Council Meeting of September 7, 2016

Agenda Item No. 6.e.

REQUEST FOR COUNCIL ACTION

SUBJECT: Approve Resolution hiring a local law firm for public defender services.

SUMMARY: Approval of the resolution will retain the services of Skeen & Robinson, LLC, to defend indigent people who are charged with criminal offenses.

FISCAL AND/OR ASSET IMPACT: The maximum fiscal impact associated with the passage of the proposed contracts is a range of $75,000 to $115,000 (based on appointments from the West Jordan City Justice Court).

STAFF RECOMMENDATION:

Staff recommends approval of a contract with Skeen & Robinson, LLC for public defender services.

MOTION RECOMMENDED:

"I move to approve Resolution 16-142 authorizing the Mayor to execute a contract with Skeen & Robinson for public defender services."

[Roll Call vote required]

Prepared by:

Craig R. Kleinman
Deputy City Attorney

Reviewed by:

David R Brickey
City Attorney

Recommended by:

for Mark R Palesh
City Manager

BACKGROUND DISCUSSION:

For the past few years, the City has contracted with Skeen & Robinson, LLC, for public defender services. The City went through the bidding process and the contract has once again been awarded to Skeen & Robinson, LLC. This contract is based upon the number of appointments from the City Justice Court. The proposal from Skeen & Robinson, LLC, has a maximum fiscal impact range of $75,000 to $115,000.

City staff recommends retaining the services of Skeen & Robinson for public defender services.

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. 16-142

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH SKEEN & ROBINSON LLC TO PERFORM PUBLIC DEFENDER SERVICES ON BEHALF OF THE CITY REPRESENTING INDIGENT PERSONS WHO ARE CHARGED WITH A CRIMINAL OFFENSE.

WHEREAS, pursuant to Utah Code Ann. §77-32-101, *et seq.*, the City of West Jordan is obligated to provide for the defense of an indigent defendant in criminal cases in the courts; and

WHEREAS, the City may fulfill the statutory obligation through the appointment of qualified legal counsel who may provide the indigent legal services required by Utah Code Ann. §77-32-301 and §77-32-304; and

WHEREAS, Skeen & Robinson, LLC has qualified and competent attorneys, licensed to practice law in the State of Utah and is willing to enter into this agreement with the City and is willing and desirous to perform the necessary legal services for indigent defendants;

Whereas, the City Council has determined that the attached contract with Skeen & Robinson, LLC for public defender services, for an amount not to exceed range of $75,000 to $115,000 (based on appointments from the West Jordan City Justice Court), is acceptable for said services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. After approval as to legal form by the City Attorney, the Mayor is hereby authorized to execute the contract with Skeen & Robinson, LLC for the retention of the firm for public defender services.

Section 2. This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 7th day of September, 2016.

ATTEST:

KIM V ROLFE
Mayor

MELANIE S BRIGGS, MMC
City Clerk

Res 16-142

Voting by the City Council:	"AYE"	"NAY"
Council Member Dirk Burton	_____	_____
Council Member Jeff Haaga	_____	_____
Council Member Zach Jacobs	_____	_____
Council Member Chris McConnehey	_____	_____
Council Member Chad Nichols	_____	_____
Council Member Sophie Rice	_____	_____
Mayor Kim V. Rolfe	_____	_____

AGREEMENT FOR PUBLIC DEFENDER SERVICES

This Agreement for Services (the "Agreement") is entered into this 31st day of August 2016, by and between Skeen & Robinson, L.L.C., a Utah Limited Liability Company (the "Firm" which specifically includes, for purposes of this Agreement, the following attorneys: Randall Skeen, Todd Mecham, Robb Jones, and Shawn Robinson), with its principal place of address located at 5788 South 900 East, Salt Lake City, Utah, 84121, and the City of West Jordan, a Utah municipality and political subdivision of the State of Utah ("the City").

