

Midway City Council
15 December 2020
Regular Meeting

Resolution 2020-32 /
Law Enforcement Agreement



RESOLUTION 2020-22

A RESOLUTION ADOPTING AN AGREEMENT BETWEEN WASATCH COUNTY AND MIDWAY CITY FOR LAW ENFORCEMENT SERVICES

WHEREAS, Midway City desires to protect the health, safety, and welfare of its residents and visitors; and

WHEREAS, law enforcement is an essential component of this protection; and

WHEREAS, Midway City would like to contract with Wasatch County for additional law enforcement services; and

WHEREAS, Wasatch County is agreeable to rendering such services; and

WHEREAS, such contracts are authorized and provided for by the provisions of Utah Code §§ 11-13-202, 11-13-203.5.

NOW, THEREFORE, be it hereby **RESOLVED** by the City Council of Midway City, Utah, as follows:

Section 1: The Midway City Council approves the agreement for law enforcement services attached hereto and authorizes the Mayor of Midway City to execute the agreement on behalf of the City.

PASSED AND ADOPTED by the Midway City Council on the day of 2020.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

DRAFT

Exhibit A

DRAFT

**AGREEMENT FOR
LAW ENFORCEMENT SERVICES**

This is an Agreement between Wasatch County (hereinafter referred to as the "COUNTY"), and MIDWAY City (hereinafter referred to as "MIDWAY"), to provide law enforcement services to MIDWAY for the period commencing **January 1, 2021**.

WHEREAS, the COUNTY is currently providing law enforcement throughout the COUNTY in a manner calculated to provide exceptional service throughout the County, including in MIDWAY; and

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WHEREAS, MIDWAY desires to continue to receive the existing law enforcement services, but also desires to hire the COUNTY for law enforcement services beyond what it is currently receiving; and

WHEREAS, the COUNTY and MIDWAY are not required to enter into a contract for the current level of service provided to all municipalities in the COUNTY, but may enter into a contract for law enforcement services that exceed the current service level; and

WHEREAS, the Wasatch County Sheriff's Office ("SHERIFF'S OFFICE") may enter into a contract for additional law enforcement services (Utah Code Ann. § 17-22-2(1)(o) & State v. Graham, 2011 UT App 332, ¶ 22, 263 P.3d 569); and

WHEREAS, MIDWAY has determined that it would like to contract with the COUNTY for law enforcement services that exceed the current level of service in accordance with the terms and conditions set forth below; and

WHEREAS, the COUNTY has determined it would like to provide an additional level of law enforcement services on the terms and conditions hereinafter set forth; and

WHEREAS, such contracts are authorized and provided for by the provisions of Utah Code Ann. § 11-13-202 and §11-13-203.5.

NOW, THEREFORE, IN CONSIDERATION OF the mutual undertakings set forth herein, the COUNTY and MIDWAY agree as follows:

A. SCOPE OF SERVICES – GENERAL DUTIES

2. The COUNTY will continue to fulfill the "General Duties" of the Sheriff throughout the COUNTY, including in the municipal boundaries of MIDWAY, as required under Utah Code §17-22-2(1) without any direct charge to MIDWAY ("General Duties"). The Sheriff will also continue to provide law enforcement services in MIDWAY at the Sheriff's discretion regardless of this Agreement. These General Duties and law enforcement services include:

