

1 SHARON SPIVAK, Executive Director
City of San Diego Ethics Commission
2 451 A Street, Suite 1410
San Diego, CA 92101
3 Telephone: (619) 533-3476
4

5 Petitioner
6

7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**
9

10 In re the Matter of:) Case No.: 2022-20
11 MIDWAY RISING, LLC, AND ZEPHYR)
ACQUISITIONS GROUP LLC,) **STIPULATION, DECISION, AND**
12 Respondents.) **ORDER**
13)
14)
15)

16 **STIPULATION**

17 **THE PARTIES STIPULATE AS FOLLOWS:**

18 1. Petitioner Sharon Spivak is the Executive Director of the City of San Diego
19 Ethics Commission (Ethics Commission). The Ethics Commission is charged with
20 administering, implementing, and enforcing local governmental ethics laws in the
21 San Diego Municipal Code (SDMC), including the Municipal Lobbying Ordinance,
22 SDMC sections 27.4001, *et seq.*

23 2. At all times referenced in this Stipulation, Midway Rising, LLC (Midway
24 Rising) was the development team, with Zephyr Acquisitions Group, LLC (Zephyr) as a
25 member, in a bid process for selection by the Mayor and San Diego City Council to
26 redevelop what is known as the Sports Arena site. The site encompasses approximately

27 ///

1 48.5 acres in the Midway-Pacific Highway area of San Diego. Midway Rising and
2 Zephyr are collectively referred to as "Respondents."

3 3. This Stipulation will be submitted for the Ethics Commission's consideration at
4 its next scheduled meeting. The agreements outlined in this Stipulation are contingent
5 upon the Ethics Commission's approval of the Stipulation and the accompanying
6 Decision and Order.

7 4. This Stipulation resolves all factual and legal issues raised in this matter by
8 the Ethics Commission without needing an administrative hearing to determine the
9 Respondents' liability.

10 5. Respondents understand and knowingly and voluntarily waive any procedural
11 rights under the SDMC including, but not limited to: a determination of probable cause,
12 the issuance and receipt of an administrative complaint, the right to appear personally in
13 any administrative hearing held in this matter, the right to confront and cross-examine
14 witnesses testifying at the hearing, the right to subpoena witnesses to testify at the
15 hearing, and the right to have the Ethics Commission or an impartial hearing officer hear
16 this matter. Respondents agree that the terms of this Stipulation constitute compliance
17 with SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
18 reference to each violation, and an order.

19 6. Respondents agree to hold the City of San Diego harmless from any claims
20 or damages resulting from the Commission's investigation, this stipulated agreement, or
21 any related matter.

22 7. Respondents acknowledge that this Stipulation is not binding upon any other
23 law enforcement or government agency and does not preclude the Ethics Commission
24 from referring this matter to, cooperating with, or assisting any other law enforcement or
25 government agency regarding this or any other related matter.

26 8. The parties agree that if the Ethics Commission refuses to accept this
27 Stipulation, it shall become null and void. Respondents further agree that if the Ethics
28

1 Commission rejects the Stipulation and a full evidentiary hearing before it becomes
2 necessary, no member of the Ethics Commission or its staff shall be disqualified
3 because of their prior consideration of this Stipulation.

4 **Summary of Law and Facts**

5 9. “Expenditure lobbyist” is defined in SDMC section 27.4002 as “any *person*
6 who makes expenditures for public relations, media relations, advertising, public
7 outreach, research, investigation, reports, analyses, studies, or similar activities
8 designed to influence one or more *municipal decisions*, to the extent that such
9 *payments* total \$5,000 or more within a calendar quarter.” (Emphasis in original).

10 10. Between October 1, 2021, and December 31, 2021, Respondents made
11 \$34,000 in lobbying expenditures in support of their bid to redevelop the Sports Arena
12 property. The money was spent to engage a paid political consultant to advise
13 Respondents and to prepare external public communications regarding the
14 redevelopment. As Respondents spent more than \$5,000 during the calendar quarter
15 on indirect lobbying methods, Respondents met the definition of “expenditure lobbyists”
16 during the fourth quarter of 2021.

17 11. Between January 1, 2022, and March 31, 2022, Respondents made
18 \$36,000 in lobbying expenditures in support of their bid to redevelop the Sports Arena
19 property. The money was spent to engage a paid political consultant to advise
20 Respondents and to prepare external public communications regarding the
21 redevelopment. As Respondents spent more than \$5,000 during the calendar quarter
22 on indirect lobbying methods, Respondents met the definition of “expenditure lobbyists”
23 during the first quarter of 2022.

24 12. Between April 1, 2022, and June 30, 2022, Respondents made \$48,000 in
25 lobbying expenditures in support of their bid to redevelop the Sports Arena property.
26 The money was spent to engage a paid political consultant to advise Respondents and
27 to prepare external public communications regarding the redevelopment. As
28

1 Respondents spent more than \$5,000 during the calendar quarter on indirect lobbying
2 methods, Respondents met the definition of “expenditure lobbyists” during the second
3 quarter of 2022.

4 13. The City of San Diego’s Municipal Lobbying Ordinance requires
5 “expenditure lobbyists” to file disclosure reports in every quarter in which they meet that
6 definition. The quarterly reports must be filed no later than the last day of April, July,
7 October, and January, covering the preceding calendar quarter. SDMC §§ 27.4015 and
8 27.4016.

