor to provide additional customization and training services on a time and materials basis to be mutually determined by the Parties and agreed upon in a written addendum to this Agreement ("Supplemental Services"). This Agreement sets forth the terms and conditions that will govern Licensor's grant of access to the Software and the performance of the Supplemental Services (such Software and Supplemental Services are collectively, the "Services") as specified on the applicable Order Form, substantially in the form attached hereto as Exhibit A. All Services are subject to this Agreement.

1.2 **Rights to Use.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable, limited, revocable license (solely through Customer's Designated Users) to access and use the hosted Software identified in the applicable Order Form solely for the duration of the applicable Order Term (as defined in such Order Form).

1.3 **Ownership and Reservation of Rights.** Nothing in this Agreement shall constitute a transfer of any proprietary right by Licensor to Customer. The Services may be protected by patent, copyright and other intellectual property laws. As between the Parties, Licensor owns and retains all right, title and interest in and to the intellectual property rights in and to the Services and any enhancements, modifications or derivative works thereof. As between the Parties, (i) each Party retains ownership in and to its Confidential Information (as hereinafter defined) and (ii) Licensor exclusively owns all right, title and interest in and to the Services and any derivative works and work product conceived, originated, or prepared in connection with the Services. All rights not specifically granted to Customer in this Agreement are retained by Licensor. Customer acknowledges the proprietary rights of Licensor and its licensors in the Services and that Licensor retains all right, title and interest in and to the Services.

1.4 **Third-Party Sites.** The Services may link, interface and integrate with third party software applications and websites that are not operated or controlled by Licensor ("Third-Party Sites"). All such Third-Party Sites shall remain the property of their third-party providers. Customer hereby acknowledges and agrees that Licensor is not responsible for the content or practices of the Third-Party Sites. Any links to or content from Third-Party Sites in the Services are provided for Customer's convenience only. Licensor reserves the right to update or remove any functionality available through the Services at any time for any reason.

1.5 **Feedback.** Notwithstanding any provision in this Agreement to the contrary, Licensor may use, develop and implement any information, suggestions, comments or other feedback provided by Customer or any of its Representatives (collectively, "Feedback") in connection with the development, operation, marketing and sale of the Services, in its discretion and with no compensation to any person providing Feedback, irrespective of any intellectual property or proprietary rights claimed by Customer in such Feedback. Customer represents that it has not, and will not, knowingly provide Feedback that is subject to any third-party intellectual property rights.

1.6 **Changes to Services.** Licensor reserves the right at any time to alter any features, functionality and other characteristics of the Services; provided, however, that in the event that any such alterations materially limit the features or functionality of the Services, Licensor shall provide Customer with advanced notice thereof. Any subsequent upgrade, enhancement or other change to the Services shall be owned by Licensor and subject to the terms of this Agreement.

2. CONFIDENTIAL INFORMATION

2.1 **Definition of Confidential Information.** "Confidential Information" means all information, in whatever form, that is disclosed by a Party to the other Party, which, given the totality of the circumstances, a reasonable recipient should have reason to believe is proprietary, confidential, or competitively sensitive, regardless of whether such information is labeled as confidential or not, including without limitation personally identifiable information, creative works, business activities, trade secrets, know-how, techniques, research, developments, inventions, discoveries, processes, designs, technical data and information, financial information, pricing, vendors, customers, prospects, marketing plans and any other information of a similar nature. For the avoidance of doubt, Licensor's Confidential Information includes the Services and Software (including the design, features, functions and architecture thereof).

2.2 **Access and Use.** Each Party receiving Confidential Information from the other Party shall: (i) use and reproduce the Confidential Information only for the purposes specified in this Agreement, (ii) restrict disclosure of Confidential Information to its Representatives with a need to know the Confidential Information to enable the receiving Party to perform its obligations and exercise its rights under this Agreement, provided that such Representatives are bound by confidentiality obligations at least as strict as those contained in this Agreement, and (iii) use reasonable care to protect the other Party's Confidential Information and to prevent unauthorized disclosure of such Confidential Information. Additionally, to the extent that any Confidential Information disclosed or otherwise made available by one Party includes personally identifiable information, the other Party agrees to use such personally identifiable information solely in accordance with applicable Law and in compliance with such other Party' policies governing the dissemination and use of such personally identifiable information.