- a. Enforcement of Utah State Statutes;
 - b. Criminal investigative and crime lab services;
 - c. Follow up on reported crimes with persons who reported the crime, including routine notification by telephone or mail as to the status of the investigation;
 - d. Responses to medical, fire, and other emergencies that require police presence;
 - e. Minimum Patrol services with random patrolling of residential areas, businesses, parks, and other public property areas;
 - f. Driver's license inspections, background checks and license enforcement services as called for under applicable state law;
 - g. Traffic enforcement of state law including the regular use of radar or Lidar as a speed deterrent, in the sheriff's discretion;
 - h. Special Event traffic patrol and patrol services for community festivals or other special events as funded through the permitting process; and
 - i. Attendance at Public Safety or City Council meetings as requested by the municipality.
3. As a matter of course, the COUNTY fulfills these General Duties and law enforcement services throughout the COUNTY, in the Sheriff's sole discretion. The Sheriff will channel the limited resources of the SHERIFF'S OFFICE as matter of priority, in the Sheriff's sole discretion, to fulfill these General Duties and law enforcement services, throughout the COUNTY. State v. Lopez, 873 P.2d 1127, 1135 (Utah Sup.Ct. 1994).
4. The COUNTY is not obligated to provide law enforcement services in MIDWAY beyond these General Duties unless MIDWAY enters into an interlocal agreement with Wasatch COUNTY. (See Utah Code Ann. §17-22-2(1)(o), §11-13-202, and §11-13-203.5; and State v. Graham, 2011 UT App 332, ¶ 22, 263 P.3d 569). The COUNTY'S agreement to provide "Additional Law Enforcement Services" under this Agreement does not lessen the COUNTY'S obligation to fulfill its General Duties. The COUNTY'S contractual obligations under this Agreement recognize the underlying statutory obligations that Wasatch COUNTY has to provide the General Duties throughout the COUNTY, including in MIDWAY.
5. It is agreed that prosecution of criminal activities within MIDWAY will be provided by the office of the Wasatch County Attorney and will be charged under the applicable MIDWAY or COUNTY ordinances, and state statutes, as the County Attorney may, in his discretion, deem appropriate. It is further understood that all arrests made in MIDWAY shall be referred to the appropriate court as allowed and provided for by applicable law. Matters that would be referred to the MIDWAY Justice Court, if any, will be referred to the Wasatch County Justice Court. These prosecution and justice court services were not negotiated separately under this Agreement, and the intent of this section is to maintain the status quo till such time as either party desires to negotiate these services. MIDWAY or COUNTY may terminate prosecution and court services with three months written notice without effecting other provisions of this Agreement.

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B. SCOPE OF SERVICES – ADDITIONAL SERVICES

1. The COUNTY, through the SHERIFF’S OFFICE, agrees to provide to MIDWAY Additional Law Enforcement Services (“Additional Services”) beyond those provided under the COUNTY’S General Duties. These Additional Services may include:

- a. An increase in the hours spent providing General Duties; or
- b. Law Enforcement Services not included in the General Duties, such as:
 - ii. Crime prevention programs such as Neighborhood Watch, as well as other business and residential crime prevention programs;
 - iii. Coordination of volunteer programs such as the Community Affairs Officer and Reserve Programs;
 - iv. Enforcement of MIDWAY traffic, parking, and noise control ordinances;
 - v. Traffic patrol and ticket issuance beyond what is provided under the General Duties.
- c. The scope of the Additional Services and payment for Additional Services shall be as set forth in Addendum A.

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2. Dispatch Services: Under Utah Code, a dispatch center may be funded from funds from the state or federal government, from local taxing entities, and from gifts, donations, and grants. Utah Code 69-2-201(3). By agreeing to contract for Additional Services, MIDWAY agrees to pay for the Additional Dispatch Services necessary to support any Additional Services requested under this Agreement. The charge for Additional Dispatch Services is included in Addendum A.

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3. Special Event Services: Special Event services (i.e. traffic control, road closures, pedestrian safety) for community festivals or other special events are not included in the General Duties. Costs to provide these services are normally addressed through the COUNTY’S special event permitting process. If services are needed that have not been addressed through the permitting process, MIDWAY may request Additional Services as set forth above and enter into an agreement with the Sheriff to pay for the scope of services needed.

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C. ADMINISTRATION OF LAW ENFORCEMENT SERVICES

- 1. The manner and standards of officer performance, the discipline of officers, and other matters incident to the provision of services under this Agreement, and the control of personnel so employed, shall be subject solely to the control of the Sheriff.
- 2. In the event that MIDWAY, through its elected body or authorized agent, notifies the COUNTY that MIDWAY is dissatisfied with the Additional Services contracted for, the Sheriff shall meet with MIDWAY to discuss issues and resolve problems.

