

Asset Management/Work Order Software Agreement

This Agreement to provide Midvale City with Asset Management/Work Order Software is executed on [execution date], 2019, by Midvale City, a Utah municipal corporation, and [Entity Name], a [Entity Type].

Background

Midvale currently uses iWorQ as its asset management/work order software.

Midvale desires a new asset management/work order software that is GIS-centric for its Public Works Department to streamline work management practices and establish the foundation for a useful and informative asset management system.

Midvale published a request for proposals seeking for a new asset management/work order software that would better meet its Public Works Department's needs.

[Entity Name]'s [software name] is an asset management/work order software that provides [list of functions] ("AMS").

[Entity Name] responded to Midvale's request for proposals and expressed its desire to provide Midvale with its AMS.

After reviewing the submissions, Midvale determined that [Entity Name] was the responsive responsible bidder and awarded the contract to provide an AMS to [Entity Name] in accordance with Midvale Municipal Code 3.02.130.

[Entity Name] accepted the award and is willing provide Midvale with its AMS.

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

Agreement

1. Asset Management/Work Order Software.

- a. **Functions.** [Entity Name] agrees to provide Midvale with an AMS that provides the following functions:
 - i. Direct integration with City's GIS database;
 - ii. Live connection between AMS and City's GIS database that reflects changes immediately across both platforms;

- iii. Consumption of ESRI server-published services as rest end points for interactive maps and work order tracking;
 - iv. Direct link with Blue Stakes of Utah 811 to receive, track, manage, and report on Bluestakes requests;
 - v. Local hosting of AMS data on Midvale’s Microsoft Windows and SQL servers;
 - vi. Mobile-based access compatible with Apple- and Android-based platforms;
 - vii. End user-customizable forms and fields;
 - viii. Interactive map-based access to asset information and work order creation;
 - ix. User-specific open work orders/requests are “flagged” on the interactive map;
 - x. Management of a call log, requests, and work orders;
 - xi. Scheduled maintenance for assets with the auto-generation of work orders;
 - xii. Management of asset database;
 - xiii. Preconfigured triggers and notifications for assigned tasks;
 - xiv. End user dashboard and reports;
 - xv. Tracking of asset criticality ratings, life cycle costs, and condition assessments; and
 - xvi. Integrated inventory that tracks parts and materials and alerts users at set reorder points.
- b. Connections.** [Entity Name] agrees to provide Midvale with an AMS that is compatible and connected or linked with the following software:
- i. ESRI ArcGIS;
 - ii. Caselle;
 - iii. iWorQ;
 - iv. OnBase; and

- v. [Any other compatible City-owned software]
- c. **License.** [Entity Name] agrees to provide Midvale with a perpetual license for Midvale's ongoing use of the AMS.

2. Implementation.

- a. **Data Hosting.** [Entity Name] will coordinate with Midvale's IT Department to install and setup the AMS on Midvale's servers. [Entity Name] will coordinate with Midvale's IT Department to host the AMS's data on the same servers.
- b. **Connections.** [Entity Name] will coordinate with Midvale's staff to connect the AMS with Midvale's GIS database. [Entity Name] will coordinate with Midvale's staff to connect or link the AMS with Midvale's software and their respective databases listed in Section 1(b).
- c. **Initial Customization.** [Entity Name] will collaborate with Midvale staff and perform an initial customization of the AMS to establish a front-end interface, work management processes, templates, forms, and fields that reflect Midvale staff's preferences and coincide with Midvale's workflow process.
- d. **Training.** [Entity Name] will provide training to Midvale's staff on how to use the AMS. The level of training provided must be adequate for each type of Midvale's users.
- e. **Data Migration.** In the event that Midvale needs data migrated from their existing asset management software, [Entity Name] will complete the data migration to the AMS. Prior to any data migration, [Entity Name] will coordinate such migration with Midvale's IT Department.

