MIDVALE CITY, UTAH
RESOLUTION NO. 2019-R-15

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH MOUNTAIN VALLEY MECHANICAL FOR THE MIDVALE POLICE STATION HVAC ROOFTOP UNIT REPLACEMENT

WHEREAS, the HVAC rooftop unit at the Midvale City owned property occupied by the Unified Police Department, Midvale Precinct, has ceased functioning and is in need of replacement.

WHEREAS, in compliance with its procurement requirements, the City requested proposals for the replacement of the HVAC rooftop unit; and

WHEREAS, Mountain Valley Mechanical, a Utah Corporation, responded to the City’s request and expressed its desire to provide the services to replace the HVAC unit; and

WHEREAS, the City reviewed Mountain Valley Mechanical’s proposal and found it to be the lowest responsive responsible bidder; and

WHEREAS, the City and Mountain Valley Mechanical have agreed to enter into this Agreement in order to set forth the terms and conditions under which Mountain Valley Mechanical will hereafter provide the HVAC replacement services for the rooftop unit at the Midvale UPD Precinct.

NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve this Agreement between Midvale City and Mountain Valley Mechanical and authorizes the Mayor to sign the same.

APPROVED AND ADOPTED this 7th day of May, 2019.

Robert Hale, Mayor

ATTEST:

Rori L. Andreason, MMC
City Recorder

Voting by the City Council

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Midvale Police Station HVAC Rooftop Unit Replacement Agreement

This Agreement to replace the Midvale Police Station HVAC rooftop unit is executed on April __, 2019, by Midvale City, a Utah municipal corporation, and Mountain Valley Mechanical, a Utah corporation. Midvale and Mountain Valley Mechanical agree as follows:

1. Project. Mountain Valley Mechanical agrees to:
   a. replace the existing HVAC rooftop unit (RTU) at the Midvale Police Station, located at 7912 South Main Street, Midvale, with a Trane RTU as specified in the March 13, 2019 Submittal, attached as Exhibit A; and
   b. provide quarterly maintenance on the Trane RTU for one year including, but not limited to, replacing belts and filters as needed.

Subsections 1(a) and 1(b) are referred in this Agreement cumulatively as the “Project.” The Project includes all services, labor, equipment, and materials necessary to fulfill Mountain Valley Mechanical’s obligations under this Agreement.

2. Performance.
   a. Project Documents. Mountain Valley Mechanical agrees to complete the Project in accordance with the following documents:
      i. Project Manual for Midvale Police Station HVAC, attached as Exhibit B;
      ii. Addendum No. 1 to the Midvale Police AHU Replacement, attached as Exhibit C;
      iii. Midvale Police HVAC Upgrade drawings, attached as Exhibit D; and
      iv. Mountain Valley Mechanical’s Proposal #MG022819-09, attached as Exhibit E.
   b. RTU Model. Any reference in the above documents to a HVAC rooftop model means the Trane HVAC rooftop unit in Section 1 of this Agreement.
   c. Conflict. In the event that there is a conflict, discrepancy, or inconsistency in the above documents, Midvale will determine which document or interpretation controls.

3. Schedule.
   a. Schedule. Mountain Valley Mechanical agrees to complete the Project in accordance with the following schedule:
      i. Mountain Valley Mechanical will replace the existing RTU in accordance with Section 1(a) of this Agreement no later than July 30, 2019.
ii. Mountain Valley Mechanical will provide maintenance in accordance with Section 1(b) of this Agreement for one year from the date of Midvale City’s acceptance of the new RTU.

b. Acts of God. In the event 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 in Section 3(a) of this Agreement to reasonably accommodate the unforeseen event, or it may terminate the Agreement under Section 12(a) of this Agreement. Events beyond a Party’s reasonable control include, but are not limited to, lightning storms, heavy precipitation, accidents, strikes, riots, acts or threats of terrorism, epidemics, and natural disasters.

c. Time. Time is of the essence.

