MIDVALE CITY, UTAH
RESOLUTION NO. 2016-R-22

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH STOWELL, CRAYK & BOWN, FOUNDATION FOR THE REPRESENTATION OF INDIGENT DEFENDANTS IN MIDVALE CITY JUSTICE COURT

WHEREAS, the City desires to retain a provider of indigent defense services; and

WHEREAS, in compliance with its procurement requirements, the City requested proposals for indigent defense services; and

WHEREAS, Stowell, Crayk & Bown, Foundation responded to the City’s request and expressed its desire to provide indigent legal defense services; and

WHEREAS, Stowell, Crayk & Bown, Foundation has experience in indigent legal defense and is a provider of similar services in other jurisdictions in the State of Utah; and

WHEREAS, the City reviewed Stowell, Crayk & Bown, Foundation’s proposal and found it to be the lowest responsive responsible bidder; and

WHEREAS, the City and Stowell, Crayk & Bown, Foundation have agreed to enter into this Agreement in order to set forth the terms and conditions under which the Firm will hereafter provide indigent defense services for the City.

NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve this agreement between Midvale City and Stowell, Crayk, & Bown, Foundation, and authorizes the Mayor to sign the agreement.

APPROVED AND ADOPTED this 12th day of July, 2016.

[Signature]
Jo Ann B. Seghini, Mayor

ATTEST:

[Signature]
Ron L. Andreason, MMC
City Recorder

Voting by the City Council

<table>
<thead>
<tr>
<th>NAME</th>
<th>“Aye”</th>
<th>“Nay”</th>
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<tbody>
<tr>
<td>Stephen Brown</td>
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<td>Paul Glover</td>
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<td>Quinn Sperry</td>
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<td>Paul Hunt</td>
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<td>Wayne Sharp</td>
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AGREEMENT FOR CONTRACT SERVICES FOR INDIGENT DEFENSE

This Agreement for Contract Services for Indigent Defense (the “Agreement”) is made as of June ___, 2016, by and between Midvale City, a Utah Municipal Corporation (the “City”), and Stowell, Crayk & Bown, Foundation (the “Firm”).

WHEREAS, the City desires to retain a provider of indigent defense services; and

WHEREAS, in compliance with its procurement requirements, the City requested proposals for indigent defense services; and

WHEREAS, the Firm responded to the City’s request and expressed its desire to provide indigent legal defense services; and

WHEREAS, the Firm has experience in indigent legal defense and is a provider of similar services in other jurisdictions in the State of Utah; and

WHEREAS, the City reviewed the Firm’s proposal and found the Firm to be the lowest responsive responsible bidder; and

WHEREAS, the City and the Firm have agreed to enter into this Agreement in order to set forth the terms and conditions under which the Firm will hereafter provide indigent defense services for the City.

NOW THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

Section 1. Engagement. The City hereby engages the Firm and hereby accepts such engagement to perform the Services as hereinafter defined.

Section 2. Scope of Services. The Firm agrees to furnish and provide for the defense of indigent individuals upon a determination of indigency by the Midvale Municipal Justice Court (the “Court”) and upon appointment of the Firm to defend the accused. The Firm agrees to provide the following Legal Services:

1. Appearing before the Court and representing criminal defendants at all appropriate meetings, hearings, etc., including, but not be limited to, pretrial conferences, order to show cause hearings, and bench and jury trials (collectively “Criminal Matters”), in which the Firm has been appointed as counsel for a criminal defendant by the Court; and

2. Appearing and representing criminal defendants at all Criminal Matters in which the Firm was appointed as counsel for a criminal defendant by the Court with respect to hearings and trials de novo in the Third District Court (the “District Court”).
In providing Legal Services, the Firm agrees to follow all applicable laws, rules, and regulations including, without limitation, the Rules of Professional Conduct adopted by the Utah Supreme Court. The Firm must immediately notify the City of the final adjudication or acceptance by the Firm of any violation of the Rules of Professional Conduct by the Firm or anyone associated with or performing legal services through the Firm.

Section 3. Progress Reports. The Firm will maintain thorough records of all appointments received and will provide the City access to records for the purpose of verifying the appointments. Such access is subject to the attorney-client privilege. The Firm must submit quarterly progress reports to the City if the City requests the same and, if requested by the City, will attend accountability meetings with an authorized representative of the City.

Section 4. Fees for Legal Services. The City and the Firm agree to the following fee schedule for the performance of Legal Services.

a. Cases in the Justice Court. The City will pay the Firm the following fees for cases assigned to the Firm and resolved in Court:

   i. Cases in General. The City will pay the Firm $150 per case upon appointment by the Court of the Firm to be counsel for a Defendant.

   ii. Bench Trials. In the event that a case is resolved through a bench trial, the City will pay the Firm an additional $50 per hour to prepare and represent the defendant at the bench trial. This additional payment may not exceed $100 per case.

   iii. Jury Trials. In the event that a case is resolved through a jury trial, the City will pay the Firm an additional $50 per hour to prepare and represent the defendant at the jury trial. This additional payment may not exceed $300 per case.

b. Cases in District Court. The City will pay the Firm the following fees for cases assigned to the Firm and resolved in District Court:

   i. Cases in General. The City will pay the Firm $150 per case upon appointment by the Court of the Firm to be counsel for a Defendant.

   ii. Preliminary Hearings: In the event that a case proceeds to a preliminary hearing, the City will pay the Firm an additional $50 per hour for the preliminary hearing. This additional payment may not exceed $50.

   iii. Bench Trials. In the event that a case is resolved through a bench trial, the City will pay the Firm an additional $50 per hour to prepare and represent the defendant at the bench trial. This additional payment may not exceed $100 per case.
iv. **Jury Trials.** In the event that a case is resolved through a jury trial, the City will pay the Firm an additional $50 per hour to prepare and represent the defendant at the jury trial. This additional payment may not exceed $400 per case.

