

MIDVALE CITY, UTAH

RESOLUTION NO. No. 2021-R-03

A RESOLUTION APPROVING THE MAYOR TO ENTER INTO AN AGREEMENT WITH LEWIS, YOUNG ROBERTSON AND BURNINGHAM (LYRB) TO CONDUCT A FEE RATE STUDY ON MIDVALE CITY'S WATER AND SEWER UTILITIES

WHEREAS, Midvale City (Midvale) owns and operates both water and sewer utilities; and

WHEREAS, Midvale must have adequate funding now and, in the future, to provide water and sewer services; and

WHEREAS, Midvale desires to confirm that its current and future water and wastewater rates are sufficient to accommodate adequate service, accounting for all operational costs and growth over the next five to ten years; and

WHEREAS, Midvale has requested proposals from qualified consultants to perform a rate study on the utilities; and


WHEREAS, LYRB has been selected by staff through a review process based on experience, scope, timeline and qualifications to conduct the rate studies.

NOW THEREFORE BE IT RESOLVED, that based on the foregoing, the Midvale City Council approves this resolution, authorizing the Mayor to enter into an agreement with LYRB to conduct a fee rate study and the water and sewer utilities.

APPROVED AND ADOPTED this 5th day of January 2021.


Robert M. Hale, Mayor

ATTEST:


Rori L. Andreason, MMC
City Recorder



Voting by the City Council	"Aye"	"Nay"
Dustin Gettel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Glover	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Quinn Sperry	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heidi Robinson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bryant Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Water and Wastewater Utility Rate Study Agreement

This Agreement to provide complete a water and wastewater utility rate study is executed on December 30, 2020, by Midvale City, a Utah municipal corporation, and Lewis Young Robertson & Burningham (“LYRB”), a Utah domestic, for profit corporation.

Background

Midvale operates a water utility that provides culinary water to approximately 34,000 residents; and

Midvale operates a wastewater utility that provides sewer service to approximately 8,100 residents; and

In 2018, Bowen Collins created a Sewer Master Plan for Midvale; and

In 2020, Hansen Allen and Luce Engineering created a Water Master Plan for Midvale; and

Midvale desires to confirm that its current and future water and wastewater rates are sufficient to accommodate growth over the next five to ten years; and

Midvale issued a request for proposals in November 2020 for qualified firms to complete a rate study for Midvale’s water and wastewater utilities and provide recommendations for rates and other requirements; and

LYRB is qualified to conduct the study requested by Midvale; and

LYRB demonstrated a desire to complete the study by submitting a timely and complete proposal to Midvale; and

In compliance with Midvale Municipal Code 3.02.130, Midvale determined that LYRB was the responsive, responsible bidder.

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

Agreement

1. Utility Rate Study.

LYRB agrees to conduct a comprehensive cost of services and rate design study for Midvale’s water and wastewater utilities. LYRB will complete the following elements as part of the study:

- A. Current Rate Structure.** LYRB will review historical account information, existing revenues, compare revenues to expenses, and determine if there are any deficiencies in the current rate structure.
- B. Future Rate Structure.** Using the population projections included in the 2020 Hansen Allen and Luce Water Master Plan, LYRB will determine the required rates and structure to meet operational expenses, capital improvement and funding costs for future needs of the systems.
- C. Reserve Policy Recommendation.** LYRB will review the funding requirements for capital equipment replacement and recommend a prudent reserve policy for operations, capital replacement and emergencies.
- D. Water Utilization.** LYRB will review current water utilization and determine if a large water use rate is necessary.
- E. Rate Structure Recommendation.** LYRB will provide a recommended rate structure that will recover projected revenue requirements for a five-year period. Components of the base rates and volume charges should be clearly identified and legally defensible, meeting all State and Federal requirements.
- F. Miscellaneous Fees.** LYRB will review miscellaneous fees to assure they are reasonable and not outdated.
- G. Financing Options.** LYRB will study impact fee options and levels, and methodology to address growth needs.
- H. Municipal Comparison.** LYRB will provide general comparison information on current policies, fees and trends related to payment options, connections, disconnects, etc., in comparison to other local and similar water and sewer service utilities.
- I. Rate Recommendation.** LYRB will recommend rates for a five-year period that will generate the level of revenue needs with a distribution of those costs on an equitable basis by customer category. Provide "sample bills" for all customer categories illustrating recommended rate increases.
- J. Spreadsheet.** LYRB will provide Midvale with a MS Excel spreadsheet with rate options so that Midvale staff can manipulate it for future evaluation.
- K. Presentations.** LYRB will present the findings of the study at one public hearing and at any City Council meetings in which the Utility Rate Study is on the agenda.

- L. Communication Materials.** LYRB will prepare communications materials for the public including, but not limited to, poster boards for public open house and one-page publications.

2. Document Retention.

LYRB must retain all working papers, reports, and records relating to the Utility Rate Study, at LYRB's sole expense, for a minimum of five years. Midvale may extend the retention period by written notice to LYRB. LYRB agrees to make all documents related to the Utility Rate Study available to Midvale or third parties upon Midvale's request.

3. Schedule.

- A. Term.** The Agreement will become effective on the execution date at the top of Agreement. The Agreement will expire five years from the Effective Date, unless terminated earlier under Section 8 or extended by Midvale under Section 2.
- B. Schedule.** LYRB agrees to complete the Utility Rate Study in accordance with the schedule attached as Exhibit A.
- C. 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 Section 3(B) of the Agreement to reasonably accommodate the unforeseen event, or it may terminate the Agreement under Subsection 8(A) of this Agreement. 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.
- D. Midvale-caused Delay.** Both Parties recognize that Midvale's cooperation is necessary for LYRB to successfully perform the Utility Rate Study in accordance with the schedule in Section 3(B). In the event that Midvale unreasonably delays LYRB's performance under Section 3(B), the schedule in Section 3(B) will be extended by the number of days LYRB's performance was unreasonably delayed by Midvale.
- E. Time.** Time is of the essence.