WITNESSETH

WHEREAS, pursuant to Utah Code Ann. §77-32-101, *et seq.*, the City is obligated to provide for the defense of an indigent defendant in criminal cases in the courts; and

WHEREAS, the City may fulfill the statutory obligation through the appointment of qualified legal counsel who may provide the indigent legal services required by Utah Code Ann. §77-32-301 and §77-32-304; and

WHEREAS, the Utah Supreme court issued a Study on the Representation of Indigent Criminal Defendants in Trials Courts dated October 26, 2015 (the "Study"), setting forth standards and best practice approach to indigent trial representation and the City desires to implement the recommended changes; and

WHEREAS, the Study found that use of all-inclusive, flat fee contracts create systemic disincentives that may negatively affect the provision of defense services; and

WHEREAS, the Firm has qualified and competent attorneys, licensed to practice law in the State of Utah and is willing to enter into this agreement with the City and is willing and desirous to perform the necessary legal services for indigent defendants;

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, it is hereby agreed between the parties as follows:

1. ***Services to be Performed***. Firm shall perform the services set forth in the following sub-paragraphs.

   a) Firm agrees to furnish and provide for the defense of an indigent upon a determination of indigency by the West Jordan Municipal Justice Court ("Court") and upon appointment of Firm to defend accused criminal defendants. The Court's election to appoint the Firm to represent indigent defendants shall be conducted in a manner required by Utah law. Legal Services shall include appearing and representing criminal defendants at all appropriate meetings, hearings, etc., including, but not be limited to, arraignments, pretrial conferences, order to show cause hearings, bench and jury trials (collectively, "Criminal Matters"), in which the Firm has been appointed as counsel for an indigent by

the Court. Representation of indigent defendants shall be up to and including the filing of the first notice of appeal.

b) Legal Services provided by Firm shall at all times be subject to applicable laws, rules and regulations, including without limitation, the *Rules of Professional Conduct* adopted by the Utah Supreme Court. Firm shall immediately notify the City of the final adjudication or acceptance by Firm of any violation of the *Rules of Professional Conduct* by Firm or anyone associated with or performing legal services through the Firm.

c) Progress Reports. Firm shall, as requested by City, submit periodic progress reports to the City, attend quarterly accountability meetings with the Authorized Representative of the City, submit an annual report regarding Legal Services in such form that contains such information as the City may require, and attend an annual City Council Meeting as requested by City to answer questions about the report and Legal Services in general.

d) Except as provided herein, Firm will bear all other expenses in providing the services contemplated herein, including, but not limited to, transportation within Salt Lake County, office, telephone, postage, copying and secretarial costs.

2. ***Qualifications***.

a) By signing below, Firm certifies that all of its attorneys are members in good standing of the Utah Bar and that each attorney is competent in the practice of criminal law. Firm further certifies that its attorneys shall at all times, during the period of this Agreement, maintain his/her status as a member in good standing of the Utah Bar.

b) Firm certifies that all its attorneys are citizens of the United States or permanent resident alien.

c) Firm shall maintain a bona fide office to conduct business which shall be made known to the clients served under this agreement.

d) Firm agrees to abide by all federal, state and local laws, to abide by the Canons of Ethics adopted by the Utah Bar Association and to be bound by the Rules of Civility adopted by the Utah Supreme Court.

e) Firm agrees that all its attorneys are not currently, and will not be a party to any litigation which would place his/her licensing or standing with the Utah Bar in jeopardy.

f) Firm shall, during the period of this Agreement, maintain the required professional malpractice insurance. Additionally, Firm agrees to hold the City harmless from all damages, loss or injury it may suffer or be held liable for as a result of the conduct of Firm or as a result of this Agreement.

g) In the event of any change of address, conflict of interest, conflicting litigation or inability to practice law, the Firm will promptly notify the City in writing. In addition to notification, Firm will not provide any representation in violation of this Agreement.

h) Firm shall keep abreast of all current legal trends and maintain sufficient continuing professional education credits during the period of this Agreement.