c. **Additional Costs and Fees.** Upon written request from the Firm and written consent from the City, the City will pay for costs to serve subpoenas or other court orders and the cost of investigations and expert witnesses. All other costs and expenses shall be paid by the Firm and will not be reimbursed by the City.

d. **Invoices.** The Firm must submit an invoice to the City on the last day of each month summarizing the Legal Services performed and the total payment due. The City will review the submitted invoice for discrepancies. If no discrepancies are found, the City will pay the Firm on or before the 10th day of each month. If a discrepancy is found, the City will provide the Firm written notice of the discrepancy. The City will pay the Firm for all the invoiced Legal Services except the discrepancy on or before 10th day of the month. Upon resolving the discrepancy, the City will pay the Firm any additional payment for Legal Services if necessary.

**Section 5. Termination.** This Agreement may be terminated for any of the following events:

a. **Expiration of Term of Engagement.** The term of this Agreement will begin on July 1, 2016, and will terminate at 11:59:59 p.m. on June 30, 2017. Extensions of the Agreement, beyond the stated term of the Agreement, may be entered by agreement of both Parties not less than 3 months prior to June 30th of the current term.

b. **For Cause.** A Party may terminate the Agreement 10 days after providing written notice to the other Party that the other Party has materially breached any provision of the Agreement or violated any statutory or common law duty or obligation to the terminating Party including, without limitation, the Firm’s failure to perform any of the above Legal Services.

c. **Without Cause.** A Party may terminate the Agreement by providing the other Party written notice at least 30 days prior to the termination.

d. **Mutual Consent.** The City and the Firm may mutually agree in writing to terminate the Agreement.

e. **Conduct.** The City may terminate the Agreement immediately if the Firm engages in any fraudulent or dishonest conduct, or if the City reasonably determines that the Firm has engaged in conduct which may injure the reputation of the City or otherwise adversely affect the City’s interests.

f. **Non-Funding.** If funds are not appropriated for the City’s performance under the Agreement as described in Section 6 below, then the Agreement will terminate and become null and void on the first day of the fiscal year for which funds are not budgeted and appropriated or, in the event of a reduction in appropriations, on the last day before the reduction becomes effective.
Upon any termination, the City will only pay the Firm for Legal Services that were performed but unpaid as of the effective date of termination.

**Section 6. Allocation of Funds.** The Midvale City Council's decision to allocate funding for Legal Services remains at the discretion of the Council. Should the City, for any reason, reduce or eliminate the funding for Legal Services, the City reserves the right to renegotiate the amount of compensation due to the Firm for the Legal Services provided under this Agreement or to immediately terminate the Agreement.

**Section 7. Indemnification and Liability.** The Firm agrees to 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, and others claiming through or under the Firm, including its assignees. This indemnification requirement includes indemnification for claims for attorney’s fees, court costs, and litigation expenses, of whatever type and amount. The Firm agrees to indemnify and hold harmless the City, its officers, agents, employees, and volunteers from any and all claims involving workers’ compensation and claims for injuries occurring upon or arising from the performance of its services; the Firm is solely and fully responsible for the payment of such claims. The Firm agrees to indemnify and defend the City, its officers, agents, employees, and volunteers 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 of its services. At all times, the Firm will perform its services in accordance with the regulations, standards, and instructions of the City.

**Section 8. Relationship of Parties and No Third-Party Rights.** The Agreement does not create any joint venture partnership, undertaking, or business relationship between the Parties nor any rights or benefits to third-parties. The Firm is an independent contractor and is not an agent for the City, nor the City an agent for the Firm. It is understood that the Firm is not an employee of the City, and the Firm has no authority to enter into legally binding obligations on behalf of the City.

**Section 9. General Provisions.**

a. **Binding Agreement.** This Agreement is binding upon and will inure to the benefit of the successors and assigns of the respective Parties hereto.

b. **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms of provisions of the Agreement or the intent hereof.

c. **Counterparts.** The Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.
d. **Severability.** The provisions of the Agreement are severable, and should any provision hereof be found to be void, voidable, unenforceable, or invalid, such void, voidable, unenforceable, or invalid provision will not affect the other provisions of the Agreement.

e. **Waiver of Breach.** Any waiver by either Party of any breach of any kind of character whatsoever by the other, whether such be direct or implied, may not be construed as a continuing waiver of or consent to any subsequent breach of the Agreement.

f. **Cumulative Remedies.** The rights and remedies of the Parties hereto are construed cumulatively, and none of such rights and remedies are exclusive of or in lieu or limitation of any other right, remedy, or priority allowed by law.

g. **Amendment.** The Agreement may not be modified except by an instrument in writing signed by the Parties hereto.

h. **Interpretation.** The Agreement shall be interpreted, construed, and enforced according to the substantive laws of the State of Utah.

i. **Attorneys' Fees.** In the event any action or proceeding is brought by either Party to enforce the provisions of the Agreement, the prevailing Party is entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal, or in any bankruptcy or insolvency proceeding.

j. **Notice.** Any notice or other communication required or permitted to be given hereunder is deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within 3 days after such notice is deposited in the United States mail, postage prepaid, certified, and addressed to the Parties at their respective address or to such address as a Party may specify to the other in writing at any time during the term of the Agreement.

[SIGNATURE PAGE FOLLOWS]
In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

MIDVALE CITY

By: 
Name: JoAnn B. Seghini
Title: Midvale City Mayor

Attest:

Ron L. Andreae
City Recorder

STOWELL CRAYK & BOWN FOUNDATION

By: 
Name: Douglas Stowell
Title: Managing Member