4. Warranty.

a. Quality. Mountain Valley Mechanical warrants to Midvale City that:

i. Materials and equipment furnished under Section 1 of this Agreement will be new and of good quality;

ii. The Project will be free from defects not inherent in the quality required; and

iii. The Project will conform to the requirements of Section 2 of this Agreement.

b. Labor. Mountain Valley Mechanical agrees to provide a one-year warranty for the installation labor from the date of Midvale City’s acceptance of the new RTU.

5. Compensation.

a. Amount. Midvale agrees to pay Mountain Valley Mechanical $108,737.00, as stated in Exhibit E, upon acceptance of the Project.

b. Not-to-Exceed. Mountain Valley Mechanical agrees that it may not exceed $108,737.00 to perform the Project. If cost of performing the Project exceeds this amount, Mountain Valley Mechanical agrees to perform the Project without seeking additional compensation from Midvale.

6. Responsibilities.

a. Midvale.

i. Permits. Midvale is responsible for getting all necessary permits and approvals necessary for the Project. All permits and approvals must be received prior to
the Mountain Valley Mechanical performing any onsite work under Section 1(a) of this Agreement.

b. **Mountain Valley Mechanical.**

i. **Supervision.** Mountain Valley Mechanical is responsible for using its best skill and attention to supervise and direct the performance of the Project in accordance Section 2 of this Agreement.

ii. **Standard of Care.** Mountain Valley Mechanical represents that the Project will be performed in a manner consistent with the level of care and skill ordinarily exercised by the members of Mountain Valley Mechanical’s profession currently practicing in the same locality and under similar circumstances.

iii. **Cooperation with Unified Police Department.** Mountain Valley Mechanical understands that the Project is to be completed at an active police station for Unified Police Department. Mountain Valley Mechanical agrees to cooperate with Unified Police Department to minimize the impact of Project on the function of the police officers or the police station.

iv. **Document and Site Review.** Mountain Valley Mechanical warrants that it has carefully reviewed the physical location in Section 1 and the documents in Section 2 of this Agreement. Mountain Valley Mechanical accepts all risk for any delay or increase in costs in the Project that results from a failure to have adequately reviewed the physical location or documents.

v. **Site.** Mountain Valley Mechanical must limit the Project to the site identified in Section 1(a) of this Agreement. Mountain Valley Mechanical agrees to properly remove its tools, equipment, machinery, surplus material, and waste materials from the site upon installation of the new RTU.

vi. **Safety.** Mountain Valley Mechanical must take reasonable precautions to prevent damage, injury, or loss in the performance of the Project. Mountain Valley Mechanical will promptly remedy any damage, injury, or loss that was caused by it, its employees, or its agents.

7. **Insurance.** Mountain Valley Mechanical must retain, at a minimum, the following insurance coverages for the term of this Agreement:

   a. Commercial General Liability: $1,000,000;

   b. Automobile Liability: $100,000/$100,000/$500,000; and

   c. Worker’s Compensation Insurance at statutory limits.

Mountain Valley Mechanical must list Midvale City as an additional insured.
8. **Tests and Inspections/Acceptance.** After installation of the new RTU by Mountain Valley Mechanical, Midvale may perform tests and inspections on the new RTU to verify that the RTU was installed correctly and is performing correctly. Midvale will accept the new RTU when it has determined that the RTU was installed and is performing correctly. If the new RTU was not installed or is not performing correctly, then Midvale may withhold acceptance of the new RTU. Mountain Valley Mechanical agrees to make any corrections necessary to remedy any installation or performance defects prior to Midvale’s acceptance.

9. **Indemnification.**

   a. **Mountain Valley Mechanical.** Mountain Valley Mechanical 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 arising from Mountain Valley Mechanical’s performance under this Agreement.

   b. **Midvale.** Midvale City agrees to indemnify, defend, and hold harmless Mountain Valley Mechanical and its officers, employees, and agents from and all damages, liabilities, and claims arising from Midvale City’s performance under this Agreement.

10. **Modification.** Any modification to this Agreement is prohibited without prior written consent by both Parties.