2.3 **Exclusions.** Except as expressly provided herein, nothing in this Agreement will be construed to restrict or impair in any way the right of a receiving Party to disclose any information which: (i) is at the time of its disclosure hereunder generally available to the public; (ii) becomes generally available to the public through no fault of the receiving Party; (iii) can be reasonably demonstrated to be in the possession of a receiving Party prior to its initial disclosure hereunder; or (iv) is acquired from a third party having a right to disclose the same to a receiving Party without breach of any confidentiality obligation. Notwithstanding the foregoing, the exclusions from the confidentiality obligations provided in this Section 2.3 shall not apply to personally identifiable information. A receiving Party may disclose Confidential Information (including personally identifiable information) in accordance with a legally binding judicial or other governmental order, provided that, to the extent permitted by applicable Law, such Party provides the disclosing Party with prompt notice of the same and cooperates with the disclosing Party with any actions taken by the disclosing Party to protect such Confidential Information, including without limitation the seeking of an appropriate protective order or other remedy. Licensor may collect, analyze and anonymize data, statistics or other information obtained through the provision, use and performance of various aspects of the Services and aggregate such data, statistics or other information with data, statistics or other information (collectively, "Analytics") obtained from other sources, and may use such Analytics for lawful business purposes, including improvement of the Software and the Services, as long as in doing so Licensor does not re-identify, or attempt to re-identify, any of the Analytics or otherwise link or associate Analytics with any information relating to (i) Customer, or (ii) an identified or identifiable natural person.

2.4 **Remedies.** The Parties expressly acknowledge and agree that any breach or threatened breach of this Section 2 by the receiving Party may cause immediate and irreparable harm to the disclosing Party that may not be adequately compensated by damages. Each Party therefore agrees that in the event of such breach or threatened breach by the receiving Party, and in addition to any remedies available at law, the disclosing Party shall have the right to seek equitable and injunctive relief, without bond, in any court of competent jurisdiction, in connection with such a breach or threatened breach.

3. TERM AND TERMINATION

3.1 **Term.** The term of the Agreement will commence on the Effective Date and will continue until terminated in accordance with this Agreement (the "Term").

3.2 **Termination in the Absence of Order Form.** Solely in the event that there are no Order Forms then in effect, either Party may terminate this Agreement for any reason upon 30 days' prior written notice to the other Party.

3.3 **Termination for Cause.** Either Party may immediately terminate this Agreement or any Order Form under this Agreement for cause, in the event of any of the following by the other Party: (i) a material breach of this Agreement

by the other Party which is not cured within thirty (30) days after receipt of written notice in reasonable detail of the breach; (ii) the filing of a petition in bankruptcy or for reorganization or for an arrangement pursuant to any federal or state bankruptcy laws by or on behalf of the other Party or an adjudication of bankruptcy of such Party; or (iii) the filing of a petition proposing the adjudication of the other Party pursuant to any federal or state bankruptcy law and such Party consents to such filing or such petition is not dismissed within ninety (90) days after the filing thereof.

3.4 **Discontinuance of Business**. If Licensor determines to cease to conduct a Service in the normal course of business, Licensor shall have the right to terminate this Agreement upon thirty (30) days' prior written notice.

3.5 **Effect of Termination.** Immediately upon termination or expiration of this Agreement, Licensor's obligation to provide the Services will immediately cease, and all unpaid fees and other amounts due from Customer for Services previously provided by Licensor will immediately become due and payable. Each Party shall, within thirty (30) days of termination or expiration of this Agreement, return or destroy, at the option of the other Party, all copies of such other Party's Confidential Information that are in its possession or control.

3.6 **Suspension of Services.** Notwithstanding any provision herein to the contrary, Licensor may suspend the Services in the event (i) of any activity by Customer or any of Customer's Designated Users, if such activity has, or in Licensor's reasonable assessment is likely to have, an adverse effect on the Services, or (ii) Customer fails to pay an undisputed amount within ten (10) days after Licensor gives Customer written notice of such failure.

