

**JOINT DEFENSE MEMORANDUM OF UNDERSTANDING
AND AGREEMENT**

Between

TOWN OF COLORADO CITY, ARIZONA

and

TOWN OF APPLE VALLEY, UTAH

This Joint Defense Memorandum of Understanding and Agreement (“MOU”) is entered into as of February 20, 2024 (the “Effective Date”) by and between the TOWN OF COLORADO CITY, ARIZONA, a municipal corporation and the TOWN OF APPLE VALLEY, UTAH, a municipal corporation, also referred to collectively as the “Parties.”

The Parties acknowledge the following:

- A. As of the Effective Date, the Parties are entering into intergovernmental agreements for the joint provision of emergency dispatch services for their respective communities (collectively, the “Joint IGAs”).
- B. The Parties will, from time to time, be jointly named in connection with demands, notices of claim, and filed state and/or federal lawsuits regarding the Joint IGAs.
- C. The Parties shall provide such demands, notice of claims, and filed state and/or federal lawsuits to each other for a determination of whether the demands, claims or suits are within the scope of defense or coverage, and for the Parties to provide insurance and risk management services as to those covered demands, claims, or suits.
- D. The Parties acknowledge that it is in their best interests, whenever possible, to jointly and cooperatively assess and defend those demands, claims, or suits.

Presumption Of No Conflict

- 1. The Parties agree that there is no general conflict of interest inherent in the services provided under the Joint IGAs.
- 2. As to each demand, notice of claim or filed state and/or federal lawsuit received in which the Parties are named jointly, the Parties agree to the presumption that no

conflict of interest exists which prevents the Parties from proceeding with a joint defense.

3. The above presumption of no conflict is rebuttable by either Party upon discovery and presentation to the other of facts demonstrating a non-waivable conflict of interest as to a particular demand, claim, or suit in which the Parties are named jointly. Within thirty days following receipt of a demand, claim, or suit in which the Parties are named jointly, each Party agrees to undertake an investigation to determine if the Party believes the matter can be addressed jointly and represented by one attorney, without a reasonable prospect of a conflict. If either of the Parties believes a conflict is either present, or likely to arise, the joint defense or representation will not proceed.

Defense Attorney Panel

4. The Managers for the Parties will identify a mutually agreeable panel of defense attorneys (collectively, the "Joint Defense Panel" and each attorney a "Panel Defense Attorney"). The number of attorneys in the panel may vary and will depend on such factors as experience, subject matter qualification, quality of work, availability, responsiveness, cost-effectiveness, and overall efficiency. The panel will include attorneys licensed to practice law in Arizona, Utah or both. The listed Panel Defense Attorneys shall be reviewed every 12 months from the effective date of this agreement by the City and Town. Either Party to this agreement may update or replace their respective Joint Defense Panel at any time they deem necessary with immediate written notice to the other Party.
5. Where engagement of a Panel Defense Attorney is required, if the Parties agree that one of the Parties has greater exposure to liability than the other, then the Party with the greater exposure shall select the Panel Defense Attorney. If the Parties are unable to agree that one of the Parties has the greater exposure to liability than the other, or if the Parties agree that they have equal exposure, then the Panel Defense Attorney will be selected by the Manager of each Party on a rotating basis. The selected Panel Defense Attorney will then represent each of the Parties in the matter.
6. The Party that selects the Panel Defense Attorney shall be the Party responsible for the receipt and payment of legal fees and costs initially. For each joint demand, claim, or suit in which a Panel Defense Attorney is engaged, the Parties will enter into a separate agreement which will establish the responsibility of each Party for the respective portions of legal fees and costs incurred in that matter.