11. **Default.**

    a. **Mountain Valley Mechanical.** In the event that Midvale defaults under this Agreement, Mountain Valley Mechanical may pursue the following remedies upon written notice to Midvale:

       i. **Stop Performance.** Mountain Valley Mechanical may stop performance under this Agreement until Midvale has cured the default.

       ii. **Interest.** Mountain Valley Mechanical may charge 1.5% interest, compounded monthly, on any unpaid amount owed by Midvale City.

       iii. **Termination.** If Midvale has not cured the default within a reasonable amount of time, Mountain Valley Mechanical may terminate this Agreement in accordance with Section 12(b) of this Agreement.

       iv. **Other Legal Remedies.** Mountain Valley Mechanical may pursue any other right or remedy available to it on account of Midvale’s default, either in law or equity.

    b. **Midvale.** In the event that Mountain Valley Mechanical defaults under this Agreement, Midvale may pursue the following remedies upon written notice to Mountain Valley Mechanical:
i. **Stop Performance.** Midvale may stop Mountain Valley Mechanical’s performance under this Agreement until Mountain Valley Mechanical has cured the default.

ii. **Withhold Payment.** Midvale may withhold payment until Mountain Valley Mechanical has cured the default.

iii. **Reimbursement.** If Mountain Valley Mechanical fails to cure a default within a reasonable amount of time, Midvale may cure the default and may charge Mountain Valley Mechanical with any costs Midvale incurs in curing the default.

iv. **Liquidated Damages.** If Mountain Valley Mechanical fails to replace the existing RTU in accordance with Section 1(a) by the date listed in Section 3(a)(i) of this Agreement, Midvale may deduct $100 per day from its payment to Mountain Valley Mechanical until the existing RTU has been replaced and the new RTU has been accepted by Midvale.

v. **Termination.** If Mountain Valley Mechanical has not cured the default within a reasonable amount of time, Midvale may terminate this Agreement in accordance with Section 12(b) of this Agreement.

vi. **Other Legal Remedies.** Midvale may pursue any other right or remedy available to it on account of Mountain Valley Mechanical’s default, either in law or equity.

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

d. **Legal Fees.** If a Party brings an action to enforce its rights under this Agreement, the prevailing Party may recover any expenses incurred in connection with the action and any subsequent appeals including, but not limited to, attorney and court fees.

12. **Termination.**

a. **Convenience.** Either Party may terminate this Agreement at its convenience at any time prior to Mountain Valley Mechanical ordering the new RTU as specified in Section 1(a) of this Agreement. Termination under this Section will not be considered a default by the terminating Party.

b. **Cause.**

i. **Mountain Valley Mechanical.** In the event that Mountain Valley Mechanical terminates this Agreement because of Midvale’s default, Midvale will pay the entire amount under Section 5(a) of this Agreement regardless of whether Mountain Valley Mechanical has performed any work under this Agreement. Mountain Valley Mechanical will provide Midvale the Trane RTU as specified
under Section 1(a) of this Agreement. Mountain Valley Mechanical may also collect any interest under Section 11(a)(ii) of this Agreement.

ii. **Midvale.** In the event that Midvale terminates this Agreement because of Mountain Valley Mechanical’s default, Midvale will pay Mountain Valley Mechanical for the cost of the Trane RTU specified under Section 1(a) of this Agreement. Mountain Valley Mechanical will provide Midvale with the Trane RTU specified under Section 1(a) of this Agreement. Midvale may reduce its payment to Mountain Valley Mechanical for any reimbursement costs and liquidated damages under Sections 11(b)(iii) and 11(b)(iv) of this Agreement, respectively.

c. **Term.** This Agreement will expire one year from the date of Midvale City’s acceptance of the new RTU.

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

   Midvale City                                      Mountain Valley Mechanical
   Attn: Procurement Specialist                      Attn: Mike Gleason
   7505 S. Holden Street                             1694 South 1100 West, Suite A
   Midvale, Utah 84047                               Ogden, Utah 84404

   The Parties each have the right, from time to time, to change the place of notice is to be given under this paragraph by written notice to the other Party.

