

PROFESSIONAL SERVICES AGREEMENT

(Version 9-22-2023)

This AGREEMENT ("Agreement") is entered by and between **BRW Architects** (the "Professional"), located at **175 Century Square Drive, Suite 350, College Station, TX 77840** 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:** Professional will perform the services as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **development of a Feasibility Study for the League City Fire Station No. 7 (FR2501)**. Services related to design, bid, or construction of a public work shall conform to the requirements set forth in **Exhibit B**, if applicable. If there is a conflict between the terms of this Agreement and Exhibits A (or B, if applicable), the terms of this Agreement will prevail.
- 2. Term and Termination: This Agreement shall commence on February 17, 2025 and shall expire on June 30, 2025 City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Professional. Upon such termination, City shall pay Professional, at the rate set out in <u>Exhibit A</u>, for services satisfactorily performed up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Professional for any services performed or for expenses incurred by Professional after the date of the termination notice that could have been avoided or mitigated by Professional.
- 3. Compensation: Professional shall be paid for the services as set forth in **Exhibit A**. In no event shall the total compensation exceed \$24,400 during the term of this Agreement. City shall tender payment (including progress/partial payments) for services only after such services are completed and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Professional must submit to City invoices for all services provided, which invoices must include details and dates of service. 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 Professional, City shall give Professional specific reasons for disapproval in writing.
- 4. **Insurance:** Professional **is** required during the Contract Term to maintain insurance as set forth below: (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) 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 Professional 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. Professional shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Professional shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

- 5. Liquidated Damages: Liquidated damages are not applicable to this transaction. Professional acknowledges that time is of the essence in performing this Agreement. City and Professional (collectively, the "Parties") agree that if Professional is late in performing any service designated as Time Critical on the Scope of Services attached to this Agreement, City will suffer loss, damages, or other harm from Professional's delay. The Parties agree that the amount of loss, damages, or harm likely to be incurred as a result of Professional's delay is incapable or difficult to precisely estimate, and therefore the Parties desire to stipulate the amount of such loss, damages, or harm. Accordingly, Professional shall have deducted from any amounts owed under this Agreement liquidated damages equal to the number of calendar days of the delay(s) times the daily rate, which rate shall be one-tenth of one percent (0.1%) times the compensation shown in the Scope of Services for such Time Critical service. 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 Professional's delay; (ii) one of the reasons for City and Professional to agree to such amounts is the uncertainty and cost of litigation regarding the question of actual damages; and (iii) City and Professional are sophisticated business parties and negotiated this Agreement at arm's length.
- 6. **Independent Professional:** Professional is an independent Professional and is not an employee, partner, joint venture, or agent of City. Professional understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Professional 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-forhire under applicable law, Professional 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. Professional 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, Professional hereby waives and appoints City to assert on Professional's behalf Professional'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, Professional may become privy to confidential information of City. Professional agrees to treat as

confidential the information or knowledge that becomes known to Professional 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. Professional 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 Professional's possession or control. Professional 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 Professional without the prior written approval of City.

- 9. Warranties and Representations: Professional warrants and agrees that Professional 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, Professional warrants and agrees that Professional 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: Professional 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 Professional's performance of this Agreement. If Professional is a business entity, Professional 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 Professional.
- 11. **Performance/Qualifications:** Professional agrees and represents that Professional has the personnel, experience, and knowledge necessary to qualify Professional for the particular duties to be performed under this Agreement. Professional warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.
- 12. **Conflict of Interest:** Professional warrants, represents, and agrees that Professional presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Professional's performance of the services hereunder. Professional further warrants and affirms that no relationship or affiliation exists between Professional and City that could be construed as a conflict of interest with regard to this Agreement.
- 13. **INDEMNIFICATION**: **PROFESSIONAL** 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 PROFESSIONAL OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROFESSIONAL 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 party shall be liable to the other for (i) any delay in performance; (ii) any other breach; (iii) any loss or damage; or (iv) any contribution to or aggravation of any of the foregoing; arising solely from uncontrollable forces such as fire, theft, storm, war, or any other cause that could not have been reasonably avoided by the party's 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, Professional 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 Auditor:** Professional 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, the "Auditor"), to conduct an audit or investigation in connection with those funds. Professional agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Professional will include this provision in all contracts with permitted subprofessionals.
- 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 Professional to attempt to resolve any claim for breach of contract made by Professional that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Professional's claim and any counterclaim and negotiate with Professional 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:** Professional 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: Professional 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. Professional agrees

