

# Mapleton City Council Staff Report

Meeting Date: June 18, 2013

**Prepared by:** Cory Branch

**REQUEST:**

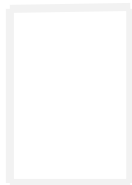
Consideration of a resolution appointing Aaron P. Wise of McKell Christiansen Wise, PLLC as the Mapleton City Public Defender.

**FINDINGS OF FACT:**

1. On March 5, 2013 the City Council motioned to approve a request for an RFP to seek bidding regarding the City's Public Defender services.
2. Mapleton City staff have completed the interviewing process and recommend that the City Council appoint Aaron P. Wise of McKell Christiansen Wise, PLLC (the "Contractor") as the new Mapleton City Public Defender.
3. Attachment 1 includes the proposed Agreement between Mapleton City and the Contractor. As shown in the Agreement the City shall pay the Contractor the annual amount of \$14,000.00 (the "Contract Price"). The Contract Price shall be for services beginning on July 1, 2013 and divided into 12 equal payments.

**STAFF RECOMMENDATION:**

Staff recommends the City Council appoint Aaron P. Wise of McKell Christiansen Wise, PLLC as the new Mapleton City Public Defender.



## AGREEMENT

This Independent Contract Agreement (“Agreement”) dated effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013 is between the City of Mapleton, a Utah Municipal Corporation (“City”) 125 West Community Center Way, Mapleton, Utah 84664 and Aaron P. Wise of McKell Christiansen Wise, PLLC (the “Contractor”) 642 Kirby Lane, Suite 105, Spanish Fork, Utah 84660.

## AGREEMENT

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of mutual covenants of the parties set forth herein, the parties hereto hereby agree as follows:

**Responsibility of Contractor:** During the term of this Agreement, Contractor agrees to provide legal representation of indigent criminal defendants, with specific duties as set forth in Public Defender Scope of Services, attached as Exhibit A, and hereby incorporated by reference.

**Contract Price and Payment:** The City shall pay the Contractor the annual amount of \$14,000.00 (the “Contract Price”). The Contract Price shall be for services beginning on July 1, 2013 and divided into 12 equal payments. The first payment shall be made on August 1, 2013, and each subsequent payment shall be paid on a monthly basis from the first payment date. Contractor shall send billing statements to the City on the 15<sup>th</sup> of every month.

**Term of the Contract:** Contractor agrees to commence the services required under this Agreement on July 1, 2013. The entire services performed will be completed on or before July 1, 2014. Any renewal to the term of this Agreement shall be mutually agreed to by both parties and in writing.

**Default:** A default hereunder shall occur if either party shall default in the performance or observation of any covenant or condition of this Agreement to be performed or observed, or by breach of any duty set forth in Exhibit A hereto. If contractor fails to complete its assigned duties as set forth herein, Contractor shall be in default.

**Remedies:** In the event of any breach or default of this Agreement by either party hereto, as defined in the section entitled “Default,” then this Agreement may declared terminated by the non-breaching party. This Agreement and the terms and conditions shall then expire upon receipt of the notice of termination by the breaching party. The rights and remedies afforded to the non-breaching party in the foregoing sentence shall not be exclusive, but shall be in addition to all other legal rights and remedies. The exercise of any right or remedy by the non-breaching party shall not be to the exclusion of any other right or remedy.

**Termination:** This Agreement may be terminated at any time by either party with 30 days prior written notice of termination.

**Independent Contractor:** Contractor’s relationship with the City under this Agreement shall be that of an independent contractor. Contractor certifies that he has done work for others in a similar capacity. All training of Contractor’s employees, if any, shall be done by Contractor and

not by the City. Contractor is exercising its own discretion in the method and manner of performing its duties, and the City will not exercise control over contractor or its employees.

**Taxes and Laws:** Contractor acknowledges that, as an independent contractor, Contractor is responsible for paying all state and local taxes. Contractor is responsible for workman's compensation and other insurance required by law. Contractor certifies that Contractor has complied with all Federal, State and Local laws regarding business licenses, permits and certificates.

**Time is of the Essence:** Both parties acknowledge that time is of the essence.

**Indemnity:** Contractor and its successor and assigns hereby agrees to indemnify, defend (with counsel acceptable to the City) and hold the City, its elected officials, officers, employees and volunteers harmless from any and all liens, encumbrances, costs, demands, claims, judgments, injuries, employee claims and/or damage caused or arising out of (a) the acts and omissions of Contractor and its agents, servants, employees, and/or contractors and (b) any work performed by the Contractor, its agents, servants, employees, consultants and/or contractors. The terms and conditions of this provision shall remain effective after the expiration or termination of this Agreement, so long as the event for which the indemnification is needed occurred prior to such expiration or termination.

**Insurance:** Contractor shall, at Contractor's sole expense, maintain a policy of comprehensive liability insurance. *See* Public Defender Scope of Services, attached as Exhibit A.

