RESOLUTION NO. 2019-R-39

WHEREAS, Midvale City (City) has a desire to operate, monitor and keep secure infrastructure necessary to provide safe and reliable water and sewer utility services; and

WHEREAS, the City assessed its ability to do meet that goal with its current SCADA system technology and determined it could not; and

WHEREAS, based upon that assessment, the City put out a request for proposals (RFP) and held a public opening of proposals on July 15th, 2019; and

WHEREAS, City Staff has evaluated these proposals based on the criteria noted in the RFP documents, and based on that evaluation wishes to award the 2019 SCADA Project to SKM Engineering; and

WHEREAS, an agreement has been prepared between the City and Beck SKM Engineering.

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 SKM Engineering for the 2019 SCADA Project.

APPROVED AND ADOPTED this 27th day of August, 2019.

[Signature]
Robert M. Hale, Mayor

ATTEST:

[Signature]
Roni L. Andreason, City Recorder

Voting by the City Council

<table>
<thead>
<tr>
<th>Name</th>
<th>“Aye”</th>
<th>“Nay”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dustin Gettel</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Paul Glover</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Quinn Sperry</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Paul Hunt</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Bryant Brown</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
August 12, 2019

Midvale City Office
7505 South Holden Street
Midvale, UT 84047

RE: Award Acceptance

Dear Mr. Glen Kennedy:

SKM Engineering is pleased to accept the award for Midvale City Water & Sewer System Supervisory Control and Acquisition (SCADA) System project.

The upgrade and maintenance to Midvale's SCADA system will include, design and required hardware, software with application platform, user interface, and not limited to the administration tools, training, system maintenance and services.

This project will be billed accordingly to not to exceed, $69,300.00 with time and materials.

On behalf of SKM, we would like to extend our sincerest thanks to Midvale City for selecting us for this project.

Sincerely,

Allen Rogers, P.E.
SKM Engineering, LLC.
Allen.rogers@skmeng.com
(801) 683-3765
August 9, 2019

SKM Engineering
533 W 2600 S Suite 25
Bountiful, UT 84010
allen.rogers@skmeng.com

RE: Notice of Award

Mr. Rogers:

Midvale City is pleased to notify you that SKM Engineering’s proposal for the Midvale City Water & Sewer System Supervisory Control and Acquisition (SCADA) System project has been selected as the successful bid. By accepting this award, SKM Engineering is agreeing to the terms of the Request for Proposal, attached as Exhibit “A,” and your proposal dated June 28, 2019, attached as Exhibit “B,” subject to the following adjustments:

Bid Price: $69,300.00

SKM Engineering and Midvale City will need to sign the contract for this project. You will find the attached contract as “Exhibit C”. Please provide a signed contract by August 15, 2019. If SKM Engineering has any questions regarding the contract, please contact me immediately. I can be reached at fhullinger@midvale.com or 801-567-7254.

If you accept this award, please sign the following page and mail the signed copy to me. Thank you for your participation, and we look forward to working with you.

Sincerely,

Fawn Hullinger
Procurement/Contract Specialist
ACCEPTANCE OF AWARD

Midvale City has awarded SKM Engineering the Midvale City Water & Sewer System Supervisory Control and Acquisition (SCADA) System project. SKM Engineering has reviewed Midvale City’s Notice of Award, dated August 9, 2019, and accepts the award.

ACCEPTED BY:
SKM Engineering
533 W 2600 S Suite 25
Bountiful, UT 84010

[Signature]
By: Allen Rogers
Its: Principal
Date: 8/12/19
Midvale SCADA Upgrade Agreement

This Agreement to upgrade Midvale’s SCADA system is executed on August 09, 2019, by Midvale City, a Utah municipal corporation, and SKM Ink. (“SKM”) an Electrical Engineering firm.

Background

Midvale had a Supervisory Control and Data Acquisition (SCADA) system installed for its water and sewer systems.

Midvale’s SCADA system no longer meets the needs of the City.

Midvale requested proposals from entities to replace or upgrade its SCADA system so that Midvale will have a central system for data communications, system monitoring and control, and historical data recording, analysis, and reporting.

SKM responded to Midvale’s request and provided a proposal to replace or upgrade Midvale’s SCADA system that met Midvale’s needs.

Midvale, after reviewing the submitted proposals, determined that SKM was the responsible bidder and awarded the contract to replace or upgrade its SCADA to SKM in accordance with Midvale Municipal Code 3.02.130.

SKM has accepted the award and is willing to replace or upgrade Midvale’s SCADA system.