- that any payments owing to Professional under the Agreement may be applied directly toward any debt or delinquency that Professional 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 Professional will provide services under the Agreement, Professional 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:** All work performed by Professional pursuant to the Agreement will be at Professional's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work, or the need to redo or revise the work for any reason except to accommodate a City request to materially alter the work, prior to City's acceptance, bearing the costs of such loss or damage to or such redo or revision of the work will be Professional's responsibility.
- 25. **Publicity:** Professional 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.
- 29. **Authority:** The Parties stipulate that in entering into this Agreement, the City is performing a solely governmental function and not a proprietary function. Professional warrants and represents that Professional 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 Professional. 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 Professional verifies that Profession (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)

Office of the City Attorney

Exhibit A

Scope of Services/Description of Products/Payment Schedule

(5 pages, including this page)

See next 4 pages for Proposal



175 CENTURY SQAURE DRIVE, SUITE 350 COLLEGE STATION, TEXAS 77840 979-694-1791 WWW.BRWARCH.COM

January 15, 2025

PROFESSIONAL SERVICES PROPOSAL
CITY OF LEAGUE CITY
FEASIBILITY STUDY FOR LEAGUE CITY FIRE STATION NO. 7

City of League City, TX League City Fire Department

ATTN: John Baumgartner, City Manager

BRW Architects is pleased to submit this proposal for architectural planning services to develop a Feasibility Study for the League City Fire Station No. 7.

The project scope, scope of services, project schedule, and compensation are described below:

1. INITIAL INFORMATION

A. This Feasibility Study will determine the scope of work and anticipated cost to design and construct a new Fire Station No. 7 located in the Lloyd developmental track along the future Muldoon Parkway near the extension of Bay Area Blvd. The new station will serve the rapidly growing residential and commercial area on the Southwest side of League City. The new station will meet current firefighting and EMS operations and standards that will allow for better training, faster turnout time, and up-to-date work environments for the safety of the EMS crew and the volunteer firefighters. The new facility will accommodate pull through apparatus bays, support spaces off the apparatus bays, dayroom/kitchen, and living spaces for the crew. The Construction Budget is unknown at this time.

2. ARCHITECTS RESPONSIBILITIES

- A. BRW Architects will meet with the design committee comprised of representatives of the volunteer firefighters, EMS staff, Fire Administration and City staff to review the scope of required services, design criteria, expectations, obtain background information, and establish tentative project schedule and deliverables. BRW will then review and verify the previously developed space program with the design committee. BRW architects has a 27-page check list for programming that we will review with the committee to verify that all programmatic requirements are reflected in an updated programming statement. BRW will compile this program statement in an Excel spreadsheet dividing up the spaces into the following zones of the building: public, semipublic, private areas, apparatus bays, and support spaces of the fire station.
- B. BRW Architects will take the excel spread program and do test fits. Test fits are examining each room for spatial layout and function by designing and graphically drawing each room individually and adding further detail to each room's program summary for required equipment, uses, and finishes. The Final program statement will include a delineation of spaces, adjacencies, functions, room sizes, plan layout, and renderings or pictures of similar spaces.
- C. BRW will review with the committee current trends and best practices for fire station design. BRW Architects will modify or redevelop the conceptual design to meet the current and future needs of the department. If a redesign is necessary, 3 design options consisting of floor plans, site plans, and aesthetic options will be developed for the committee to review. Upon comments back from the committee, our team will proceed in refining one of the conceptional options or if needed, prepare additional options.

- D. BRW Architects will consult with Gannett-Fleming to determine the regional site development options and cost of each option to bring utilities and infrastructure to the fire station site. Gannett-Fleming will also research and review related and pertinent project information regarding the necessary site development for this project. BRW and Gannett-Fleming will identify constructability opportunities, such as code requirements, permit needs, and other related items.
- E. BRW will prepare a statement of probable cost forecasted for construction in 2026 and 2027. The cost estimate will include the anticipated cost for utilities and infrastructure development as well as the design and construction of the fire station itself based on the approved conceptual design.
- F. BRW will present the fire station draft feasibility study package including our process, site development options, floor plans, site plan, renderings of interior and exterior views, and a statement of probable project costs to the decisions makers for review and comments.
- G. BRW will address all decision makers' comments and submit a final feasibility study package as defined in Item F for approval.
- H. For Deliverables, BRW will provide site plan, floor plans, roof plan, building section, elevations and renderings of interior and exterior of the fire station.
- Site plan will contain vicinity map, approximate metes and bounds of the site, anticipated easements, anticipated building setbacks, utility locations, driveways, parking, sidewalks, dumpster and generator enclosures, and preliminary landscape design.
- Floor plans will illustrate room names and sizes. The floor plans will include a proposed furniture layout to verify the functions of the rooms.
- K. The elevations will illustrate the massing of the building with proposed materials of the exterior. The renderings will be of the interior and exterior of the fire station and illustrate the special qualities of the spaces, as well as the use of materials and verify the functional aspects of the fire station.
- L. BRW will attend meetings as necessary with the committee. We are anticipating 3 meetings in person and 3-4 meetings through video conferencing for the duration of the 10-week study.
- M. Attend and conduct (1) in-person presentation to City Council including preparation of a PowerPoint document.

