

**MIDVALE CITY, UTAH
RESOLUTION NO. No. 2020-R-08**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO
AN AGREEMENT WITH METER WORKS REPLACING WARRANTY METERS**

WHEREAS, Midvale City (City) needs to accurately account for water deliveries and usage for proper billing to its customers; and

WHEREAS, the City needs to maintain accurate revenue to fund the water division and its operations; and

WHEREAS, the City does not have the resources to switch out such a large quantity of meters; and

WHEREAS, the City has funds allocated for these purposes for the first year of the contract; and

WHEREAS, the last two years of the contract are contingent upon funding approval by Council each year and not binding; and

WHEREAS, an agreement has been prepared between the City and Meterworks.

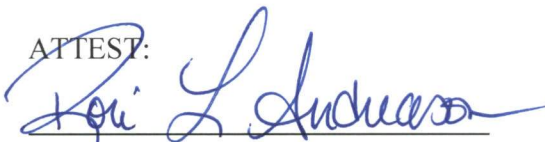
NOW THEREFORE BE IT RESOLVED, that based on the foregoing, the Midvale City Council adopts this resolution authorizing the Mayor to sign the agreement with Meterworks for the replacement of failing meters.

APPROVED AND ADOPTED this 4th day of February 2020.



Robert M. Hale, Mayor

ATTEST:



Rori L. Andreason, MMC
City Recorder

Voting by the City Council

Dustin Gettel

Paul Glover

Quinn Sperry

Heidi Robinson

Bryant Brown

"Aye"

☒
Absent
☒
☒
☒
☒

"Nay"

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Meter Replacement Agreement

This Agreement to replace failed and failing Midvale City Neptune water meters is executed on [date], 2020, by Midvale City, a Utah municipal corporation, and MeterWorks Services, a Utah corporation.

Background

In 2007, Midvale purchased 3,628 water meters from Neptune Technology Group, Inc. with serial numbers beginning with 182 and 183; and

Approximately 1,000 of the purchased water meters have failed and are no longer working; and

Midvale has negotiated with Neptune and MeterWorks to replace the failed meters as well as the other water meters in identified 182- and 183- batches; and

Neptune and MeterWorks are willing to replace and install the 3,628 meters at their 12-year prorated cost; and

Midvale believes this is the most efficient and cost-effective way to replace the failed and potentially failing meters.

Therefore, in consideration of the mutual promises contained in this Agreement, it is agreed:

Agreement

1. Meter Replacement.

- A. **Meter Replacement.** MeterWorks agrees to replace Midvale's 3,628 Neptune water meters with serial numbers beginning with 182 and 183 with Neptune Model T10 water meters at a cost of \$138.50 per meter. MeterWorks agrees to replace and install the water meters over three phases:

<u>Phase</u>	<u>Period of Time</u>	<u>Number of Meters</u>	<u>Compensation</u>
1	January 1 – June 30, 2020	900	\$124,650.00
2	July 1, 2020 – June 30, 2021	1,364	\$188,914.00
3	July 1, 2021 – June 30, 2022	1,364	\$188,914.00
Total		3,628	\$502,478.00

- B. **Prioritized Installations.** MeterWorks recognizes that a significant number of Midvale's current Neptune water meters have failed or are likely to fail. Subject to the number of meters per phase identified in Subsection 1(A), MeterWorks agrees to prioritize its replacement of Midvale's current water meters as identified by Midvale.
 - C. **Damaged Water Pipes.** In the event that an associated water pipe is damaged while MeterWorks is replacing a meter, MeterWorks will turn off the water if possible, notify Midvale, and remain onsite until a Midvale employee responds.
 - D. **Verification.** Midvale may perform inspections and tests to verify MeterWorks is correctly installing replacement meters and that the replacement meters are functioning properly.
2. **Compensation.**
- A. **Amount.** Midvale will pay MeterWorks \$138.50 for each identified water meter replaced with a new, working Neptune Model T10 water meter. The total compensation amount per phase may not exceed the amount identified for the associated phase as established by Subsection 1(A).
 - I. **Phase 3.** For Phase 3, Meterworks will honor the compensation amount per meter identified in Subsection 2(A) so long as Midvale places the order for Phase 3 on or before August 31, 2021. If the order is placed after August 31, 2021, Meterworks and Midvale will negotiate a new meter price.
 - B. **Invoices.** While work is being completed, MeterWorks agrees to submit invoices to Midvale on the first day of each month. The invoice must be itemized, describe the work performed, and have sufficient documentation of the work performed. Within 30 days of receiving the invoice, Midvale will pay MeterWorks for any uncontested charges. The Parties will resolve any disputed charges under Section 10 of this Agreement.
 - C. **Assumptions.** The price in Subsection 2(A) assumes that the old meters and their associated shut-off valves are readily accessible, and the new meters may be located in a standard AWWA meter lay length, meter setter, meter horn, or meter yoke.
 - D. **Deficiencies.** If MeterWorks finds an identified meter that does not meet the assumptions identified in Subsection 2(C), MeterWorks will notify Midvale and describe the deficiency. Midvale will have a reasonable period of time to cure the deficiency. If Midvale cannot correct the deficiency within a reasonable period of time, MeterWorks and Midvale agree to discuss options to complete the replacement of the deficient meter.