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3. To facilitate the COUNTY'S performance pursuant to this Agreement, MIDWAY agrees that the COUNTY shall have full cooperation and assistance from MIDWAY, its officers, agents and employees. MIDWAY designates its Mayor as the liaison for any issues arising under this Agreement. COUNTY designates the Sheriff as the liaison for any issues arising under this Agreement. The liaisons shall meet as reasonably requested. The purpose of these meetings is to develop short-term and long range plans and to coordinate and analyze law enforcement services and to plan for future budget parameters, and other related public service issues.
4. The COUNTY shall furnish and supply, according to the terms detailed herein, all necessary labor, supervision, equipment, communication facilities and supplies necessary to provide services pursuant to this Agreement, in the Sheriff's reasonable discretion.
5. All deputy sheriffs, dispatchers, corrections officers, record's clerks, administrators, and all other COUNTY personnel performing duties pursuant to this Agreement shall at all times be considered employees of the COUNTY for all purposes.

D. ASSUMPTION OF LIABILITIES/INSURANCE

1. Except as otherwise provided, MIDWAY shall not be called upon to assume any liability for the direct payment of any salaries, wages, or other compensation to any COUNTY personnel performing services pursuant to this Agreement for MIDWAY, and the COUNTY hereby assumes said liabilities.
2. The COUNTY and the MIDWAY are governmental entities under the "Utah Governmental Immunity Act" (UTAH CODE ANN. § 63G-7-101, *et seq.*) (the "Immunity Act.") Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each are responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. The COUNTY and MIDWAY do not waive any defenses otherwise available under the Immunity Act nor does MIDWAY or the COUNTY waive any limits of liability currently provided by the Immunity Act. The COUNTY shall defend, indemnify, save and hold harmless MIDWAY (including their respective elected and appointed officers and employees) from and against any and all demands, liabilities, claims, damages, actions and/or proceedings, in law or equity (including reasonable attorney's fees and costs of suit) relating to or arising from the law enforcement services provided, or to be provided, by the COUNTY hereunder, except where such demands, claims, actions or proceedings resulting from the negligence or misconduct of MIDWAY, or their respective elected or appointed officers or employees. Similarly, MIDWAY shall defend, indemnify, save and hold harmless the COUNTY (including their respective elected and appointed officers and employees) from and against any and all demands, liability, claims, damages, actions and/or proceedings, in law or equity (including reasonable attorney's fees and costs of suit) relating to or arising from the actions or failure to act of MIDWAY, except to the extent where such demands, claims, actions or proceedings may result from the negligence or misconduct by the COUNTY, or its respective elected or appointed officers or employees. Finally, MIDWAY shall indemnify the COUNTY

(including its elected and appointed officers and employees) from and against demands, claims, actions and/or proceedings, in law or equity (including reasonable attorney's fees and costs of suit) relating to or arising from actions of MIDWAY's elected and appointed officers or employees; the COUNTY's enforcement of any ordinances of MIDWAY that ~~are~~ alleged to be unconstitutional; or improper disclosure by MIDWAY of private, controlled, or protected information under the provisions of GRAMA. The COUNTY is considered a governmental entity for purposes of the Act, including the defense and indemnification of employees, volunteers and officials.

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E. TERM OF AGREEMENT/TERMINATION

1. The term of this Agreement shall commence on **January 1, 2021**, and shall continue through **December 31, 2025** ("Term").
2. If either party intends not to renew this Agreement at the end of its Term, the party must notify the other party in writing at least eleven (11) calendar months prior to the end of the contract Term. If either party has not approved a successor agreement at the end of the Term, the COUNTY will continue to provide ~~Additional~~ Services in accordance with this Agreement, and MIDWAY will pay in accordance with this Agreement.
3. Either party may terminate this Agreement at the end of a calendar year and prior to the end of the Term of the Agreement by notifying the other party to this Agreement in writing of their intent to terminate the Agreement at least eleven (11) calendar months prior to the end of the calendar year.
4. Notice to the COUNTY shall be given to the Wasatch COUNTY Sheriff, and Notice to the MIDWAY shall be given to its Mayor.