4. **FEES**

4.1 **Payments.** Customer shall timely pay the fees set forth on the applicable Order Form in United States dollars. Unless otherwise specified on the applicable Order Form, all fees shall be due and payable in advance within thirty (30) days of the date of Customer's receipt of Licensor's invoice. All payments not made when due shall be subject to late charges on a pro-rated daily basis equal to the lesser of: (i) one and one-half percent (1.5%) per month of the overdue amount, or (ii) the maximum amount permitted under applicable Law. Customer shall reimburse Licensor for all fees and expenses, including reasonable attorneys' fees, incurred to collect amounts owed by Customer.

4.2 **Taxes**. The fees under this Agreement do not include, and Customer shall be responsible for paying all, local, state, federal or foreign sales, use, excise, VAT or other taxes, levies, duties or tariffs of any nature that may be due relating to this Agreement and the Services provided hereunder, except for taxes based on the income of Licensor.

4.3 **Expenses.** If the Parties agree to the performance of any Services on-site, Customer will pay all of Licensor's reasonable travel expenses. Licensor will obtain prior approval of such expenses and will provide standard supporting documentation with any reimbursement request.

5. **CUSTOMER'S DUTIES AND RESTRICTIONS**

5.1 **Login and Password.** Customer must provide Licensor with the email addresses and names for Customer's designated end users and administrators (collectively, the "Designated Users"), and Licensor will assign unique initial login credentials for such Designated Users in order to access the Software. The logins for the Designated Users may not be shared and shall only be used by the Designated User to whom the login is initially assigned. Customer is solely responsible for maintaining the confidentiality of the accounts and related passwords of Customer's Designated Users and all use of such accounts. Each Designated User must be Customer's employee or consultant and, in each case, under Customer's control. Customer shall be solely responsible for all use of the Services under Customer's account, including by Customer's Designated Users. Customer hereby agrees that the act or omission of a current or former Representative shall be deemed the same as if performed by Customer.

5.2 **Affirmative Covenants.** Customer shall: (i) ensure Customer's Designated Users, officers, directors employees, contractors, representatives, agents and affiliates (collectively, "Representatives") comply with this Agreement; (ii) take all necessary steps to prevent unauthorized access to or use of the Services, (iii) notify Licensor immediately of any such unauthorized access or use; (iv) comply with applicable federal, state, local, municipal, domestic and foreign laws, rules and regulations ("Law"); (v) use the Services in compliance with all applicable industry standards; (vi) use the Services only for Customer's own internal business purposes and solely in accordance with the terms of this Agreement; and (vii) use the Services solely in accordance with Licensor's instructions.

5.3 **Restrictive Covenants**. Customer shall not, and Customer will cause Customer's Representatives to not: (i) alter, change, modify, adapt, translate, or make derivative works of the Services; (ii) use the Services in a manner that violates any applicable Law; (iii) transmit any virus or programming routine intended to damage, surreptitiously intercept, or expropriate any system, data, or personal information; (iv) transfer, resell, license, sublicense or otherwise make the Services available to any third party, except as expressly described in this Agreement; (v) use the Services for timesharing, rental, outsourcing, or a service bureau operation; (vi) attempt to gain, or assist others with attempting to gain unauthorized access to Licensor's network, systems or the Services; (vii) decipher, decompile, disassemble, or reverse engineer the Software or assist or encourage any third party to do so; (viii) engage in any activity that violates the rights of others or that interferes with or disrupts the Services; or (ix) upload any file containing any back door, time bomb, Trojan horse, worm, virus or similar malicious code ("Malware").

6. WARRANTIES, DISCLAIMERS AND LIMITATIONS

6.1 **Warranties**. Each Party represents and warrants to the other that: (i) it is duly organized and existing under the laws of the state of its formation; (ii) it has all requisite power and authority to enter into this Agreement; (iii) there is no outstanding contract, commitment or agreement to which it is a party that conflicts with this Agreement, and (iv) its activities relating to this Agreement will not violate any applicable Law. Licensor will use reasonable efforts not to transmit Malware to Customer, provided that it shall not be a breach of Licensor's covenant to Customer if Customer or a Designated User uploads a file containing Malware in contravention of Customer's obligations under Section 5.3(ix).