Sharing Of Information

7. The Parties understand that, as part of this MOU, it will be necessary to share information with each other in connection with any joint defense, which may include confidential, privileged, private, or otherwise protected material (collectively, "protected material").
8. The Parties wish to pursue their common interests as stated in this MOU, and to avoid any suggestion of waiver of confidentiality of protected material exchanged as part of any joint defense.
9. The Parties agree that the exchange of protected material as part of any joint defense shall be protected from disclosure to any third party to the extent allowed by law, and regardless of the alignment of the Parties throughout the course of any joint defense.
10. It is understood and agreed that the Parties and their counsel may freely exchange and discuss protected material with their officials, supervisors, managers, employees, representative, and agents, and that any such materials exchanged or discussed shall be used solely in connection with the joint defense, and any related proceedings. The Parties agree to take the position as to any third party that a sharing of protected material as part of a joint defense does not constitute the waiver of any claim of confidentiality or privilege.

Pre-litigation Demands and Notices of Claim

11. When a Party to this Agreement receives a pre-litigation demand or notice of claim in which the Parties are named jointly, the receiving Party's risk manager will immediately notify the other Party's risk manager.
12. Upon receipt and notification of the pre-litigation demand or notice of claim in which the Parties are named jointly, the risk managers or the assigned claims adjusters for each Parties' insurer will promptly meet to discuss the demand or claim, and determine if it is in the best interests of the Parties to conduct a joint investigation and/or joint response to the demand or claim.
13. Where it is in the best interests of the Parties to conduct a joint investigation and/or joint response to the demand or claim, the Parties' risk managers or assigned claims adjusters for each Parties' insurer will meet and discuss documentary and testimonial

information that will be requested of each Party, obtain the documentary and testimonial information, and exchange all information collected.

14. The Parties' risk managers and assigned claims adjusters for each Parties' insurer will then meet, discuss, and arrive at a mutually agreeable approach or response to the demand or claim, including whether Panel Defense Attorney representation should be engaged at that time. Any Panel Defense Attorney will be selected in accordance with the procedure set forth in paragraphs 4-6 of this MOU.
15. Notwithstanding any provision in this MOU, each Party will be responsible to institute all appropriate measures to affect the preservation of physically and electronically stored information as required by law.

Litigated Matters

16. When a Party has been served with process in a lawsuit concerning the Joint IGAs involving both Parties, the receiving Party's risk manager shall immediately notify the other Party's risk manager.
17. Upon receipt and notification of a lawsuit in which the Parties are named jointly, the risk managers or assigned claims adjusters for each Parties' insurer will promptly meet to discuss the lawsuit, and determine if it is in the best interests of the Parties to be jointly represented in the suit.
18. Where it is in the best interests of the Parties to be jointly represented in the suit, a Panel Defense Attorney will be selected in accordance with the procedure set forth in paragraphs 4 -6 of this MOU.
19. The Parties shall ensure that the selected Panel Defense Attorney enters into an appropriate Joint Defense Agreement in the lawsuit which shall include an agreement that the selected Panel Defense Attorney may continue to represent the Party that selected the Panel Defense Attorney in the event a non-waivable, or non-waived, conflict should arise.

Term of Agreement

20. The term of this MOU shall commence on the Effective Date and shall continue for any period during which any of the Joint IGAs are effective.

21. This MOU shall be subject to the terms of A.R.S. Sec. 38-511, the terms of which are incorporated by reference.
22. Either Party may withdraw from this agreement by giving 30 days notice to the other Party so that substitute counsel may be retained as necessary.

IN WITNESS WHEREOF, the parties hereby agree to carry out the terms of this Agreement.
DATED this **20th** day of **February, 2024**.

APPLE VALLEY

COLORADO CITY

Michael Farrar, Mayor



Vance Barlow, Town Manager

This Agreement as executed is hereby approved as being in proper form and is compatible with and is within the powers and authority granted under the laws of the State of Utah.

Apple Valley Attorney

This Agreement as executed is hereby approved as being in proper form and is compatible with and is within the powers and authority granted under the laws of the State of Arizona.

Mangum, Wall, Stoops & Warden, PLLC
Colorado City Attorney