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F. COST AND PAYMENT

1. The General Duties provided for in this Agreement shall not be paid for by MIDWAY. The COUNTY is responsible to ensure these General Duties are paid for in a lawful manner, in its discretion.
2. Payment for Additional Services and Additional Dispatch Services shall be paid in monthly payments payable thirty days after the date of the invoice. The payment for ~~Additional~~ Services and Additional Dispatch Services shall be as outlined in Addendum ~~A~~ to this Agreement.
3. The Sheriff shall submit a Budget Estimate for the next fiscal year for ~~Additional~~ Services and Additional Dispatch Services to MIDWAY no later than **March 1** of each year. Said Budget Estimate will be for the limited purpose of better enabling MIDWAY to estimate its annual budget and tax levy. The initial year will be for a minimum of 240 hours of deputies' time per month providing ~~Additional~~ Services above the level of service the COUNTY would provide without this Agreement. If MIDWAY wishes to change this 240 hours ~~from year to year~~, the COUNTY will need time to adjust its

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personnel needs based on MIDWAY's request for Additional Services. Hence, COUNTY may allow or deny requests for annual changes from the 240 hours at COUNTY discretion.

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4. If MIDWAY does not make necessary payments for its obligations under this Agreement, MIDWAY will be in breach of the terms of this Agreement, and the COUNTY may take any other lawful measures to collect necessary funding from MIDWAY. Similarly, if COUNTY fails to provide Additional Services or Additional Dispatch Services, COUNTY will be in breach of the terms of this Agreement, and MIDWAY may take any other lawful measures to enforce the Agreement.

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G. GENERAL PROVISIONS

1. Notice to the COUNTY shall be given to the COUNTY Manager and Wasatch COUNTY Sheriff, and Notice to MIDWAY shall be given to the Mayor.
2. It is understood that prosecutions for violations of ordinances or state statutes, together with disposition of all fines collected pursuant thereto, shall be in accordance with state statutes, state rules, and judicial orders.
3. MIDWAY may contract with the COUNTY for additional Law Enforcement Services above and beyond those provided in this Agreement, through a written agreement or addendum to this Agreement.
4. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, signed by authorized representatives of the COUNTY and MIDWAY and attached to the original of this Agreement.
5. Force Majeure. Any failure or delay by a party in the performance of its obligations under this Agreement is not a default or breach of the Agreement or a ground for termination under this Agreement to the extent the failure or delay is due to elements of nature or acts of God, acts of war, terrorism, riots, revolutions, or strikes or other factor beyond the reasonable control of a party (each, a "*Force Majeure Event*"). The party failing or delaying due to a Force Majeure Event agrees to give notice to the other party which describes the Force Majeure Event and includes a good faith estimate as to the impact of the Force Majeure Event upon its responsibilities under this Agreement, including, but not limited to, any scheduling changes. However, should any failure to perform or delay in performance due to a Force Majeure Event last longer than thirty (30) days, or should three (3) Force Majeure Events apply to the performance of a party during any calendar year, the party not subject to the Force Majeure Event may terminate this Agreement by notice to the party subject to the Force Majeure Event.
6. No third party is a beneficiary of this Agreement.

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7. This Agreement shall be governed and enforced according to the laws of the State of Utah. Any disputes that cannot be resolved between the parties shall be resolved through the District Court in Wasatch County.
8. Interlocal Cooperation Act Requirements. In satisfaction of the requirements of the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Ann. 1953, as amended, MIDWAY and the COUNTY agree as follows:
 - a. This Agreement shall be conditioned upon the approval and execution of this Agreement by the MIDWAY and the COUNTY.
 - b. This Agreement shall be administered by the Mayor of MIDWAY and the SHERIFF'S OFFICE. Under this Agreement, the SHERIFF'S OFFICE shall provide Additional Services in the incorporated area of MIDWAY.
 - c. The respective budgets for this Agreement shall be financed, established, and maintained by MIDWAY and the COUNTY.
 - d. This Agreement shall be submitted to the attorneys authorized to represent MIDWAY and the COUNTY for review as to proper form and compliance with applicable law, as established by the respective attorneys affixing their signatures to this Agreement before this Agreement may take effect.
 - e. A duly executed copy of this Agreement shall be immediately filed with the keeper of records for both MIDWAY and the COUNTY.
 - f. This Agreement shall not take effect until it is filed with the keeper of the records of MIDWAY and the COUNTY.
9. Prior Agreements. This Agreement between the parties, and upon the date of the approval of this Agreement by both parties, and starting January 1, 2021, supersedes and replaces all prior agreements between the parties for the provision of Law Enforcement Services to MIDWAY by the COUNTY.