6.2 **Services Warranty**. If Customer reasonably believes Licensor has failed in a material respect to perform the Services in accordance with the terms of this Agreement, Customer shall notify Licensor within thirty (30) days after the defective Services were performed, and in the event of such defective Services, Customer's sole and exclusive remedy, and Licensor's sole and exclusive obligation, shall be for Licensor to correct the defects or re-perform the Services.

6.3 **Warranty Disclaimer**. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, LICENSOR MAKES NO WARRANTY, (EXPRESS, IMPLIED OR STATUTORY) AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ALL SERVICES PROVIDED BY LICENSOR ARE PERFORMED AND PROVIDED ON AN "AS-IS", "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS. LICENSOR DOES NOT WARRANT THAT THE SERVICES OR ITS WORK PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR WITHOUT DELAY. CUSTOMER ACKNOWLEDGES THAT, AS A SAAS-BASED SERVICE, THE FUNCTIONALITY AND INTERFACES OF THE SERVICES MAY CHANGE OVER TIME.

6.4 **Limitation of Liability**. EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, ANY BREACH OF EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS, VIOLATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS OR CUSTOMER'S BREACH OF SECTIONS 5.2, 5.3 OR 8.3, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING LOST PROFITS, DAMAGES FOR LOSS OF GOODWILL, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE APPLICABLE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE. EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, EACH PARTY'S INDEMNIFICATION OBLIGATIONS, ANY BREACH OF CONFIDENTIALITY OBLIGATIONS, VIOLATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS OR CUSTOMER'S BREACH OF SECTIONS 5.2, 5.3 OR 8.3, NEITHER PARTY'S TOTAL AGGREGATE AND CUMULATIVE LIABILITY TO THE OTHER SHALL EXCEED THE AMOUNT PAID OR PAYABLE TO LICENSOR IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM THAT GAVE RISE TO SUCH LIABILITY.

6.5 **Prohibition of Claim**. CUSTOMER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT ANY CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT OR RELATING TO THE SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE SUCH CAUSE OF ACTION SHALL BE PERMANENTLY BARRED.

6.6 **Application.** SECTIONS 6.3, 6.4 AND 6.5 SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE UNDER LAW AND SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT AND THE PERFORMANCE OF ANY SERVICES TO BE RENDERED HEREUNDER.

7. INDEMNIFICATION

7.1 **By Licensor.**

7.1.1 Licensor will defend, indemnify and hold Customer harmless against any claim, demand, suit, investigation or proceeding made or brought by any third party (each, a "Claim") against Customer alleging that the use of the Services as permitted hereunder infringes or misappropriates a third-party copyright, trade secret, trademark or United States patent. Licensor will pay all costs, reasonable attorneys' fees and any settlement amounts agreed to by Licensor or damages awarded in connection with the Claim.

7.1.2 If Customer's use of the Services has become, or in Licensor's opinion is likely to become, the subject of any Claim, Licensor may at its option and expense: (i) procure for Customer the right to continue using the Services as set forth herein; (ii) modify the Services to make it non-infringing; or (iii) if the foregoing options are not reasonably practicable, terminate this Agreement and refund Customer any unused pre-paid fees.

7.1.3 Licensor will have no liability or obligation with respect to any Claim to the extent caused by: (i) Customer's use of the Services that is not in accordance with this Agreement or not reasonably foreseeable by Licensor; or (ii) the combination, operation or use of the Services with other applications, portions of applications, products or services where the Services would not by itself be infringing.

7.1.4 This Section 7.1 states Licensor's entire and exclusive obligation, and Customer's exclusive remedy, for any claim of any nature related to the infringement or misappropriation of third-party intellectual property rights.

7.2 **By Customer.** Customer will defend, indemnify and hold harmless Licensor, and its officers, directors, employees, contractors, representatives, agents and affiliates, from and against any Claim made or brought against Licensor, arising from Customer's breach, or alleged breach, of this Agreement.

