

## LANDSCAPE MAINTENANCE AGREEMENT

This AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between the City of Waco, hereinafter referred to as the "City", and the Midway Independent School District, acting by and through its duly authorized officers, hereinafter called "Midway".

### WITNESSETH

**WHEREAS**, the City operates a highway system, including Mars Drive, for the use and benefit of vehicular traffic in the City; and

**WHEREAS**, the City has proposed to develop design plans, specifications, unit cost estimates, and to provide contract administration, construction inspection, and testing for landscape improvements, including but not limited to the installation of trees, plantings, bushes, hardscape, and an irrigation system located on the east side of Mars Road from Hewitt Drive to Texas Central Parkway, within the city limits of the City ("Project Area"); and

**WHEREAS**, Midway shall be responsible for maintaining the trees, plantings, and irrigation systems associated with the landscape improvements upon the completion of the above mentioned Landscape Development project.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be respectively kept and performed, it is agreed as follows:

#### **ARTICLE 1. TERM OF AGREEMENT**

This Agreement becomes effective upon satisfactory completion of the work, as called for in the Plans, and as stipulated within this Agreement, unless otherwise terminated as provided hereinafter.

#### **ARTICLE 2. RESPONSIBILITY OF PARTIES**

The City and Midway agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its employees, representatives, and agents. If either the City or Midway hires or uses a private contractor to complete work, the contractor shall be required to either indemnify both the City and Midway or present proof of insurance that will protect both the City and Midway.

- A. The City agrees to:
1. Execute a construction contract, which will provide for the furnishing and installation of the landscape material (hardscape, trees, and plantings), and installation of a sprinkler system.
  2. Allow waterline taps to the City's nearest water lines to supply the irrigation systems with water.
  3. Provide notification to Midway upon completion of the installation of landscape improvements portion of the Project.
- B. Upon receiving notification of the completion of the installation of landscape improvements portion of the Project, Midway will start maintaining the landscape area. (Since the City will have a 12-month warranty on the project,) Midway will notify the City of any issues or problems that arise with the landscape improvements so that such issues/problems can be corrected.
- C. Upon completion of said 12-month warranty period, Midway agrees to:
1. Furnish all labor and incidentals required to maintain the irrigation system and replace any damaged parts; and
  2. Inspect annually the irrigation system to ensure proper application of water to keep the plants and trees in a healthy condition.

### **ARTICLE 3. MIDWAY'S ACKNOWLEDGMENT**

Midway acknowledges it is not an agent, servant, or employee of the City, and that it is responsible for its own acts and deeds and for those of its agents or employees during the performance of contract work.

### **ARTICLE 4. INSURANCE**

Midway is a political subdivision of the state of Texas and maintains appropriate insurance coverage. The execution of this Agreement and the performance by Midway of any of its obligations hereunder do not, and are not intended to, waive or relinquish, and Midway shall not waive or relinquish, any governmental, sovereign immunity or defense from or to liability or prosecution available to Midway, its trustees, officers, employees, or agents under federal or Texas laws.

### **MIDWAY AGREES TO ASSUME FULL RESPONSIBILITY FOR THE SERVICES RENDERED PURSUANT TO THE CONTRACT.**

### **ARTICLE 5. REMEDIES**

Violation or breach of contract terms by either the City or Midway shall be grounds for

termination of this Agreement.

#### **ARTICLE 6. SUBCONTRACTS**

Midway shall not sublet or transfer any portion of the work under this Agreement unless specifically authorized in writing by the City.

## **ARTICLE 7. SUCCESSORS AND ASSIGNS**

The City and Midway shall not assign or otherwise transfer its rights and obligations under this Agreement except with prior written consent of the other party.

## **ARTICLE 8. TERMINATION**

This Agreement may be terminated by mutual agreement or by either party in writing.

The termination of this Agreement shall extinguish all rights, duties, obligations and liabilities of the City and Midway under this Agreement.

## **ARTICLE 9. LEGAL CONSTRUCTION**

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or enforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## **ARTICLE 10. NOTICES**

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or USPS mail, postage prepaid, addressed to such party at the following respective addresses:

### **Midway ISD:**

Midway ISD  
13885 Woodway Drive  
Woodway, TX 76712  
Attn:

### **The City:**

The City of Waco  
PO Box 2570  
Waco, Texas 76702  
Attn: Mr. Charles Leist

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

## **ARTICLE 11. SIGNATORY WARRANTY**

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party they represent.

## **ARTICLE 12. VENUE; GOVERNING LAW**

Venue for any lawsuit involving this agreement shall be in McLennan County, Texas.

This Contract is governed by the laws of the State of Texas and the City of Waco Code of Ordinances.

**IN WITNESS WHEREOF, THE CITY AND THE MIDWAY INDEPENDENT SCHOOL DISTRICT** have executed duplicate counterparts to effectuate this Agreement:

### **THE CITY OF WACO**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title \_\_\_\_\_

### **MIDWAY INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title \_\_\_\_\_