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IN WITNESS WHEREOF, Midway City, as set forth below, by resolution duly adopted by its Council has caused this Agreement to be signed by its Mayor, and the seal of Midway to be affixed hereto on the _____ of _____, 2020, and the County, by resolution of the County Council, has caused this Agreement to be signed by the County Manager on the ____ day of _____.

COUNTY OF WASATCH

MIDWAY CITY

By: _____
 Michael K. Davis
 County Manager

By: _____
 Celeste Johnson
 Midway Mayor

APPROVAL RECOMMENDED:

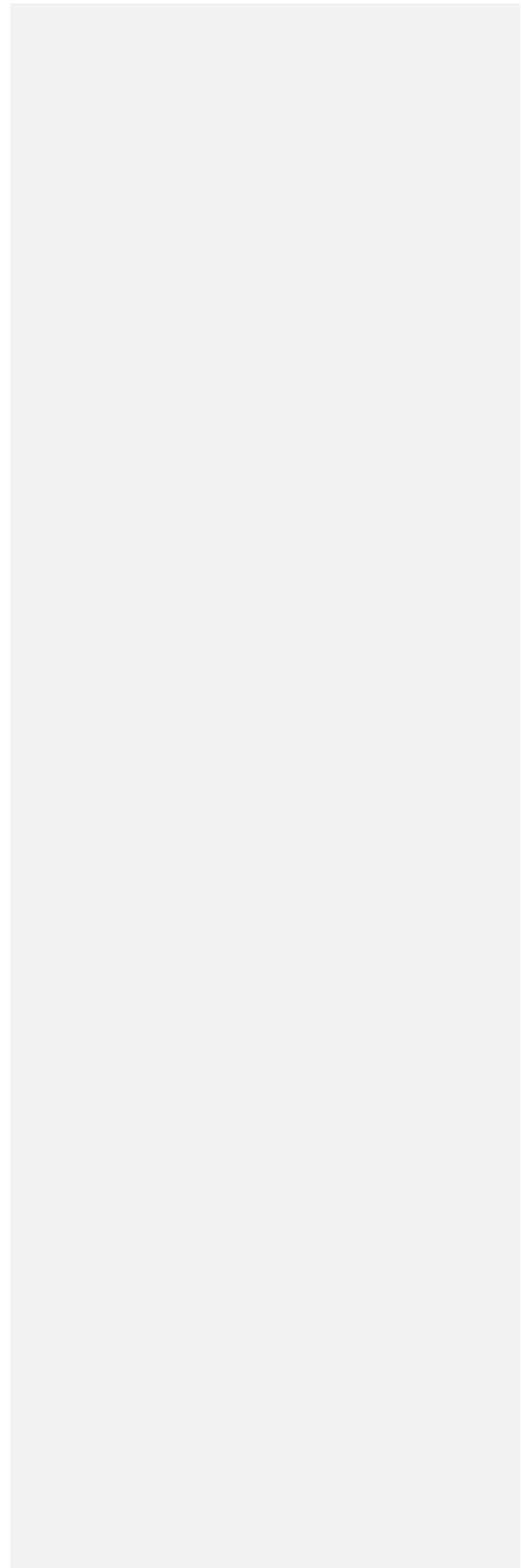
APPROVED AS TO FORM:

By: _____
Jared W. Rigby
Wasatch County Sheriff

By: _____
Corbin Gordon
Midway City Attorney

APPROVED AS TO FORM:

By: _____
Jon Woodard
Deputy Wasatch County Attorney



Addendum A

Additional Services

In addition to the General Duties provided to MIDWAY by the SHERIFF'S OFFICE, MIDWAY desires to further contract with the SHERIFF'S OFFICE for the following Additional Services:

