



## **STANDARD AGREEMENT**

(Version 9-22-2023)

This AGREEMENT (“Agreement”) is entered by and between **Hazard Dynamics** (“Contractor”), located at **PO Box 1967, Pflugerville, TX 78691** and the **City of League City** (“City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

### **Terms:**

1. **Scope of Services:** Contractor will perform the services and/or provide the products as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **Scope of Work and Term and Conditions of Agreement**. 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 commence on **July 10, 2024** and shall expire on **September 30, 2025**. The period from commencement to expiration is the Contract Term. City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Contractor. Upon such termination, 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, 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.
3. **Compensation:** Contractor shall be paid for the services/products as set forth in **Exhibit A**. In no event shall the total compensation exceed **\$125,000** during the term of this Agreement. City shall tender payment (including progress/partial payments) for services/goods only after such services are completed or goods are delivered and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Contractor must submit to City invoices for all goods delivered and services provided, which invoices must include details and dates of service or delivery. Payment by City shall be made within thirty (30) days of receipt of an invoice, except for any portion of the invoiced amount that City disapproves as not compliant under this Agreement, in the sole reasonable discretion of City. If City disapproves any amount submitted for payment by Contractor, City shall give Contractor specific reasons for disapproval in writing.
4. **Insurance:** Contractor **is** required during the Contract Term to maintain insurance as follows: (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate; (b) If Contractor will provide City “professional services,” as that term is used in Chapter 252 of the Texas Local Government Code, Professional Liability (errors and omissions/malpractice) insurance with minimum coverage limits—exclusive of defense costs—of \$2,000,000 per occurrence; and (c) If at any point during the Contract Term it is foreseeable that Contractor will enter upon City premises: (i) Worker’s Compensation coverage with statutory limits for the State of Texas, and (ii) Commercial Automobile Liability coverage with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate. 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. **Liquidated Damages:** Liquidated damages **are** applicable to this transaction. Contractor acknowledges that time is of the essence in performing this Agreement. City and Contractor (collectively, the “Parties”) agree that if Contractor is late in performing any obligation of this Agreement, City will suffer loss, damages, or other harm from Contractor’s delay. The Parties agree that the amount of loss, damages, or harm likely to be incurred is incapable or difficult to precisely estimate, and therefore Contractor agrees to pay City liquidated damages for delay at a daily rate equal to the total compensation allowed under the Agreement divided by the number of days in the Contract Term. The Parties further agree that: (i) the liquidated damages specified herein are not a penalty but rather bear a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable loss likely to be incurred by City as a result of Contractor’s delay; (ii) one of the reasons for City and Contractor to agree to such amounts is the uncertainty and cost of litigation regarding the question of actual damages; and (iii) City and Contractor are sophisticated business parties and negotiated this Agreement at arm’s length.
6. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
7. **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 (the “Work”) for hire under federal copyright law. Ownership of the Work shall belong to and remain the exclusive property of City. The Work may be edited at any time within 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, 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, 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 City’s discretion. Contractor shall not sell, disclose or obtain any other compensation for the services provided herein or the Work. If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Contractor hereby waives and appoints City to assert on Contractor's behalf 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 City’s purposes.
8. **Confidentiality:** During the course of the services to be provided under this Agreement, Contractor may become privy to confidential information of City. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify

City of any misuse or unauthorized disclosure of City's confidential information and upon expiration of this Agreement shall return to City all confidential information in Contractor's possession or control. Contractor shall further comply with all information security policies of 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 City.

9. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform its 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 City, Contractor warrants and agrees that Contractor will perform said services in compliance with all City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
10. **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 formation; 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.
11. **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.
12. **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 City that could be construed as a conflict of interest with regard to this Agreement.
13. **INDEMNIFICATION: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY , AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR 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.**

14. **Force Majeure:** Neither 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 solely from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by the exercise of due diligence.
15. **Notices:** Any notice given under this Agreement 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 notices shall be deemed communicated three (3) days after mailing.
16. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the 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.
17. **State and/or City 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 or the City's internal auditor (collectively, the "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.
18. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
19. **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 City and 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 City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.
20. **Entire Agreement:** This Agreement contains the entire understanding 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.
21. **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.
22. **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.

23. **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. **Risk of Loss:** If applicable, all work performed by Contractor pursuant to the Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, bearing such loss or damage will be Contractor's responsibility.
25. **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.
26. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this Agreement 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 Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
27. **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"). Any 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.
28. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City. The Parties also agree that this Agreement constitutes a governmental function and is not a proprietary function.
29. **Authority:** The Parties stipulate that in entering into this Agreement, the City is performing a solely governmental function and not a proprietary function. 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 City represents that he/she has authority to sign this Agreement on behalf of City.
30. **Non-Waiver:** The Parties specifically agree that 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. 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.