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

Agreement

1. **SCADA System Upgrade.**

SKM agrees to upgrade Midvale’s SCADA system. As part of the upgrade, SKM will provide the following:

1. A design for the SCADA system, including required hardware, software and communications, as described in this RFP, documenting the proposed configuration of all components at each site, to be submitted and approved prior to the commencement of installation work.

2. SCADA system software, including application platform, user interface, configuration/administration tools, data archiving, reporting and alarm management capabilities,
with system and user documentation.
3. Proposed equipment, procured, configured and installed in a manner conforming to approved design submittal and meeting all applicable City standards.

4. Training, instructions and documentation to enable City staff to effectively operate and maintain the system.

5. System maintenance and support for a period of a minimum of three years following acceptance of the system.

6. Services for the deployment of tablet devices to mobile operators. The tablet devices will be purchased separately by the City.

2. Performance.

SKM agrees to complete the project in accordance with the following documents:

a. Midvale’s Request for Proposal attached as Exhibit “A” and SKM’s responsive bid submitted June 28, 2019 attached as Exhibit “B.”

3. Schedule.

a. Completion. SKM agrees to complete the Project no later than October 31, 2019.

b. Milestones. SKM agrees to complete the Project no later than October 31, 2019, and maintain a support guarantee for three years from date of completion.

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 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.

d. Time. Time is of the essence.

4. Warranty.

a. Quality. SKM warrants to Midvale that:

i. Materials and goods furnished by SKM for the performance of the Project will be of new and good quality;
ii. The Project will be free from defects not inherent in the quality required and will function properly for at least one year from Midvale’s acceptance of the Project; and

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

5. Documents.

a. Progress Reports and Meetings. SKM will provide Midvale with progress reports of the Project every two weeks. SKM will also meet periodically with Midvale employees and agents to discuss the Project.

b. As-Built Documents. SKM will provide as-built documents of the Project to Midvale upon completion of the Project. The as-built documents should provide sufficient information for Midvale or one of its agents to understand how the Project was installed and how it operates. The as-built documents must include, at a minimum, drawings, schematics, identification of components, and any manufacturer-provided manuals for components.


a. Amount. Midvale agrees to pay SKM $69,300.00 for completion of the Project.

b. Not-to-exceed. SKM agrees that it may not exceed $69,300.00 to perform the Project. If the cost of performing the Project exceeds this amount, SKM agrees to perform the Project without seeking additional compensation from Midvale.

c. Payments.

i. Invoices. SKM will submit invoices to Midvale for work performed 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 15 days of receiving the invoice, Midvale will pay SKM for any uncontested charges. The Parties will resolve any disputed charges under Section 13 of this Agreement.

ii. Payment Limits. The total payments to SKM may not exceed 75% of the total compensation under Subsection 6(a) of this Agreement prior to acceptance of the Project. After acceptance of the project, the total payments to SKM may not exceed 100% of the total compensation under Subsection 6(a) of this Agreement.

d. Acceptance. Midvale will withhold 25% of the total compensation under Subsection 6(a) of this Agreement until acceptance of the Project. Upon acceptance of the Project, Midvale will pay SKM the withheld amount.
e. **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.

7. **Party 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 SKM performing any onsite work of the Project.

b. **SKM.**

i. **Supervision.** Even if a Midvale employee or agent is onsite during performance of the Project, SKM is solely responsible for using its best skill and attention to supervise and direct the performance of the Project in accordance with Section 2 of the Agreement.

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

iii. **Cooperation.** SKM understands that the Project is to be completed as multiple locations that are secured from the public. SKM agrees to cooperate with Midvale to coordinate scheduling, access, and security.
iv. **Midvale Water and Sewer Systems.** SKM understands Midvale operates water and sewer utilities that serve its residents and businesses. These systems must remain fully operational during the Project. SKM’s performance under this Agreement must not interfere with the performance of Midvale’s water and sewer systems. If interference is necessary, SKM agrees to coordinate the interference with Midvale with as much advance notice as possible to minimize the impact on the systems. Midvale may, at its sole discretion, reject any request to interfere with its systems.

v. **Existing SCADA System.** SKM agrees to perform the Project in such a manner that will not interfere with the operation and maintenance of Midvale’s existing SCADA system until the Project has been accepted under Section 10 of this Agreement.

vi. **Document and Site Review.** SKM warrants that is has carefully reviewed the physical locations of each of the Project sites. SKM also warrants that is has carefully reviewed each of the Project documents listed in Section 2 of this Agreement. SKM accepts all risk for any delay or increase in costs in the Project that results from a failure to have adequately reviewed the Project’s physical locations or documents.

vii. **Site.** SKM must limit the Project to the Project sites identified in this Agreement. SKM agrees to properly remove its tools, equipment, machinery, surplus material, and waste materials from the sites upon completion of the Project. SKM agrees to keep the Project sites reasonably clean during performance of the Project.