3. Schedule.

- A. Phases.** For each phase, MeterWorks will complete its replacement and installation of new meters within 2 months from the beginning of each phase.
- B. Acts of God.** In the event that a Party is unable to perform any of its obligations under this Agreement due to events beyond its reasonable control, the Party must notify the other Party of its inability to meet its obligations and identify the events beyond its reasonable control. The other Party may either modify the schedule under Subsection 3(A) of the Agreement to reasonably accommodate the unforeseen event, or it may terminate the Agreement under Subsection 7(A). Events beyond a Party's reasonable control include, but are not limited to, fires, floods, accidents, strikes, riots, acts or threats of terrorism, epidemics, and natural disasters.
- C. Urgency.** MeterWorks recognizes that meters have already failed, and Midvale is not able to accurately track water usage at the failed meters. As a result, Midvale and its water users are potentially suffering losses every day the meters are not functioning. MeterWorks recognizes that time is of the essence.

4. Warranty.

- A. Representations.** MeterWorks represents and warrants that its replacement and installation of new meters is free from defects in materials and workmanship. In the event that a meter has not been replaced and installed correctly, MeterWorks agrees to cure the defect within 30 days from Midvale's written notification so long as the notification is received within 1 month from the completion of replacement and installation.
- B. Neptune Meters.** MeterWorks is not responsible for any warranties regarding the provided Neptune Meters. If any meters are discovered to be defective during the term of this Agreement, MeterWorks agrees to assist Midvale in making warranty claims to Neptune.

5. Term.

- A. Term.** This Agreement will become effective on date of execution. The Agreement will expire upon the completion of the meter replacement work identified under Subsection 1(A) and complete payment to MeterWorks as established by Subsection 2(A).
- B. Survival.** The following Sections will survive the expiration or termination of this Agreement:

 - i. Section 4 'Warranty;' and

- ii. Section 6 ‘Indemnification.’

6. Indemnification.

A. MeterWorks.

- I. **Indemnification.** MeterWorks agrees to indemnify, defend, and hold harmless Midvale City and its officials, officers, employees, volunteers, and agents from and against all damages, liabilities, and claims (including legal fees) arising from MeterWorks’ performance under this Agreement.
- II. **Limitation of Liability.** Midvale recognizes that MeterWorks has no control over the condition of the existing pipes. Unless caused by the gross negligence or willful misconduct of MeterWorks, MeterWorks is not responsible for damage to the associated water pipes or any damage arising from a damaged water pipe when replacing a meter.

- B. **Midvale.** Midvale City agrees to indemnify, defend, and hold harmless MeterWorks and its officers, employees, and agents from and against all damages, liabilities, and claims (including legal fees) arising from Midvale City’s performance under this Agreement.

7. Insurance.

- A. **Coverage Amounts.** MeterWorks must retain, at a minimum, the following insurance coverages for the term of this Agreement:

- i. Commercial General Liability: \$2,000,000 combined single limit per occurrence and \$3,000,000 in the aggregate;
- ii. Automobile Liability: \$1,000,000 per each accident, single limit, bodily injury and property damage combined; and
- iii. Worker’s Compensation Insurance at statutory limits.

- B. **Additional Endorsements.** MeterWorks must also carry the following endorsements:

- i. Pollution—Drinking Water; and
- ii. Professional Liability—Contractors.

If MeterWorks uses subcontractors in performance of this Agreement, MeterWorks must also carry an Independent Contractor endorsement.

