



## **STANDARD AGREEMENT**

(version 2-20-2018)

This AGREEMENT ("Agreement") is entered by and between **Brailsford & Dunlavey, Inc.** ("Contractor"), located at **515 Congress Avenue, Austin, TX 78701** and **City of League City** ("City"), a municipal corporation, located at 300 W. Walker, League City, Texas 77573 on the date set forth below.

### **Terms:**

1. **Scope of Services:** Contractor will perform the designated services and/or provided the designated products, as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **Advisory Services for Project Epic**. If there is a conflict between the terms of this Agreement and Exhibit A, the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall begin on **December 1, 2018** and shall terminate on **February 28, 2019**. This City reserves the right to terminate this Agreement for convenience upon seven (7) days-notice to the Contractor. Upon such termination, the City shall pay Contractor, at the rate set out in **Exhibit A**, for services satisfactorily performed or products satisfactorily provided up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, the City will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor. This Agreement is eligible for **NA** renewal option(s) with a term of **NA** year.
3. **Compensation:** Contractor shall be paid for the services, as set forth in **Exhibit A**, attached and incorporated for all purposes. In no event shall the total compensation exceed **\$51,415 (Fifty One Thousand Four Hundred Fifteen Dollars)** during the term of this Agreement. The City shall pay Contractor in accordance with the Texas Government Code 2251. Contractor must submit invoices for all services, which invoices must include dates of service and details of services provided. Payment for delivery of services rendered shall not be unreasonably withheld or delayed. If the City disapproves any amount submitted for payment by Contractor, the City shall give Contractor specific reasons for disapproval in writing. Upon resolution of any disputed charges, Contractor shall submit an amended invoice covering any remaining charges to the City.
4. **Insurance:** The Contractor **is** required to maintain insurance through the term of this Agreement.

If required by the City, Contractor shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence or medical malpractice insurance (whichever applies) throughout the entire term of the Agreement. If at any point during the Agreement, Contractor will enter City property, Contractor shall also maintain the following insurance: (i) Worker's Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of \$5,000,000 per occurrence; and (iv) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Contractor shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City.

Contractor shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of the City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City of League City employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by the City for such expenses except as otherwise provided in this Agreement.
6. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work for hire under federal copyright law. Ownership of the work shall be shared jointly between the City and Contractor. The work may be edited at any time within the City's discretion. If the work would not be considered a work-for-hire under applicable law, Contractor hereby assigns, transfers, and conveys any and all rights, title and interest to City of League City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the work, the City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within the City's discretion. Contractor shall not sell, disclose or obtain any other compensation for the services provided herein. If the work is one to which the provisions of 17 U.S.C. § 106A apply, the Contractor hereby waives and appoints the City to assert on the Contractor's behalf the Contractor's moral rights or any equivalent rights regarding the form or extent of any alteration to the work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for the City's purposes.
7. **Confidentiality:** During the course of the work and/or services to be provided under this Agreement, Contractor may come in contact with confidential information of the City. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by the City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify the City of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Agreement shall return to the City all confidential information in Contractor's possession or control. Contractor shall further comply with all information security policies of the City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Contractor without the prior written approval of the City.
8. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform the Services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any Service performed on premises owned or controlled by the City, Contractor warrants and agrees that Contractor will perform the Services in compliance with all City Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
9. **Licenses/Certifications:** Contractor represents and warrants that it will obtain and maintain in effect, and pay the cost of all licenses, permits or certifications that may be necessary for Contractor's performance of this Agreement. If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contractor.
10. **Performance/Qualifications:** Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under

this Agreement. Contractor warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.

11. **Conflict of Interest:** Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the Services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and the City that could be construed as a conflict of interest with regard to this Agreement.
12. **INDEMNIFICATION: CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, AND EACH OF ITS DIRECTORS, OFFICERS, AND EMPLOYEES FROM COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.**
13. **Force Majeure:** Neither the City nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.
14. **Notices:** Any notice given under this contract by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice shall be deemed communicated three (3) days after mailing.
15. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
16. **State Auditor:** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
17. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
18. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for

in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by the City and the Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Director of Finance of the City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, (ii) neither the issuance of this Contract by the City nor any other conduct, action or inaction of any representative of the City relating to this contract constitutes or is intended to constitute a waiver of the City's or the state's sovereign immunity to suit; and (iii) the City has not waived its right to seek redress in the courts.

19. **Entire Agreement:** This Agreement contains the entire Agreement between the parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the parties executed subsequent to this Agreement.
20. **Eligibility to Receive Payment:** Contractor certifies that, as a matter of State law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
21. **Payment of Debt/Delinquency to State:** Contractor certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
22. **Products and Materials Produced in Texas:** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
24. **Publicity:** Contractor shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
25. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this contract are declared to be severable. The Parties may mutually agree to renegotiate the contract to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
26. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.