7.3 **Conditions.** As a condition of the obligations set forth in this Section 7, a Party entitled to indemnification (the "Indemnified Party") will: (a) provide prompt written notice of the applicable Claim to the other Party (the "Indemnifying Party"); (b) provide the Indemnifying Party with sole control of the applicable defense and settlement; and (c) cooperate as requested by the Indemnifying Party, at the Indemnifying Party's expense. The Indemnifying Party will not agree to any settlement that admits fault or obligates the Indemnified Party to pay damages without the consent of the Indemnified Party, which consent shall not be unreasonably withheld.

8. **CUSTOMER DATA**

8.1 **Definitions.**

8.1.1 "Customer Data" means any information relating to any identified or identifiable person, household or device that Licensor Processes solely on behalf of Customer in connection with Licensor's provision of the Services under this Agreement.

8.1.2 "Process" (including any grammatically inflected forms thereof) means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, including without limitation collection, recording, organization, structuring, storage, adaptation or alteration, access, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

8.2 **Licensor's Obligations.** Licensor shall Process Customer Data only as required to provide the Services under this Agreement or otherwise in accordance with Customer's written instructions.

8.3 **Customer's Obligations.** Customer represents, warrants, and covenants that: (i) it has (and will have) provided any notice and obtained all consents and rights required by applicable law to enable Licensor to lawfully Process Customer Data or any other data input into the Services by or on behalf of Customer or its Designated Users pursuant to this Agreement; (ii) it has full right and authority to make the Customer Data or any other data input into the Services by or on behalf of Customer or its Designated Users available to Licensor under this Agreement; and (iii) Licensor's Processing of the Customer Data or any other data input into the Services by or on behalf of Customer or its Designated Users in accordance with this Agreement will not infringe upon or violate any applicable laws or any rights of any third party.

9. **GENERAL TERMS**

9.1 **Publicity**. Licensor shall have the right to identify Customer as a Licensor customer for purposes of promotion and marketing of Licensor's services, subject to Customer's prior approval which shall not be unreasonably withheld, delayed or conditioned (and will be deemed given if no written notification is received from Customer within one (1) week from the date of written request for approval).

9.2 **Law; Dispute Resolution**. This Agreement will be governed by and construed under the laws of the Commonwealth of Massachusetts, without reference to principles of conflict of laws. Any dispute arising between the Parties will be settled in an action commenced and maintained in any court sitting in Suffolk County, Massachusetts. The Parties irrevocably consent and submit to the exclusive personal jurisdiction of such courts if there is any dispute between them and agree not to challenge or assert any defense to the jurisdiction of such courts.

9.3 **Relationship**. This Agreement does not create any agency, partnership, franchise, joint venture, or any other such relationship between the Parties. Neither Party is granted any express or implied right or authority to assume or create any obligation on behalf of or in the name of the other Party or to bind the other Party in any matter whatsoever.

9.4 **Severability**. If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision will be automatically reformed and construed so as to be valid, legal, operative, and enforceable to the maximum extent permitted by applicable law while preserving its original intent. The invalidity, illegality, or unenforceability of any part of this Agreement will not render invalid the remainder of this Agreement.

9.5 **Survivability**. Sections 1.3, 1.5, 2, 3, 4, 5.2, 5.3, 6.3, 6.4, 6.5, 6.6, 7, 8 and 9 shall survive and continue to bind the Parties after execution and delivery of this Agreement and its expiration or early termination to the extent and for as long as may be necessary to give effect to the rights, duties and obligations of the Parties pursuant to this Agreement, subject to any applicable statutes of limitation.

9.6 **Waiver**. Failure by a Party to insist upon strict performance of any provision herein by the other Party will not be deemed a waiver by the first Party of its rights or remedies or a waiver by it of any subsequent default by the other Party, and no waiver will be effective unless it is in writing and duly executed by the Party entitled to enforce the provision being waived.

9.7 **Amendment**. This Agreement may only be amended in a writing executed by both Parties.