31. **Prohibitions Pursuant to Texas Government Code:** By executing this Agreement Contractor verifies that Contractor (1) does not boycott Israel and will not during the term of this Agreement per Section 2274.002; (2) is not engaged in business with Iran, Sudan, or any company on the list referenced in Section 2252.152; (3) does not boycott energy companies and will not during the term of this Agreement per 2274.002; and (4) does not have a practice, policy, guidance, or directive of this Agreement against a firearm entity or firearm trade association and will not during the term of this Agreement per 2274.002.

*(signature block on next page)*

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

**HAZARD DYNAMICS - “Contractor”**

\_\_\_\_\_  
Eric Archibald, Partner

**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/Payment Schedule

(There are **5** pages for Exhibit A, including this page)

[Click or tap here to enter text.](#)



June 25, 2024

Dear Caitlin King,

Thank you for your interest in retaining Hazard Dynamics, LLC (HD) to provide services to League City (Client) related to this project. This letter presents our current understanding of the scope of services sought and the terms of the engagement.

**Task 1 ESS Plume Modeling - \$23,000**

*Hazard Dynamics will develop a computational fluid dynamics model to evaluate the toxic gas hazards around an ESS system for a single system type and single location. Hazard dynamics will run this model for a single chosen geometry and with up to 6 different conditions. Geometry changes and additional flow conditions will require additional cost.*

*Hazard Dynamics will provide a report describing the methods, calculations, models and results of the analysis. The report will show calculations, models which indicate what the expected distances are that could be affected by toxic gases during a thermal runaway gas release or fire event. The following information is required to begin work:*

- *Applicable AHJ / Utility / Owner requirements*
- *Site drawings*
- *Mechanical drawings of ESS or 3D CAD model*
- *UL 9540A test reports, full-scale fire test reports if available*
- *ESS manuals, Fire Risk Assessment, NFPA 69 report if available*

Based on results obtained in the above tasks or discussion with the client throughout the project, additional scope or modifications to the existing scope may be recommended or required. If additional scope not described in the above tasks is recommended, HD will provide you with an estimate of the fees. We will await written approval from you prior to the commencement of any additional work.

The client understands and acknowledges that HD's role is advisory in nature and that the opinions, analysis, conclusions, results, recommendations, and the like will be assessed by the client with respect to its products, processes, or services.

Hazard Dynamics's services are provided only in accordance with our Terms and Conditions of Agreement, a copy of which is enclosed and made a part hereof by reference. It is our understanding that Hazard Dynamics's proposed retention on this project is with your organization and all charges (i.e., fees and expenses) incurred by Hazard Dynamics on this project will be your responsibility, independent of other parties/payees involved. If invoices should be mailed to an address other than the one above, please provide that information with the signed letter. Hazard Dynamics's federal tax ID number is 85-2642775 and is included on all invoices.

Based on the information you have provided, we have performed a conflict-of-interest check for the client. Using this information, HD has determined that it does not currently have a conflict that would preclude us from assisting you. Please inform us as soon as possible if this list of parties is inaccurate or incomplete, and if other parties become involved as this matter proceeds.

A retainer in the amount of 50% of the project cost is required prior to the commencement of our work. The retainer will be held on account until the final invoice has been issued, at which time, you will have the option of paying the invoice in full and requesting a refund of your retainer or applying the retainer against the final invoice. Hazard Dynamics will begin work after the retainer is received.

This proposed retention letter is valid for 60 days from the date first set forth above. Please sign and return this letter or provide a purchase order if you would like us to proceed with this work. If you have any questions or require additional information, please do not hesitate to contact me at 801-708-9890. We look forward to working with you.

Sincerely,



Erik Archibald, PhD, P.E.