- Midway City has budgeted \$252,000 for Additional Services for the budget year of 2021.
- Midway City contracts with Wasatch County Sheriff's Office for 240 hours of Additional Services per month, to be as directed by the Midway City Mayor, and will include: directed patrol, speed enforcement, noise complaints, special events not covered by the County approval process.
- Initially Midway City requests that the primary focus of the Additional Services be directed traffic patrol with the specific purpose of enforcing traffic laws including speed limits, by giving warnings in an effort to seek voluntary compliance, and issuing speeding citations within Midway City. Traffic patrol shall not be excessively provided during late night/ early morning hours.

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Dispatch Services

MIDWAY also agrees to pay for Additional Dispatch Services. Additional Dispatch Services are not included in the Additional Services. County provides five dispatchers to ensure that the dispatch is staffed with one dispatcher at all times. The cost for additional dispatchers are shared throughout the municipalities based on dispatch volume associated with a municipality, or by population. MIDWAY will pay based on population. Currently, MIDWAY has 15% of the population of Wasatch County, and the additional dispatchers currently run \$300,000 per year. Midway agrees to pay \$45,000 per year, paid monthly, to cover the Additional Dispatch Services.

In order to allow MIDWAY to adjust its budget to this new formula, the Parties agree that the Additional Dispatch Services shall be reduced by 66.67% for 2021, by 33.33% for 2022, and thereafter will not be reduced.

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Cost and Payment

Midway City shall pay the hourly rate of \$87.50 for Additional Services received from Wasatch County Sheriff's Office, which includes \$70.00 per hour for police services and a 25% administrative fee (which includes costs associated with supervision, sheriff time and administrative time).

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Midway shall be required to pay solely for the hours of Additional Services it actually receives. For example, in the event that the Sheriff directed Deputies to not provide Additional

Services, such as in the event of a natural disaster for which the Deputies were needed, MIDWAY would not be required to pay for Additional Services not actually provided in a given month. The Parties agree that the maximum amount of Additional Services provided by Wasatch County Sheriff's Office is 240 hours per month, and that the maximum amount to be paid each month for Additional Services will be up to \$21,000, subject to annual increases as described herein, and unless the parties agree to different amounts in writing.

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Wasatch County Sheriff's Office shall bill Midway City each month for the hours of Additional Service Midway City receives, and for the Additional Dispatch Services. Midway City will only be billed for the hours of Additional Services provided for that month. All billing will be verified and accompanied by the Activity Reports set forth below.

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Payment for Additional Services received shall be made by Midway City within 10 days of receipt of the monthly invoice.

Activity Reports

Along with each monthly bill, Wasatch County Sheriff's Office shall submit to Midway City monthly activity reports which provide hours from the Wasatch County Sheriff's Office vehicle trackers in MIDWAY, listing activities of the Sheriff's Office within Midway City, unless they are confidential in limited cases, and which designate which of those activities qualify as "Additional Services". These reports shall contain, at a minimum, the "Law Incident Summary Report with Times", "Law Incident Report by Nature", the Geofence Violation Report (time spent in MIDWAY), and the total number of traffic stops in MIDWAY that month. The Parties agree that no information will be provided which would violate the Utah Data Privacy Act or other applicable law, or information that would be private, controlled, or protected under GRAMA.

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Annual Review

The parties agree that this Addendum A will be reviewed on an annual basis to update both the scope of Additional Services and Additional Dispatch Services as well as the costs for Additional Services and Additional Dispatch Services. If neither party objects in writing 60 days prior to January 1 of each year the terms to Addendum A for the prior year shall continue for the coming year with an increase in cost for Additional Services and Additional Dispatch Services by 2.5%.

COUNTY OF WASATCH

MIDWAY CITY

By: _____
Mike Davis
County Manager

By: _____
Celeste Johnson
Mayor

APPROVAL RECOMMENDED:

By: _____
Jared Rigby
Sheriff of Wasatch County

APPROVED AS TO FORM:

By: _____
Jon Woodard
Deputy Wasatch County Attorney

Deleted: Scott Sweat