3. ***Fees for Legal Services***. Payment for services rendered shall be made according to the following paragraphs.

a) Payment of Fees for services rendered shall be approved by an authorized representative of the City as provided below (collectively, "Legal Services") during the term of this Agreement. As full compensation for Legal Services rendered by the Firm pursuant to this Agreement, the City shall pay Firm as follows:

i) $150.00 for each case assigned to the Firm by the Court, to be paid at the conclusion of such case (*i.e.*, sentencing, acquittal, or failure to appear);

ii) $250.00 for each jury trial that goes to verdict;

iii) $100.00 for any appeal as a trial *de novo* to the District Court;

iv) $25.00 for each Review Hearing and Orders to Show Cause; and

v) $50.00 for Orders to Show Cause on a newly-appointed case.

b) Firm understands and agrees it may be appointed to defend the same criminal defendant for his or her involvement in a criminal case~~s~~ with multiple charges. No additional fee shall be awarded in a single case with multiple charges.

c) The City shall pay for costs to serve subpoenas or other pleadings, the cost of investigations and expert witnesses provided that the Firm obtains advance written consent from an authorized representative of the City. All other costs and expenses shall be paid by Firm and shall not be reimbursed by the City. All such services shall collectively be refereed to as "Authorized Legal Services." Within 30 days of the end of each month, the Firm, through the Firm, shall provide the City with a detailed invoice that is acceptable to the City that sets out each new case assigned to Firm, each appearance by the Firm required by the Court and a detailed description of Authorized Legal Services.

d) Upon a showing of critical need, Firm may request additional funding for extraordinary unforeseen expenses which may arise during the term of this Agreement. A critical need for extraordinary unforeseen expenses shall be construed in favor of the defendant and shall be determined weighing the nature, scope and materiality of the need in light of City resources and the City's statutory requirements to provide indigent defense. It is agreed between the parties that the City will bear the reasonable and necessary cost of

investigators, laboratory costs, transcripts and defense witness fees, including expert witnesses called on behalf of indigent clients. Further, the City will bear the reasonable travel costs of the Firm, if any is required outside of Salt Lake County in conjunction with the Firm's representation of indigent defendants charged by the City. It is agreed by the parties that prior to Firm incurring expert witness fees on behalf of a client, the amount of the fee and the expert used must be approved by the Court having jurisdiction of the case. The Firm hereby agrees to use best efforts to minimize the costs and expenses and shall make application for the approval of expenses in the form of a written motion to the trial judge, specifying the reasons for the expenses. Payment for any expenses incurred by the Attorney and not previously approved by the Court or in excess of that approved by the Court, shall be the sole responsibility of the Firm.

4. ***Conflicts of Interest***. Firm agrees to use his best efforts to avoid any conflicts of interest which would divide loyalty of defense counsel to the client. The parties recognize, however, that certain cases may arise where conflicts are of sufficient magnitude that Firm cannot represent the indigent defendant.

   a) In the event of a conflict of interest or other permanent reassignment, Firm shall immediately give notice to the Court and City Attorney of the need and/or purpose of reassignment.

5. ***Assignability of Agreement***. This agreement is personal in nature and is not assignable to any person not a party to the agreement without the express written consent of the City.

6. ***Authorized Representative***. For purposes of this Agreement, the Authorized Representative of the City shall mean an employee of the City, designated by the City Manager to oversee administration of this Agreement. City shall notify Firm of the City Manager's selection of the Authorized Representative.

7. ***Time***. This Agreement shall commence on the latest date herein below inscribed (the "Effective Date"). This Agreement shall terminate on the date two years after the Effective Date unless renewed as set forth below.

8. ***Renewal***. This Agreement may be renewed for a two-year term, not to exceed two successive renewals, upon written agreement of the parties.

9. ***Termination***. Agreement may be terminated for any reason or no reason, by either party upon providing written notice to the other party, such notice to be received at least ninety (90) days prior to the effective date of termination.

   a) Breach. In the event that either party hereto shall deem the other to be in breach of any provision hereof, the party claiming the existence of the breach on the other's part shall notify the other in writing of such breach. The breaching party shall have fifteen (15) days in which to commence all actions necessary to cure the breach and shall notify the complaining party in writing of the actions taken to cure the breach. In the event the actions reasonably necessary to cure the breach are not commenced within fifteen (15)

days, the complaining party may terminate this agreement immediately upon written notice to the breaching party.

b) Misconduct. In the event any disciplinary action is taken by the Utah State Bar against the Firm or any of its attorneys, this Agreement may be immediately terminated without notice.