- C. **Additional Insured.** Except for its Worker's Compensation Insurance policy, MeterWorks must list Midvale City as an additional insured on the insurance policies required under Subsections 7(a) and 7(b) of this Agreement. This must include ongoing and completed operations.
- D. **Primary Insurance.** Insurance under this Section is required to be primary, non-contributory, and not in excess of any insurance or self-insurance policies available to or maintained by Midvale.
- E. **Notice of Cancellation or Reduction.** Insurance under this Section must require the MeterWorks' insurer to provide at least 10 days written notice to Midvale prior to the cancellation or reduction of coverage.

8. **Termination.**

- A. **Convenience.** Either Party, by providing written notice, may terminate this Agreement at its convenience at any time prior to MeterWorks ordering replacement meters in performance of this Agreement. Termination under this Section will not be considered a default by the terminating Party. Midvale agrees to pay MeterWorks for any work performed under this Agreement prior to the termination. MeterWorks must provide reasonable, detailed documentation to Midvale for any work performed prior to the termination.
- B. **Default.**
 - I. **MeterWorks.** In the event that MeterWorks terminates this Agreement because of Midvale's default, Midvale will pay MeterWorks for any completed work within 30 days of the termination of this Agreement. Additionally, Midvale will pay MeterWorks 10% of the compensation amount listed in Subsection 2(A) of this Agreement for the current phase within 30 days of the termination of this Agreement as liquidated damages.
 - II. **Midvale.** In the event that Midvale terminates this Agreement because of MeterWorks' default, Midvale will pay MeterWorks for any completed work minus 10% of the compensation amount listed in Subsection 2(A) of this Agreement for the current phase within 30 days of the termination of this Agreement. If the 10% exceeds the final payment owed to MeterWorks, MeterWorks agrees to reimburse Midvale the difference within 30 days of the termination of the Agreement. The 10% of the compensation amount listed in Subsection 2(A) of this Agreement for the current phase will be considered liquidated damages.
- C. **Non-funding.** The Parties acknowledge that funds are not presently available for Midvale's performance under this Agreement beyond June 30, 2020. Midvale's ability to pay compensation under Section 2 beyond June 30, 2020, is contingent

upon funds being appropriated in future fiscal years. In the event that insufficient funds are appropriated, the Agreement will terminate and become null and void on the first day of the fiscal year for which funds were not sufficiently appropriated. In the event of a reduction in appropriations, the Agreement will terminate and become null and void on the last day before the reduction becomes effective. Termination of this Agreement under this Section will not be considered a breach of this Agreement. Such termination will be without any penalty or liability.

9. Default.

- A. MeterWorks.** In the event that Midvale defaults under this Agreement, MeterWorks may pursue the following remedies upon written notice of the default and the remedy to Midvale.
 - I. Stop Performance.** MeterWorks may stop performance under this Agreement until Midvale has cured the default.
 - II. Interest.** MeterWorks may charge Midvale 1.5% interest, compounded monthly, on any unpaid amount owed by Midvale.
 - III. Termination.** If Midvale has not cured the default within a reasonable amount of time, MeterWorks may terminate this agreement in accordance with Subsection 8(B)(I) of this Agreement.
- B. Midvale.** In the event that MeterWorks defaults under this Agreement, Midvale may pursue the following remedies upon written notice of the default and the remedy to MeterWorks.
 - I. Suspend Performance.** Midvale may suspend MeterWork's performance under this Agreement until MeterWorks has cured the default.
 - II. Withhold Payment.** Midvale may withhold payment until MeterWorks has cured the default.
 - III. Reimbursement.** If MeterWorks fails to cure the default within a reasonable amount of time, Midvale may cure the default and may charge MeterWorks with any costs Midvale incurs in curing the default.
 - IV. Termination.** If MeterWorks has not cured the default within a reasonable amount of time, Midvale may terminate this Agreement in accordance with Subsection 8(B)(II) of this Agreement.
- C. Other Legal Remedies.** The list of remedies under this Section is not exhaustive. Either Party may pursue any other right or remedy available to it, either in law or equity, on account of the other Party's default.

10. Dispute Resolution.

Any dispute arising under or relating to this Agreement will be resolved in the following order:

- a. Good faith negotiations between the Parties;
- b. Good faith mediation with a mutually agreed upon mediator and with each Party paying one half of the mediation costs; and
- c. Litigation. If a Party incurs any legal or attorney's fees in litigation to resolve a dispute arising under or relating to this Agreement, the prevailing Party may recover such fees.