14. **Relationship of Parties.** Mountain Valley Mechanical is an independent contractor that Midvale City has contracted to perform the Project. 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.

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. **Non-Discrimination.** Mountain Valley Mechanical affirms that it does not discriminate against any individual because of race, color, sex, age, religion, national origin, disability, pregnancy, familial status, veteran status, genetic information, sexual orientation, or gender identity, and that these are not factors in consideration for employment, selection of training, promotion, transfer, recruitment, rates of pay, or other forms of compensation, demotion, or separation.

17. **Conflict of Interest.** Mountain Valley Mechanical affirms that none of its officers, employees, or immediate family members of its officers and employees is or has been an elected official, employee, board member, or commission member of Midvale or its
affiliates who influences the RFP, selection of a bidder, or the subsequent written agreement. Mountain Valley Mechanical also represents and warrants that it has not provided any compensation in any form, whether directly or indirectly, to an elected official, employee, board member, or commission member of Midvale or its affiliates who influences the RFP, selection of a bidder, or the subsequent written agreement.

18. **Status Verification.** Under the Utah Immigration Accountability and Enforcement Act (UCA 63G-12-101 et seq.), any entity contracting with a public employer is required to participate in Utah’s Status Verification System. Mountain Valley Mechanical will provide Midvale a certification of its compliance with this requirement prior to it performing the Project.

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 other existing or subsequently occurring breach.

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 Jurisdiction.** The 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. **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 Mountain Valley Mechanical have read and understand the terms of this Midvale Police Station HVAC Rooftop Unit 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

MOUNTAIN VALLEY MECHANICAL

Mike Gleason, President
UTAH PRELIMINARY NOTICE
Notice of Right to File Mechanic’s Lien or Claim Against Payment Bond

THIS IS NOT A LIEN NOR A REFLECTION ON THE INTEGRITY OF ANY CONTRACTOR OR SUBCONTRACTOR

Via Certified Mail/Return Receipt Requested

TO: Mountain Valley Mechanical, Inc. Midvale City Municipal Corporation
1694 South 1100 West, Suite A 7505 South Holden Street
Ogden, UT 84404 Midvale, UT 84047

PRELIMINARY NOTICE IS HEREBY GIVEN by WASATCH LIEN SERVICE, LLC, the duly authorized recording agent of Utah-Yamas Controls, Inc., whose address is 13526 South 110 West, Suite 1, Draper, Utah 84020, with the telephone number (801) 990-1950. Said agent hereby gives preliminary notice to Mountain Valley Mechanical, Inc., the original contractor, of commencement of work at the request of Mountain Valley Mechanical, Inc. whose address is 1694 South 1100 West, Suite A, Ogden, Utah 84404, and preserves the right to claim a mechanic’s lien and/or right of claim against any relevant bond by virtue of and in accordance with the provisions of Utah Code Ann. Section 38-1-27 et. seq., and 14-2-1 et. seq. (1953 as amended). The Preliminary Notice is reserved against the improvements planned for and real property located at 19H8410, Midvale Police Station HVAC Upgrade, 7912 South Main Street, Midvale, Utah. Utah-Yamas Controls, Inc. has been contracted to provide disconnection of existing, update to latest, and reconnection for RTU replacement. If the project has been registered with the State Construction Registry, please contact Utah-Yamas Controls, Inc. or Wasatch Lien Service, LLC with the SCR number.

WASATCH LIEN SERVICE, LLC
Agent for Claimant

By: Jamie Crnich

STATE OF UTAH

COUNTY OF SALT LAKE

Jamie Crnich, in her capacity as manager of Wasatch Lien Service, LLC, personally appeared before me on May 20, 2019, and duly acknowledged to me that Wasatch Lien Service, LLC is the agent for Utah-Yamas Controls, Inc., and acknowledged to me that she executed the above document.

cc: Utah-Yamas Controls, Inc.
Order #185-0519-20

WASATCH LIEN SERVICE, LLC • 3165 East Millrock Drive, Suite 500 • Salt Lake City, Utah 84121
(801) 278-5436 • Fax: (801) 438-2077