10. ***Transition***. In the event this agreement is terminated under the provisions of the Agreement or is not renewed under the provisions of this Agreement: Firm agrees to complete those existing cases where it is not feasible for Firm to withdraw. Compensation for such cases shall continue under the same terms of this Agreement.

a) Firm agrees to cooperate with its successors including the filing of all necessary pleadings for withdrawal and to deliver all applicable files, information and materials to the successor.

b) In the event the Firm is not permitted to withdraw from the representation in any matter by the Court, the City agrees to compensate the Firm for all services subject to the terms of this Agreement.

c) Private practice. Nothing in this agreement shall prohibit Firm from representing private clients so long as the representation of private clients does not interfere with or create a conflict of interest in the representation of indigent defendants.

11. ***Notice***. All notices required or permitted under this Agreement shall be deemed to have been given if and when deposited in the United States mail, properly stamped and addressed to the party for whom intended at such party's address listed below, or when delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

Firm:
Skeen & Robinson, LLC
5788 South 900 East.
Salt Lake City, Utah 84121

City:
City of West Jordan
Attn: City Attorney
8000 South Redwood Road
West Jordan, Utah 84088

12. ***Indemnification, Liability and Insurance.*** Firm shall indemnify and hold harmless the City, its officers, agents employees and volunteers from any and all claims arising out of the activities or omissions of the Firm, its officers, agents, employees, sub-Firms and others claiming through or under Firm, including its assignees, under this Agreement. This indemnification requirement includes indemnification for claims for attorney's fees, court

cost and litigation expenses, of whatever type and amount. Firm shall indemnify and hold harmless the City, its officers, agents, employees and volunteers from any and all claims involving worker's compensation and claims for injuries occurring upon or arising from the performance of this Agreement; Firm shall be solely and fully responsible for the payment of such claims. Firm shall indemnify and defend the City, its officers, agents and employees from any and all administrative claims and proceedings (such as alleged OSHA violations and similar proceedings) brought against the City, its officers, agents, employees or volunteers which arise out of the performance by Firm of this Agreement. Firm shall be fully responsible for the training and equipping of its workers on the premises and for any failings in such training or equipment. Firm shall be responsible for the costs of any safety feature or improvements mandated by the performance of this agreement. At all times, Firm shall perform the services set forth in this agreement in accordance with the regulations, standards and the instructions of the City.

13. ***Assignment***. This Agreement shall not be assignable except at the written consent of the parties, and if so assigned, shall be binding upon the successors and assigns of the parties.

14. ***Relationship of Parties and No Third Party Rights***. This Agreement does not create any joint venture partnership, undertaking or business arrangement between the parties hereto nor any rights or benefits to third parties. The contractual relationship between the City and Firm out of this Agreement is one of independent contractor and not agency. It is understood that Firm shall not be deemed an employee of the City, and Firm has no authority to enter into legally binding obligations on behalf of the City. It is specifically understood by the parties that: (a) the City has no interest in or responsibilities for or duty to third parties as a result of this Agreement, (b) Firm shall have full power and authority over services performed subject to the obligations of Firm set forth in this Agreement.

15. ***Construction***. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

16. ***Integration***. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto.

17. ***Representation Regarding Ethical Standards For City Officers and Employees and Former City Officers and Employees***. Firm represents that it has not: (1) provided an illegal gift or payoff to a city officer or employee or former city officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than as exempted in the City's Conflict of Interest ordinance; or (3) knowingly influenced (and hereby promises that it will not knowingly influence) a city officer or employee or former city officer or employee to breach any of the ethical standards set forth in the City's Conflict of Interest ordinance, Chapter 1-11-15, West Jordan City Code.

18. ***Discrimination***. Firm assures that it will comply with the Americans with Disabilities Act (ADA), and Title VI of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, sex, sexual orientation, marital status, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this agreement.

EXECUTED this 31st day of August 2016.

SKEEN & ROBINSON, LLC

_____

By: Randall Skeen
Its: Managing Member

STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

The above instrument was acknowledged before me by Randall L Skeen, this 31 day of August, 2016.

_____
Notary Public
Residing in Salt Lake County

MARY L. BALLINGHAM
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 678558
COMM. EXP. 06-08-2018

CITY OF WEST JORDAN

By: _____
Mayor
Attest:

_____
City Recorder
Approved as to form

_____
City Attorney