**Miscellaneous:**

**Attorney's Fees:** If any party is required to retain legal counsel in order to enforce this Agreement, with or without the commencement of a formal legal action, such party shall be entitled to recover its attorney's fees and costs from the breaching party or parties. In addition, City shall be entitled to attorney's fees and costs for all expenses arising out of a default by the Contractor.

**Change Orders:** The parties may agree to change the scope of the work contained in the Project. Change Orders must be in writing and signed by both parties. Change Order must contain the change agreed upon and a specific cost or credit associated with the change in work.

**Binding Effect:** This Agreement shall be binding on the parties and their respective heirs successors and assigns.

**Governing Law:** This Agreement shall be governed by the laws of the State of Utah.

**Modifications:** This Agreement shall not be amended or modified except by written document signed by the party to be charged with such amendment or modification.

**Notices:** Any notice, demand, request, consent, approval or other communication (collectively, the "Notices") required or permitted to be given by any provision of this agreement shall be in writing and sent by hand-delivery, by special courier (for example Federal Express), by United States Certified Mail (return receipt requested, postage prepaid), or by telefax, addressed to the party to be so notified. Notice pursuant to this Agreement shall be deemed given pursuant to the following rules: if hand delivered, at the time of delivery; if sent by special courier, on the third (3<sup>rd</sup>) day after deliver to the courier; if mailed, on the later of the date of receipt or the third

day after deposit thereof in the United State Mails; and if sent by telefax, on the date that the telefax is acknowledged as received.

**Assignment:** Contractor may not assign this Agreement without the written consent of the City.

**No Waiver:** No failure to exercise, delay in exercising or single or partial exercise of any right, power or remedy by any party hereto shall constitute a waiver there of or shall preclude any other or further exercise of the same or any other right, power or remedy.

**Section Headings:** The headings and captions contained in this Agreement are for convenience only and shall not be considered in the interpreting the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, to be effective for all purposes as of the date first written above.

MAPLETON CITY

By: 

ATTEST:

By: \_\_\_\_\_  
Camille Brown, City Recorder

CONTRACTOR

By: \_\_\_\_\_

## EXHIBIT A

### **Public Defender Scope of Services**

1. Contractor shall perform services as a member in good standing with the Utah State Bar Association.
2. Contractor may retain assistance of other qualified attorneys. At all times, the Public Defender will supervise any attorneys working, helping to perform the services found herein and ensure that defendants charged and represented the Public Defender in the Mapleton Municipal Justice Court receive competent legal representation.
3. Contractor and any other attorneys performing services under this agreement shall:
  - a) Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to criminal law;
  - b) Be familiar with the collateral consequences of a conviction, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction;
  - c) Be familiar with mental health issues and be able to identify the need to obtain expert services; and
  - d) Complete a minimum of five (5) hours of continuing legal education within each calendar year in courses relating to their public defense practice.
4. Representation as the City's Public Defender shall include but not be limited to:
  - a) Attending all scheduled court appearances. In the event of vacation or illness Public Defender is responsible for arranging coverage by another qualified attorney.
  - b) Acting as counsel available to all defendants at arraignments and in custody bail hearings on scheduled court days. Presently, Mapleton Justice Court session for Public Defender is the second and fourth Thursday from 9:00 am to 11:30 am, however Public Defender will have to make appearances at other times whenever noticed by the Court.
  - c) Representation of appointed cases at pre-trial hearing, trials, sentencing, and post-dispositions proceedings.
  - d) Consulting with defendants prior to pretrial hearings. Appointment as the City's Public Defender may require meetings with defendants at the Public Defender's office or at the Utah County Jail. Failure to consult with defendants prior to pretrial shall only be excused for good cause.
5. Pursuant to Utah Rules of Criminal Procedure, Public Defender, services may include providing legal representation to persons in other Courts at other times. The City's Public

Defender shall provide Mapleton City a contact telephone number that is available 24 hours a day to provide legal representation, in an emergency, including evenings, holidays, and weekends.

6. When a defendant excuses his or her right to trial, the City's Public Defender shall diligently prepare for trial and ensure that the defendant receives adequate representation. Preparation for trial shall include but not be limited to: interviewing witnesses identified by the City Prosecutor, interviewing witnesses identified by the defendant, review of police reports and evidence, research legal issues, preparing a witness list on behalf of the defendant, and consultation with the defendant.
7. If a defendant represented by the City's Public Defender elects to appeal a conviction to District Court, the Public Defender is responsible for timely filing a Notice of Appeal to the Mapleton Justice Court.
8. Services do not extend to forfeiture hearings or hearings with any Department of Licensing.
9. Contractor shall secure and maintain a policy of professional liability insurance in the amount of one million dollars (\$1,000,000) or more against claims arising out of work provided for in this Agreement. All insurance shall be obtained from an insurance company authorized to do business in the State of Utah. Excepting the professional liability insurance, Mapleton City shall be named on all insurance as an additional insured.
10. Contractor shall perform all other Public Defender services and requirements that may not be listed in this Exhibit but that are contained in the City of Mapleton Public Defender Request for Proposal and the Contractor's response to the Request for Proposal.