3. Support Services.

- a. **End User Assistance.** Upon Midvale's acceptance of the AMS, [Entity Name] will be available eight hours per day Monday through Friday to provide technical assistance for Midvale's end users. Such assistance must be provided in any combination of phone, email, live-chat, or in-person support.
- b. **Technical Assistance.** Upon acceptance of the AMS, [Entity Name] will be available 24 hours per day seven days per week to provide technical assistance for Midvale's IT Department. Such technical assistance is limited to emergencies, AMS upgrades, and AMS maintenance that may impact Midvale's servers or use of the AMS. Such assistance must be provided in any combination of phone, email, live-chat, or in-person support.
- c. **Meetings.** Upon Midvale's acceptance of the AMS, [Entity Name] will be available for monthly onsite meetings with Midvale. After one year, [Entity

Name] will be available for onsite meetings with Midvale once per quarter for a period of one year.

- d. **Software Maintenance/Repair.** [Entity Name] will use reasonable efforts to ensure that the AMS is free from errors. [Entity Name] will use its best efforts to repair any AMS errors that are impacting Midvale's use of the AMS.
- e. **Software Updates.** [Entity Name] agrees to coordinate with Midvale's staff to install and implement any updates or new versions of the AMS. At the request of Midvale, [Entity Name] will train Midvale's staff on any updates or new versions of the AMS.

4. **Schedule.**

- a. **Term.** This Agreement will become effective on the execution date at the top of this Agreement. The Agreement will terminate, unless terminated earlier under Section 11, at the conclusion of Support Services under Section 4(c).
- b. **AMS Implementation.** [Entity Name] agrees to provide an AMS that meets the requirements of Section 1 and complete its implementation in accordance with Section 2 by [completion date]. In order to ensure that [Entity Name] will meet the completion date, [Entity Name] agrees to complete implementation milestones by the respective dates listed in Exhibit A.
- c. **Support.** Upon Midvale's acceptance of the AMS and its implementation, [Entity Name] agrees to provide the Support Services under Section 3 for a period of [#] years.
- d. **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 4 of the Agreement to reasonably accommodate the unforeseen event, or it may terminate the Agreement under Subsection 11(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.
- e. **Midvale-caused Delay.** Both Parties recognize that Midvale's cooperation is necessary for [Entity Name] to successfully provide and implement its AMS in accordance with the schedule in Section 4(b). In the event that Midvale unreasonably delays [Entity Name]'s performance under Section 2, the schedule in Section 4(b) will be extended by the number of days [Entity Name]'s performance was unreasonably delayed by Midvale.
- f. **Time.** Time is of the essence.

5. Acceptance.

- a. Testing and Inspections.** Upon completion of each milestone identified in Exhibit A, Midvale may perform tests and inspections on the AMS to verify that each milestone of the AMS was completed in accordance with this Agreement. If requested, [Entity Name] will reasonably assist Midvale in any tests and inspections.
- b. Cure.** In the event that Midvale determines that a milestone of the AMS was not completed or is not performing in accordance with this Agreement, [Entity Name] agrees to cure any identified deficiencies prior to Midvale's acceptance.
- c. Acceptance.** Midvale will accept the AMS when it has determined that the AMS has been completed and is performing in accordance with Sections 1 and 2 of this Agreement.

6. Warranty.

- a. Quality.** [Entity Name] warrants to Midvale that:
 - i. The AMS is new;
 - ii. The AMS is merchantable;
 - iii. The AMS is free from defects in materials and workmanship;
 - iv. The AMS is free from code that may damage or limit the City's access to or use of the City's data, network, equipment, or property;
 - v. The AMS does not infringe on any third-party's intellectual property rights; and
 - vi. The AMS conforms to the requirements of Section 1 of this Agreement.
- b. Performance.** For the term of this Agreement, [Entity Name] warrants to Midvale that the AMS will substantially perform in accordance with Section 1 so long as the AMS is operated in accordance with [Entity Name]'s instructions.
- c. [Other Warranty Provisions].**

7. Compensation.

- a. Amount.** Midvale agrees to pay [Entity Name] \$[total bid amount] for its performance under this Agreement.