3. EXCLUSIONS FROM BASIC SERVICES

- A. Architectural services beyond conceptual design
- B. Demolition
- C. Structural engineering
- D. Civil Engineering services beyond conceptual design
- E. Mechanical, Electrical and Plumbing Engineering
- F. Environmental testing/Asbestos Testing
- G. Surveying and Geotechnical Engineering

4. CITY RESPONSIBILITIES

- A. The City will provide the Architect with all available information to support the project, including:
 - 1. Department organization charts

- 2. Site zoning, boundaries, easements, setbacks, utilities for the site.
- B. Unless otherwise provided for under this Agreement, the City shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the City's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.
- C. The City shall identify a representative authorized to act on the City's behalf with respect to the Project. The City shall render decisions and approve the Architect's submittals in a timely manner, in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

5. COST OF THE WORK

A. In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

6. MISCELLANEOUS PROJECT EXPENSES

A. We recommend a budget not to exceed \$2,000 be set for project miscellaneous expenses such as printing, plotting, local travel mileage, postage, and deliveries. These costs will be billed based on cost plus 10%. The unit cost for any additional city-requested in-person visit over the three (3) included in basic services shall be lump sum of \$800 each.

7. COMPENSATION

A. Payment for Architectural services shall be lump sum for each task listed below. Total amount shall not exceed \$24,400 without prior approval from the City. Monthly invoicing shall be made based on percentage of each task completed. Project miscellaneous expenses shall be billed on cost plus 10%.

B. COST BREAKDOWN BY TASKS

Total Feasibility Study Design Services	\$24,400
isc. Project Expenses \$	
3D Renderings	\$4,800
Cost Estimating	\$2,200
Conceptual Building Design	\$10,600
Conceptual Site Design	\$3,200
Programming Verification	\$1,600

8. BILLING RATES

A. The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

•	Principal	\$220.00/hour
•	Sr. Project Manager	\$190.00/hour
•	Project Manager	\$170.00/hour
•	Project Architect	\$150.00/hour
•	Architect	\$125.00/hour
•	Intern Architect I	\$105.00/hour
•	Intern Architect II	\$85.00/hour
•	Admin	\$70.00/hour

9. ADDITIONAL SERVICES

- A. Additional Services may be provided after execution of the Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services shall entitle the Architect to compensation and an appropriate adjustment in the Architect's schedule. Additional Services will be negotiated on a lump sum basis.
- B. Upon recognizing the need to perform Additional Services, the Architect shall notify the City with reasonable promptness and explain the facts and circumstances, giving rise to the need. The Architect shall not proceed to provide the following services, until the Architect receives the City's written authorization.
- C. Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable within thirty (30) days of the date of receipt of invoice. Amounts unpaid thirty (30) days after the date of receipt of invoice shall bear interest at the rate of 5%, or as allowed by applicable State laws.

10. PROJECT SCHEDULE

- A. As soon as practicable after the date of the Agreement, the Architect shall submit for the City's or City's Representative approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the City's review, for the performance of the City's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the City, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or City. With the City's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the Completion of the Work.
- B. We anticipate the Feasibility Study to be completed in 10 weeks, upon notice to proceed from the City of League City. This time excludes City review periods.
- C. We anticipate the following time periods for the project phases:

WEEK	PROJECT PHASE
Week 1	Kick off meeting / review previous Fire Station Study / Program Verification / Site Development Discussion - In person
Week 2	BRW team works on program / presents program revisions - Video conference
Week 3	BRW Team finalizes program - Video conference
Week 4	BRW Team will modify or redevelop the conceptual design up to 3 options
Week 5	BRW Team will modify or redevelop the conceptual design up to 3 options
Week 6	BRW Team develops and presents design options – In person
Week 7	BRW Team revises preferred concept design - Video conference
Week 8	BRW Team finalizes concept design / develops renderings / prepares cost estimate
Week 9	BRW Team finalizes concept design $/$ develops renderings $/$ prepares cost estimate – Video conference
Week 10	BRW Team Presents Final Concept design / Present – In person

The above schedule excludes review periods by the City.

Exhibit B

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