4. Standard of Care.

LYRB represents that its performance under this Agreement will be completed in a manner consistent with the level of care and skill ordinarily exercised by the members of LYRB's profession currently practicing in the same locality and under similar conditions.

5. Compensation.

- A. Cost.** Midvale agrees to pay LYRB a total of \$15,550.00 to complete the Utility Rate Study and for Document Retention.
- B. Invoices.** In order to receive payment, LYRB will submit invoices to Midvale. 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 LYRB for any uncontested charges. The Parties will resolve any disputed charges under Section 10 of this Agreement.
- C. Non-Funding.** Although it is not anticipated that the Utility Rate Study will require additional payments after June 30, 2021, the Parties acknowledge that funds are not presently available for Midvale's performance under this Agreement beyond June 30, 2021. Midvale's ability to pay compensation under this Section beyond June 30, 2021, 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 City 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.

6. Insurance.

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

 - I. Commercial General Liability: \$1,000,000 combined single limit per occurrence and \$2,000,000 in the aggregate;
 - II. Automobile Liability: \$1,000,000 combined single limit;
 - III. Professional Negligence/Errors and Omissions: \$1,000,000 per occurrence; and
 - IV. Worker's Compensation Insurance at statutory limits.
- B. Additional Insured.** Except for its Worker's Compensation Insurance policy, LYRB must list Midvale City as an additional insured on the insurance policies required under Subsections 6(A) of this Agreement.

- C. 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.

7. Indemnification.

- A. LYRB.** LYRB 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 LYRB's performance under this Agreement.
- B. Midvale.** Midvale City agrees to indemnify, defend, and hold harmless LYRB 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.

8. Termination.

- A. Convenience.** Midvale may terminate this Agreement at its convenience at any time by providing LYRB 30-day prior written notice. Termination under this Section will not be considered a default. Midvale agrees to pay LYRB for any work performed under this Agreement prior to the termination. LYRB must provide reasonable, detailed documentation to Midvale for any work performed prior to the termination.
- B. Cause.**
 - I. LYRB.** In the event that LYRB terminates this Agreement because of Midvale's default, Midvale will pay LYRB for any completed work within 30 days of the termination of this Agreement.
 - II. Midvale.** In the event that Midvale terminates this Agreement because of LYRB's default, Midvale will pay LYRB for any completed work within 30 days of the termination of this Agreement.

9. Default.

- A. LYRB.** In the event that Midvale defaults under this Agreement, LYRB may pursue the following remedies upon written notice of the default and the remedy to Midvale.
 - I. Stop Performance.** LYRB may stop performance under this Agreement until Midvale has cured the default.
 - II. Interest.** LYRB 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, LYRB may terminate this agreement in accordance with Subsection 8(B)(I) of this Agreement.

B. Midvale. In the event that LYRB defaults under this Agreement, Midvale may pursue the following remedies upon written notice of the default and the remedy to LYRB.

I. Suspend Performance. Midvale may suspend LYRB's performance under this Agreement until LYRB has cured the default.

II. Withhold Payment. Midvale may withhold payment until LYRB has cured the default.

III. Termination. If LYRB 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.

D. Nonexclusive. The remedies available to the Parties are nonexclusive. Either Party may use any combination of remedies available.

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.

LYRB 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: Fawn Hullinger
7505 S. Holden Street
Midvale, Utah 84047

LYRB
Attn: Mr. Philpot IV Vice President
41 N. Rio Grande, STE 101
Salt Lake City, UT 84101

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.

LYRB 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 not modify this Agreement without prior written consent by both Parties.

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 LYRB 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. LYRB is responsible for the acts or omissions of any of its subcontractors in the performance of this Agreement. Any subcontractor retained by LYRB to perform work under this Agreement is subject to the requirements of this Agreement.

C. Indemnification. If LYRB subcontracts with any entity for performance under this Agreement, LYRB 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 LYRB's subcontractor's performance under this Agreement.

D. Status Verification. If LYRB subcontract with an entity that performs on-site work at any Midvale location, the subcontractor must be compliant with Section 19 of this Agreement. Prior to performing any work, the subcontractor must provide certification of its compliance prior to performing any work under this Agreement.

17. Conflict of Interest.

A. Relationship. LYRB 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 or Midvale's selection of a bidder.

B. Gift. LYRB 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 or Midvale's selection of a bidder.

18. Government Records Access and Management Act.

Midvale is a governmental entity that is subject to Utah's Government and Records Access and Management Act, Utah Code Ann. §§ 63G-2-101 to 901. Any documents produced or collected under this Agreement may be subject to public access. If LYRB believes that a document should be protected under Utah Code Ann. §§ 63G-2-305(1) or (2), LYRB must provide a written claim of business confidentiality to Midvale that complies with Utah Code Ann. § 63G-2-309(1). LYRB agrees to cooperate with and to supply any requested records to Midvale with any public records request. This obligation will survive any suspension or termination of this Agreement.

19. 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. LYRB will provide Midvale a certification of its compliance with this requirement prior to performing work under this Agreement.

20. 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.

21. 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.

22. Governing Law.

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.

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 City and LYRB have read and understand the terms of this Water and Wastewater Utility Rate Study Agreement. Both Parties have demonstrated their willingness to enter into the Agreement as of the date above by having their Authorized representatives sign below.



ATTEST:


Rori L. Andreason, City Recorder

MIDVALE CITY


Robert M. Hale, Mayor

Lewis Young Robertson & Burningham

Mr. Philpot IV, Vice President