- b. Not-to-exceed.** [Entity Name] agrees that it may not exceed \$[bid amount] for its performance under this Agreement. If the cost of performing under this Agreement exceeds this amount, [Entity Name] agrees to fulfill its obligations without seeking additional compensation from Midvale.
- c. Payments.**

 - i. AMS Licensing.**

 - 1. Amount.** Upon acceptance of the AMS, Midvale will pay [Entity Name] \$[licensing amount] to provide perpetual licensing for the AMS.
 - ii. Implementation.**

 - 1. Amount.** Midvale will pay [Entity Name] \$[implementation amount] to complete the work under Section 2.
 - 2. Payment Limit.** The total payments to [Entity Name] for work performed under Section 2 may not exceed \$[75% of implementation amount] prior to acceptance of the AMS.
 - 3. Acceptance.** Upon acceptance of the AMS, Midvale will pay [Entity Name] \$[25% of implementation amount].
 - iii. Support Services.**

 - 1. Amount.** Midvale will pay [Entity Name] \$[support services amount] to provide the services under Section 3.
 - 2. Annual Payment.** Midvale will pay [Entity Name] \$[support services amount/term of support services] upon acceptance of the AMS for the provision of services under Section 3 for one year. For each additional year of services under Section 3, Midvale will pay [Entity Name] \$[support services amount/term of support services] upon the anniversary of its acceptance of the AMS.
- d. Change Orders.** Midvale may change the scope of work of this Agreement by providing [Entity Name] a written request detailing the changes in the scope work. [Entity Name] may decline to accept a request that expands the scope of work of this Agreement, but it may not decline to accept a request that reduces the scope of work. The Parties will negotiate in good faith to determine the cost or credit resulting from the request. A change order will become binding once both Parties have executed a written document that details the change to the scope of work, the cost or credit of such change, and any impact on the Schedule as outlined by Section 4.

- e. **Invoices.** In order to receive payment, [Entity Name] 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 [Entity Name] for any uncontested charges. The Parties will resolve any disputed charges under Section 13 of this Agreement.

- f. **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 this Section 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.

8. Party Responsibilities.

a. Midvale.

- i. **Cooperation.** Midvale will reasonably cooperate with [Entity Name].

- ii. **Equipment.** Midvale is responsible for providing the following equipment:

1. [List of equipment]

b. [Entity Name].

- i. **Performance.** [Entity Name] is solely responsible for providing all services, labor, materials, software, and equipment necessary for performance under this Agreement except as provided in Section 8(a)(ii).

- ii. **Supervision.** [Entity Name] is solely responsible for using its best skill and attention to supervise and direct its employees and agents in the performance of this Agreement.

- iii. **Standard of Care.** [Entity Name] 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 [Entity Name]'s profession currently practicing in the same locality and under similar conditions.

- iv. **Cooperation.** [Entity Name] understands that its performance under this Agreement will require physical and electronic access to Midvale's facilities and network. [Entity Name] agrees to cooperate with Midvale to coordinate scheduling, access, and security.

9. Indemnification.

- a. **[Entity Name].** [Entity Name] 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 [Entity Name]'s performance under this Agreement.
- b. **Midvale.** Midvale City agrees to indemnify, defend, and hold harmless [Entity Name] 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.

10. Insurance.

- a. **Coverage Amounts.** [Entity Name] 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. Professional Errors and Omissions: \$2,000,000; and
 - iii. Worker's Compensation Insurance at statutory limits.
- b. **Additional Endorsements.** [Entity Name] must also carry the following endorsements:
 - i. Premises – Operations;
 - ii. Product – Completed Operations Hazard;
 - iii. Broad Form Contractual Insurance;
 - iv. Independent Contractors;
 - v. Comprehensive Form;
 - vi. Automotive;
 - vii. Broad Form Property Damage; and

viii. Personal Injury.

- c. **Additional Insured.** Except for its Worker's Compensation Insurance policy, [Entity Name] must list Midvale City as an additional insured on the insurance policies required under Subsections 10(a) and (b) of this Agreement.
- 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 [Entity Name]'s insurer to provide at least 10 days written notice to Midvale prior to the cancellation or reduction of coverage.