27. **Sovereign Immunity:** Except as otherwise provided by Texas law, neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement is a waiver of sovereign immunity by City.
28. **Authority:** Contractor warrants and represents that Contractor has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of the City represents that he/she has authority to sign this Agreement on behalf of City.
29. **Non-Waiver:** No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
30. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002, Texas Government Code, by executing this Agreement Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
31. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.
32. **No Personal Liability:** All actions or claims against either City or Contractor arising under or relating to this Agreement shall be made only against such Party as a corporation or other legal entity, and any liability relating thereto shall be enforceable only against the assets of such Party.
33. **Estimates and Projections:** Estimates and projections relating to development budgets, finance, and other aspects of Contractor's analysis will be based upon reasonable assumptions, information provided by City or other sources, reasonable analytical techniques, and professional judgment. Actual costs and financial performance, however, will be influenced by market and other external factors. Accordingly, Contractor does not represent or warrant that its estimates and projections will reflect City's actual costs and financial performance.
34. **Limitation of Liability:** Neither Party shall be liable to the other Party for any consequential, exemplary, special, incidental, or punitive damages sounding in contract or tort except as may arise from breach of the contract or as may be necessary to provide indemnification in accordance with Contractor being held harmless against all actions or claims asserted by third parties.
35. **Non-Solicitation:** In consideration of Contractor's agreement to provide services pursuant to this Agreement through valued employees who may have specialized knowledge of Contractor's trade secrets, intellectual property, and proprietary methods, City covenants and agrees that, during the term of this Agreement and for a period of six (6) months from the later of the cancellation or completion of the Project, City shall not, without Contractor's prior written consent, solicit or hire as an employee of City, or solicit or retain as an independent contractor to City, any current or former employee of Contractor who performed any services for City while employed by Contractor to perform professional services for City that are substantially similar in nature and/or scope to the professional services that the person was assigned to perform on the Project while employed by Contractor. This paragraph may be specifically enforced in any court of competent jurisdiction, and attorneys' fees shall be awarded to Contractor in any such enforcement action, regardless of any other provision of this Agreement.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. *(date to be filled in by City Secretary)*

**BRAILSFORD & DUNLAVEY - “Contractor”**

\_\_\_\_\_  
Will Mangrum, Executive Vice President

**CITY OF LEAGUE CITY – “City”**

\_\_\_\_\_  
John Baumgartner, City Manager

**Attest:**

\_\_\_\_\_  
Diana Stapp, City Secretary

**Approved as to Form:**

\_\_\_\_\_  
Office of the City Attorney

# **Exhibit A**

## **Scope of Services/Description of Products** (Three pages, including this page)

Development Advisory Services for the Project Epic proposed by the Contractor dated December 20, 2018.



December 20, 2018

Gwynetheia Pope  
Senior Buyer  
League City  
purchasing@leaguecity.com

Re: City of League City - Project EPIC

Dear Gwynetheia Pope:

Brailsford & Dunlavey, Inc. ("B&D") is pleased to submit this proposal to continue providing League City ("Client") development advisory services for the proposed Project EPIC (the "Project"). We believe our firm is uniquely positioned to continue to assist League City through the next phase of work, which includes the negotiation of legal agreements, finalization of project design, final project approval and financial closing. The detailed tasks associated with this process can be found below:

### **Objectives and Proposed Work Plan**

B&D has found that a carefully structured, multi-step negotiations process is critical to maintaining Client control of the project and ultimately maximizing the value of the transaction for the benefit of League City, its residents, and its constituent community. As a national leader in providing P3 advisory services, we will continue to deploy our expertise and deep understanding of League City's vision to empower League City to efficiently negotiate deal terms that position the Project for long-term success. Outlined below is B&D's proposed work plan for continued negotiation of the key terms of the Project through financial close.

### **Negotiations with Selected Partner**

With B&D guidance, League City has executed a predevelopment agreement with the proposed development team – Western Spherical Developers (WSD). This agreement grants WSD the necessary approvals to continue due diligence on the site including surveys, testing, and feasibility analysis. With site access, the WSD team will continue to refine their design and begin pricing. This phase of the development process is pivotal in ensuring League City's interests are protected. B&D is prepared to continue supporting League City through business term negotiations, review of the proposed program, analysis of the local tax incentives value, review of the project budget, and monitoring of the progress of the WSD team. B&D will also coordinate a series of sub-committee meetings designed to maintain Client control throughout.

Throughout negotiations, B&D will support League City's decision-making by providing ongoing financial analysis to confirm that League City's and the State's key financial objectives are protected. Additionally, B&D will monitor and refine these financial analyses as they relate to the Tax Increment Reinvestment Zone (TIRZ) and HB 2445 to ensure close coordination and alignment with the various components of the proposed development.



This document, therefore, serves as the Agreement for the described scope billed on a percent complete basis through execution of applicable development agreements between League City and its development partners for a time period not to exceed January 31, 2019. The total fee for services is \$51,415 as described below:

Task Category	Executive Vice President	Vice President	Senior Associate	Project Manager	Total Fee
Kick Off Meeting with Development Team Prep & Execution (WebEx)		4	4	4	\$3,600
Review and Comment - Concept Development / Schematic Design		10	4	4	\$6,240
Coordinate and Lead Preliminary Business Term Negotiation	1	6	12		\$7,085
Preliminarily Assist in Drafting Ground Lease, Development Agreement, and Operating Agreement		6	12		\$6,540
Review Financial Pro Forma and Development Budget	1	4	10	10	\$7,115
Conduct Bi-Weekly Progress Updates		12	20	14	\$13,930
Project Support - Agenda Setting, Meeting Coordination, Business Term Memo, Recommendations	1	4	12	4	\$6,845
TOTAL FEE					\$51,415

This Proposal's fees are based on the ongoing professional services completed in a manner consistent with the B&D role as defined in B&D's original Agreement (Contract #3180469 dated June 11, 2018). Travel and related expenses related to the Project will be reimbursed to B&D as accrued, in addition to the professional fees as described above. B&D will make reasonable efforts to contain Project-related expenses, and will coordinate closely with League City's Office of Economic Development to determine those meetings that can be conducted remotely, and those that will require B&D's travel to League City.

Thank you for the opportunity to present this proposal. If you have any questions or would like additional information about our firm, please do not hesitate to contact me at 202.266.3469.

Sincerely,



Brian Hanlon, AIA, LEED AP®  
Vice President