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

8. **Indemnification.**

a. **SKM.** SKM 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 SKM’s performance under this Agreement.

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

9. **Insurance.**
a. **Coverage Amounts.** SKM must retain, at a minimum, the following insurance coverages for the term of this Agreement:

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

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

iii. Worker’s Compensation Insurance at statutory limits.

b. **Additional Endorsements.** Due to the nature of Project, SKM must also carry the following endorsements:

i. Drinking water pollution;

ii. Sanitary sewer pollution;

iii. Storm water/SWPPP pollution;

iv. Contractor’s professional liability;

v. Failure of essential systems;

vi. Ongoing operations; and

vii. Completed operations.

c. **Additional Insured.** Except for its Worker’s Compensation Insurance policy, SKM must list Midvale City as an additional insured on the insurance policies required under Subsections 7(a) and 7(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 SKM’s insurer to provide at least 10 days written notice to Midvale prior to the cancellation or reduction of coverage.

10. **Acceptance.**

a. **Testing and Inspections.** Upon completion of each phase of the Project, Midvale may perform tests and inspections on the Project to verify that the phase of the Project was completed in accordance with this Agreement.
b. **Acceptance.** Midvale will accept the phase of the Project when it has determined that the phase of the Project was completed and is performing in accordance with this Agreement.

c. **Cure.** In the event that Midvale determines that a phase of the Project was not completed or is not performing in accordance with this Agreement, SKM agrees to cure any identified deficiencies prior to Midvale’s acceptance.

11. **Termination.**

a. **Convenience.** Either Party, by providing written notice, may terminate this Agreement at its convenience at any time prior to SKM installing any physical installations in performance of this Agreement. Termination under this Section will not be considered a default by the terminating Party. Midvale agrees to pay SKM for any work performed under this Agreement prior to the termination. SKM must provide reasonable, detailed documentation to Midvale for any work performed prior to the termination.

b. **Cause.**

i. **SKM.** In the event that SKM terminates this Agreement because of Midvale’s default, Midvale will pay SKM for any completed work within 30 days of the termination of this Agreement. Additionally, Midvale will pay SKM 10% of the compensation amount listed in Subsection 6(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 SKM’s default, Midvale will pay SKM for any completed work minus 10% of the compensation amount listed in Subsection 6(a) of this Agreement within 30 days of the termination of this Agreement. If the 10% exceeds the final payment owed to SKM, SKM agrees to reimburse Midvale the difference within 30 days of the termination of the Agreement. The 10% of the compensation amount listed in Subsection 6(a) of this Agreement will be considered liquated damages.

12. **Default.**

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

i. **Stop Performance.** SKM may stop performance under this Agreement until Midvale has cured the default.
ii. **Interest.** SKM 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, SKM may terminate this agreement in accordance with Subsection 11(b)(i) of this Agreement.

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

i. **Suspend Performance.** Midvale may suspend SKM’s performance under this Agreement until SKM has cured the default.

ii. **Withhold Payment.** Midvale may withhold payment until SKM has cured the default.

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

iv. **Termination.** If SKM 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.

SKM 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  

SKM  
Attn: Allen Rogers  
533 W. 2200 S. #25  
Bountiful, UT 84010

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.


SKM is an independent contractor that Midvale 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. 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.


a. Prior Consent. If SKM 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.** SKM is responsible for the acts or omissions of any of its subcontractors in the performance of the Project. Any subcontractor retained by SKM to perform the Project is subject to the requirements of this Agreement.

20. **Conflict of Interest.**

a. **Relationship.** SKM 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.** SKM 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 the 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 SKM believes that a Project document should be protected under Utah Code Ann. §§ 63G-2-305(1) or (2), SKM must provide a written claim of business confidentiality to Midvale that complies with Utah Code Ann. § 63G-2-309(1). SKM 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. SKM will provide Midvale a certification of its compliance with this requirement prior to performing the Project.

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.

27. **Entire Agreement.**

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

Midvale and SKM have read and understand the terms of this Midvale SCADA Upgrade 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

[Signature]
Robert M. Hale, Mayor

ATTEST:

[Signature]
Rori L. Andreason, City Recorder

SKM

[Signature]
By: Allen Rogers
Its: Principal