11. Termination.

- a. **Convenience.** Either Party, by providing written notice, may terminate this Agreement at its convenience at any time prior to [Entity Name] installing any software or hardware in performance of this Agreement. Termination under this Section will not be considered a default by the terminating Party. Midvale agrees to pay [Entity Name] for any work performed under this Agreement prior to the termination. [Entity Name] must provide reasonable, detailed documentation to Midvale for any work performed prior to the termination.
- b. **Cause.**
 - i. **[Entity Name].** In the event that [Entity Name] terminates this Agreement because of Midvale's default, Midvale will pay [Entity Name] for any completed work within 30 days of the termination of this Agreement. Additionally, Midvale will pay [Entity Name] 10% of the compensation amount listed in Subsection 7(a) of this Agreement within 30 days of the termination of this Agreement as liquidated damages.
 - ii. **Midvale.** In the event that Midvale terminates this Agreement because of [Entity Name]'s default, Midvale will pay [Entity Name] for any completed work minus 10% of the compensation amount listed in Subsection 7(a) of this Agreement within 30 days of the termination of this Agreement. If the 10% exceeds the final payment owed to [Entity Name], [Entity Name] agrees to reimburse Midvale the difference within 30 days of the termination of the Agreement. The 10% of the compensation amount listed in Subsection 7(a) of this Agreement will be considered liquidated damages.

12. Default.

- a. **[Entity Name].** In the event that Midvale defaults under this Agreement, [Entity Name] may pursue the following remedies upon written notice of the default and the remedy to Midvale.
 - i. **Stop Performance.** [Entity Name] may stop performance under this Agreement until Midvale has cured the default.
 - ii. **Interest.** [Entity Name] 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, [Entity Name] may terminate this agreement in accordance with Subsection 11(b)(i) of this Agreement.

- b. **Midvale.** In the event that [Entity Name] defaults under this Agreement, Midvale may pursue the following remedies upon written notice of the default and the remedy to [Entity Name].
 - i. **Suspend Performance.** Midvale may suspend [Entity Name]’s performance under this Agreement until [Entity Name] has cured the default.
 - ii. **Withhold Payment.** Midvale may withhold payment until [Entity Name] has cured the default.
 - iii. **Reimbursement.** If [Entity Name] fails to cure the default within a reasonable amount of time, Midvale may cure the default and may charge [Entity Name] with any costs Midvale incurs in curing the default.
 - iv. **Termination.** If [Entity Name] has not cured the default within a reasonable amount of time, Midvale may terminate this Agreement in accordance with Subsection 11(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.

13. 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.

14. Applicable Laws.

[Entity Name] 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.

15. 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: Procurement Specialist
7505 S. Holden Street
Midvale, Utah 84047

[Entity Name]
Attn: [Entity Representative or Position]
[Entity Street Address or PO Box]
[City], [State] [ZIP Code]

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.

16. Relationship of Parties.

[Entity Name] 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.

17. Modification.

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

18. 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.

19. Subcontractors.

- a. Prior Consent.** If [Entity Name] 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.** [Entity Name] is responsible for the acts or omissions of any of its subcontractors in the performance of this Agreement. Any subcontractor retained by [Entity Name] to perform work under this Agreement is subject to the requirements of this Agreement.
- c. Indemnification.** If [Entity Name] subcontracts with any entity for performance under this Agreement, [Entity Name] 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 [Entity Name]'s subcontractor's performance under this Agreement.

20. Conflict of Interest.

- a. Relationship.** [Entity Name] 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 Midvale's drafting of procurement and project documents or Midvale's selection of a bidder.
- b. Gift.** [Entity Name] represents and warrants that is 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 Midvale's drafting of procurement and project documents or Midvale's selection of a bidder.

21. 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 [Entity Name] believes that a document should be protected under Utah Code Ann. §§ 63G-2-305(1) or (2), [Entity Name] must provide a written claim of business confidentiality to Midvale that complies with Utah Code Ann. § 63G-2-309(1). [Entity Name] 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 this Agreement.

22. 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. [Entity Name] will provide Midvale a certification of its compliance with this requirement prior to performing work under this Agreement.

23. 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.

24. 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.

25. 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.

26. 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 [Entity Name] have read and understand the terms of this Asset Management/Work Order Software 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

[Entity Name]

[Name], [Title]