9 14. These quarterly disclosure reports require the expenditure lobbyist to
10 identify the municipal decision for which the lobbyist made payments, the outcome
11 sought, the total payments made during the quarter, and the name of any person or
12 entity that paid \$100 or more to the expenditure lobbyist for use in making the
13 payments. The disclosure reports do not require detail concerning how the funds are
14 spent or to whom they are paid.

15 15. Respondents failed to file a disclosure report for the fourth quarter of 2021
16 until September 13, 2022. The filing was 226 days late; it had been due January 31,
17 2022.

18 16. Respondents failed to file a disclosure report for the first quarter of 2022
19 until September 13, 2022. The filing was 137 days late; it had been due on April 30,
20 2022.

21 17. Respondents failed to file a disclosure report for the second quarter of 2022
22 until September 13, 2022. The filing was 45 days late; it had been due June 30, 2022.

23 **Count**

24 **Count 1 – Violations of SDMC sections 27.4015 and 27.4016**

25 18. Respondents violated SDMC sections 27.4015 and 27.4016 by failing to
26 timely file three expenditure lobbyist disclosure reports as outlined in paragraphs 15
27 through 17 above.

1 **Factors in Mitigation**

2 19. Respondents fully cooperated with the Commission’s investigation.

3 20. Respondents’ attorney self-reported these violations to the Ethics
4 Commission after being retained to audit the Respondents’ compliance with City
5 ordinances. He then worked with the Respondents to file the forms shortly thereafter.

6 21. The forms would have been filed on September 12, 2022, before the final
7 vote on the Sports Arena matter, but the Respondents faced technical issues with the
8 City’s filing portal.

9 **Factors in Aggravation**

10 22. The following timeline shows major milestones for the Sports Arena
11 redevelopment project. Respondents’ forms were filed after the following actions were
12 taken. At each milestone, the public, other bidders, and City officials were denied and
13 could have benefitted from having information contained in the disclosure forms.

14 A) October 4, 2021 – The City issues a notice of availability (NOA) for
15 the property after the City Council previously passed a resolution to declare the land
16 “surplus.”

17 B) December 3, 2021 – The Department of Real Estate and Airport
18 Management (DREAM) receives five responsive submittals to the NOA, including a
19 submittal from Respondents.

20 C) December 4, 2021 – The City begins a mandatory 90-day “good
21 faith negotiating” period.

22 *January 31, 2022 - Fourth quarter 2021 (October through December 2021)*
23 *disclosure report was due.*

24 D) March 4, 2022 – 90-day “good faith negotiating” period ends.

25 E) March 9, 2022 – Staff presents a recommendation to the City
26 Council’s Land Use and Housing Committee (LUHC) to shortlist the three teams with
27 the highest number of proposed affordable housing units, which includes Respondents.

1 F) April 21, 2022 – Public provides feedback at a LUHC meeting.
2 April 30, 2022 – First quarter 2022 (January through March 2022) disclosure
3 report was due.

4 G) May 23, 2022 – The City Council approves a shortlist of three of the
5 five NOA responders, including Respondents. The public provides feedback at this
6 meeting.

7 H) June 14, 2022 – The City contracts with JLL to provide financial
8 analysis and consulting services. JLL coordinates with staff to prepare a Request for
9 Information (RFI) to obtain additional information from the three shortlisted teams.

10 I) July and August 2022 – JLL and City staff have a comprehensive
11 working session with each team and several direct interactions with individual team
12 representatives. Meetings are also held with the California Department of Housing and
13 Community Development.

14 July 31, 2022 – Second quarter 2022 (April 2022 through June 2022)
15 disclosure report was due.

16 J) September 8, 2022 – At a LUHC meeting, DREAM recommends
17 that Respondents be selected as the redevelopment team. LUHC votes 3-0 (with
18 Councilmember Vivian Moreno absent) to move staff's recommendation with additional
19 requirements.

20 K) September 13, 2022 – The City Council votes to select
21 Respondents as the redevelopment team for the Sports Arena project.

22 23. The three late disclosure reports were filed on September 13, 2022. The
23 final vote to select Respondents as the redevelopment team for the Sports Arena
24 project was taken earlier on the same day the reports were filed.

25 **Conclusion**

26 24. Respondents agree to take necessary and prudent precautions to ensure
27 compliance with all provisions of the City's Lobbying Ordinance in the future.

28

1 25. Respondents acknowledge that the Ethics Commission may impose
2 increased fines concerning future violations of the City's lobbying laws.

3 26. Respondents agree to pay a fine in the amount of \$5,000 for violating
4 SDMC sections 27.4015 and 27.4016. This amount must be paid by check or money
5 order made payable to the City Treasurer by February 3, 2023. The payment will be
6 held pending Commission approval of this Stipulation and execution of the Decision and
7 Order portion set forth below.

8 [REDACTED]
9 DATED: _____
10 Sharon Spivak, Petitioner
11 SAN DIEGO ETHICS COMMISSION

12 [REDACTED]
13 DATED: _____
14 Brad Termini
15 MIDWAY RISING, LLC
16 ZEPHYR ACQUISITIONS GROUP, LLC

17 **DECISION AND ORDER**

18 The Ethics Commission considered the above Stipulation at its meeting on
19 February 9, 2023. The Ethics Commission hereby approves the Stipulation and orders
20 that, per the Stipulation, Respondents pay a fine in the amount of \$5,000.

21 [REDACTED]
22 DATED: _____
23 Caridad Sanchez, Chair
24 SAN DIEGO ETHICS COMMISSION