11. Applicable Laws.

MeterWorks agrees to comply with all applicable laws, rules, and regulations. This includes, but is not limited to, not discriminating against any individual in an employment decision because of the individual's race, color, sex, age, religion, national origin, disability, pregnancy, familial status, veteran status, genetic information, sexual orientation, or gender identity.

12. Notice.

Any notice required or permitted under this Agreement will be deemed sufficiently given or served if personally delivered or sent by United States Certified Mail, return receipt requested, addressed as follows:

Midvale City
Attn: Public Works Director
7505 S. Holden Street
Midvale, Utah 84047

MeterWorks Services
Attn: Ken Sheffield
1199 West 850 North
Centerville, UT 84014

The Parties each have the right, from time to time, to change their respective notice addresses under this Section by written notice to the other Party.

13. Relationship of Parties.

MeterWorks is an independent contractor. The Parties have not created any other legal relationship with each other including, but not limited to, that of employee or agent of the other Party. Neither Party has the authority or power to bind the other Party.

14. Modification.

The Parties may modify this Agreement with prior written consent by both Parties. Any other modification is prohibited and invalid.

15. Assignment and Delegation.

A Party may not assign or delegate any part of this Agreement without the other Party's prior written consent. A Party may not unreasonably withhold its consent.

16. Subcontractors.

- A. Prior Consent.** If MeterWorks subcontracts with any entity for performance under this Agreement, it must first receive written consent from Midvale. Midvale may not withhold its consent unreasonably.
- B. Responsibility.** MeterWorks is responsible for the acts or omissions of any of its subcontractors in the performance of this Agreement. Any subcontractor retained by MeterWorks to perform work under this Agreement is subject to the requirements of this Agreement.
- C. Indemnification.** If MeterWorks subcontracts with any entity for performance under this Agreement, MeterWorks agrees to indemnify, defend, and hold harmless Midvale City and its officials, officers, employees, volunteers, and agents from and against all damages, liabilities, and claims (including legal fees) arising from MeterWorks' subcontractor's performance under this Agreement.

17. Conflict of Interest.

- A. Relationship.** MeterWorks represents and warrants that none of its officers, employees, or immediate family members of its officers or employees is or has been an elected official, employee, board member, commission member, or agent of Midvale or its affiliates who influences Midvale's procurement process. This includes, but is not limited to, anyone involved in the Midvale's drafting of procurement and project documents.
- B. Gift.** MeterWorks represents and warrants that it has not provided any compensation or gift in any form, whether directly or indirectly, to an elected official, employee, board member, commission member, or agent of Midvale or its affiliates who influences Midvale's procurement process. This includes, but is not limited to, anyone involved in the Midvale's drafting of procurement and project documents.

18. Status Verification.

Under the Utah Immigration Accountability and Enforcement Act, Utah Code Ann. §§63G-12-101 to 402, any entity contracting with a public employer is required to participate in Utah's Status Verification System. MeterWorks will provide Midvale a certification of its compliance with this requirement prior to performing work under this Agreement.

19. Waiver.

Failure by either Party to insist upon the strict performance of any condition of this Agreement or to exercise any right or remedy found under the Agreement does not constitute a waiver. Either Party may waive any of its rights or any conditions by written notice to the other Party. No waiver may affect or alter the remainder of this Agreement. Every other condition in the Agreement will remain in full force with respect to any existing or subsequently occurring default.

20. Severability.

In the event that any provision of the Agreement is held to be void, the voided provision will be considered severable from the remainder of the Agreement and will not affect any other provision in the Agreement. If the provision is invalid due to its scope or breadth, the provision will be considered valid to the extent of the scope or breadth permitted by law.

21. Governing Law and Venue.

This Agreement is governed, construed, and interpreted under the laws of the State of Utah. Any suit arising from this Agreement must be brought within the appropriate court in Salt Lake County, Utah.

22. Background.

The Background is incorporated into the Agreement.

23. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior understandings or agreements between the Parties.

Signature page to follow.

Midvale and MeterWorks have read and understand the terms of this Meter Replacement Agreement. Both Parties have demonstrated their willingness to enter into the Agreement as of the date above by having their Authorized representatives sign below.

MIDVALE CITY

Robert M. Hale, Mayor

ATTEST:

Rori L. Andreason, City Recorder

MeterWorks Services

[Name], [Title]