Partner, Senior Engineer

Accepted by:	
<hr/>	
Authorized Signature	Date
<hr/>	
Name	Title

## TERMS AND CONDITIONS OF AGREEMENT

1. Work performed on a time-and-expenses basis will be billed in accordance with Hazard Dynamics' most current Schedule of Rates and Charges. Work performed under a fixed-price arrangement will be billed at the agreed fixed amount. A payment in advance or a suitable retainer may be required from the client. Hazard Dynamics will hold any retainer until the final invoice is prepared, at which time it will reconcile the client's account. Following Hazard Dynamics' completion of work, the client is responsible for and may be charged for the storage and disposal of evidence, exemplars and samples. Hazard Dynamics will charge taxes where applicable.
2. Invoices are typically rendered monthly or in accordance with the agreed upon payment schedule, and are due in U.S. dollars within 30 days of the date of the invoice. Hazard Dynamics, without liability, may withhold delivery of reports and other data, and may suspend performance of its obligations to the client, pending payment of outstanding charges. Hazard Dynamics reserves the right to decline further work with any client who has been delinquent in payment of Hazard Dynamics' invoices.
3. Hazard Dynamics will perform its services consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances. In the event that Hazard Dynamics fails to meet the foregoing standard of care or that the client has any other claim, client's sole and exclusive remedy shall be limited to Hazard Dynamics re-performing the work at Hazard Dynamics' expense, or reimbursing the client up to the amount the client paid Hazard Dynamics for the work. No other warranty, express or implied, is made concerning work performed under the agreement.
4. The client assumes full and complete responsibility for all uses and applications of Hazard Dynamics' recommendations or work under this agreement, or failure to use recommendations or work, and agrees to indemnify and hold harmless Hazard Dynamics, its affiliates, employees, and agents against any and all liabilities, damages, losses, claims, demands, actions, causes of action, and costs including attorney's fees and expenses resulting from the death or injury to any person or damage to any property or any other alleged or actual damages resulting from the aforementioned use, application, or nonuse of Hazard Dynamics' recommendations or work under this agreement.
5. In no event shall either party, Hazard Dynamics or client, or their respective affiliates, officers, directors, employees, or agents be liable for any incidental or consequential damages.
6. Hazard Dynamics will hold in confidence all information provided by the client that the client designates and/or marks as confidential or proprietary. If Hazard Dynamics and the client have entered into a separate non-disclosure agreement, it is deemed incorporated herein. All deliverables and any improvements to the client's processes or products arising from this agreement shall be and remain the property of client; however, Hazard Dynamics has a right to retain a copy of such deliverable(s). Hazard Dynamics shall retain all rights, title, and interest in and to its proprietary information (along with any modifications or improvements to such information), including, but not limited to Hazard Dynamics' know-how, methodologies, techniques, processes, tools, test fixtures, technologies, trade secrets, software, data, databases, algorithms, source code, computational engines, logic formulas, non-interface worksheets, macros, and other materials used by Hazard Dynamics in connection with providing its services.
7. Anybody required to be present at Hazard Dynamics' property for the project, including other parties and the like, will be required to sign an agreement that contains confidentiality obligations and a general release of claims for injuries or damages to property related to the visit.
8. Client understands that evidence, materials, test articles or the like ("Articles") may be damaged or destroyed during testing and as such Hazard Dynamics is not responsible for any loss or damage thereto. The client shall bear the risk of loss of the Articles while they are in transit. Notwithstanding any language to the contrary herein, should Hazard Dynamics be obligated to replace the Articles, the cost of such replacement shall be its fair market value and not any implicit value. Hazard Dynamics, unless other specific arrangements are made, will maintain technical files and evidence for 30 days after the completion of work. Hazard Dynamics will retain financial records according to I.R.S. requirements, but in no event less than 1 year after completion of the work.
9. Client shall not use Hazard Dynamics' (or any of its affiliates' or its personnel's) name(s), trade names, service marks, trademarks, trade dresses, logos, symbols, or the like in any form for advertising, publicity, marketing, or in any way that could be construed as endorsement or promotion and the like without the prior written consent of Hazard Dynamics in each instance.
10. This agreement is solely between, and may only be enforced by, Hazard Dynamics and the client, and this agreement shall not create or be construed to create any third-party rights, obligations, or liabilities including, but not limited to, affiliates, employees, contractors, licensees, or the like. Any deliverables, recommendations, or service provided by Hazard Dynamics shall be for the client's use only. Hazard Dynamics' services are expressly limited to the terms herein and are not modified or supplemented by terms from the client's purchase order. Hazard Dynamics will reference the client's purchase order for billing purposes only.
11. Upon receipt of written notice from the client, Hazard Dynamics will terminate work under this agreement. Work under a fixed-price agreement that is terminated before completion will be billed on a percentage of completion basis. Hazard Dynamics may terminate work under this Agreement only for cause. "Cause" includes, but is not limited to, development of a material conflict of interest, delinquency in payment, judicially required participation in onerous discovery or other legal process outside the intended scope of the work, or the presence of circumstances beyond Hazard Dynamics' control, such as natural disasters or

government intervention. Hazard Dynamics shall not be liable for any delay or failure to perform resulting from unforeseen causes beyond its reasonable control.

12. If Hazard Dynamics is required to testify or to produce information regarding work under this agreement, the client agrees to pay Hazard Dynamics' reasonable time and expenses, including attorney's fees associated with responding to such request. In the event of any such request, Hazard Dynamics will promptly notify the client to enable the client to object to any such testimony or production. This paragraph is not intended to apply to claims between Hazard Dynamics and the client.
13. This agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the internal laws of the state of Texas, without regard to the conflicts of laws principles of such state. The parties to this agreement consent to the jurisdiction of any state or federal court located in Austin, Texas. The prevailing party in any action shall recover from the losing party its reasonable attorney's fees and costs of suit incurred in addition to any other relief granted.