9.8 **Notice**. All notices sent hereunder will be in writing, will be effective upon receipt (except as provided below), and may be: (i) personally delivered; or (ii) sent by a nationally recognized overnight commercial delivery service with provision for receipt, postage or delivery charges prepaid (effective upon receipt or refused delivery); and will be addressed to the Parties at the address set forth below or as updated in writing by a Party in accordance with this Section 9:

Licensor: LearnLux	**Customer: City of Elizabeth City**
Attn: Rebecca Liebman	Attn: _____
_____	_____
_____	_____
_____	_____

9.9 **Force Majeure**. Except with regard to payments due to Licensor, neither Party will be liable for any delays or failures in performance due to circumstances beyond its reasonable control. In the event any such delay continues for a period of thirty (30) or more days, then either Party may terminate this Agreement upon five (5) business days' prior written notice, provided Customer shall remain responsible for payments due to Licensor prior to termination.

9.10 **Assignment**. Neither Party may assign this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld; provided, however, that either Party may assign this Agreement to an affiliate of such Party or in connection with a merger, sale of substantially all of its assets, acquisition or other change of control with respect to such Party or any division of its business without the need for such prior written consent. The Agreement is binding upon and inures to the benefit of each Party and its respective successors and permitted assigns, subject to the restrictions against assignment provided in this Section 9.10.

9.11 **Construction.** In this Agreement, unless a clear contrary intention appears: (i) where not inconsistent with the context, words used in the present tense include the future tense and vice versa and words in the plural number include the singular number and vice versa; (ii) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement; (iii) reference to any gender includes each other gender; (iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and includes all addenda, exhibits and schedules thereto; (v) the titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement; (vi) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or Subsection of this Agreement; (vii) "including" (and with correlative meaning, "include") means including without limiting the generality of any description preceding such term and (viii) any reference to "dollars" means United States Dollars.

9.12 **Entire Agreement.** Except as amended after the date hereof pursuant to Section 9.7, this Agreement, the applicable Order Form, Schedules and Exhibits hereto constitute the entire Agreement between the Parties and supersede all prior and contemporaneous undertakings and agreements between the Parties, whether written or oral, with respect to the Services. In the event of any conflict between this Agreement and any Order Form, the terms of this Agreement shall govern, except to the extent the applicable Order Form expressly references the provision of this Agreement to be overridden.

Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date

LearnLux Inc.	**City of Elizabeth City**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit A

Form of Order Form

THIS ORDER FORM (this "Order Form") is made as of the latest date set forth below (the "Order Effective Date") by and between LearnLux Inc., a Delaware corporation ("Licensor") and **City of Elizabeth City** ("Customer"), and is made pursuant to that certain Master Services Agreement, dated as of September 21st, 2020, between Customer and Licensor. The terms of the Agreement are incorporated into this Order Form by reference and capitalized terms used but not defined in this Order Form have the meanings ascribed to them in the Agreement.

GENERAL TERMS

Launch Date:	
Expiration Date:	

SERVICES ORDER FORM

SERVICE	QUANTITY	UNITS
Financial Wellness Benefit	400	Seats
Custom Lesson	12	Lessons
Advisor Sessions	Unlimited	Hours
Total Subscription Fee		**$17,000**

This Order Form shall be effective as of the Launch Date provided above and continue until the Expiration Date provided above (the "Initial Order Term"). If neither Party gives notice of its intent not to renew in accordance with this paragraph, the terms of this Order Form will renew automatically upon the expiration of the Initial Order Term or any Renewal Order Term (as defined below), at Licensor's then-current fee applicable to the Services under this Order Form, from the Expiration Date (in the case of the Initial Order Term) or the effective date of expiration of such Renewal Order Term (as applicable) (each, an "Order Expiration Date") for an additional one-year period from such Order Expiration Date (each, a "Renewal Order Term" and, collectively with the Initial Order Term, the "Order Term"). Either Party may give the other Party written notice of its intent not to renew at least sixty days prior to the applicable Order Expiration Date.

Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Order Form as of the Order Effective Date.

LearnLux Inc.	**City of Elizabeth City**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____