

**COMMON INTEREST, JOINT DEFENSE, ATTORNEY WORK PRODUCT, AND  
EXCHANGE OF CONFIDENTIAL INFORMATION AGREEMENT**

The City of Moab (“**Moab**”) and Grand County (“**County**”) (collectively, the “**Clients**”) hereby enter into this Common Interest, Joint Defense, Attorney Work Product, and Exchange of Confidential Information Agreement (“**Agreement**”) by and through their respective undersigned counsel (together with Clients referred to hereinafter as the “**Parties**”) for the reasons and in the manner set forth below.

WHEREAS, Moab was served with a Notice of Claim, dated March 3, 2022, from the offices of Freeman Lovell on behalf of 14 individual claimants (“**Notice of Claim Claimants**”), challenging Moab City Ordinance 2021-07, adopted on April 27, 2021, as it relates to ATV.

WHEREAS, the County was served with a Notice of Claim, dated March 2, 2022, from the offices of Freeman Lovell on behalf of the same Notice of Claim Claimants, challenging the County’s ordinances in Titles 5 and 11 relating to ATVs.

WHEREAS, based on the Notices of Claim and reasonably anticipated litigation involving Moab, the County, and the Notice of Claim Claimants, the Clients anticipate that any action taken by the Clients is likely to be challenged by the Notice of Claim Claimants and result in litigation with those or other third parties; and

WHEREAS, the Clients therefore share common issues and concerns, and are mutually interested in strategies and in structuring any resolution in a way that either avoids litigation with third parties or, if litigation occurs, will give Clients the greatest likelihood to prevail against challenges brought by third parties; and

WHEREAS, the Clients desire to take all lawful, ethical, and proper steps to ensure that their respective counsel are free to share and exchange information, strategies, legal theories, documents, and other confidential information and to allow interviews of, and discussions with, Clients and their agents, officers, officials, and employees in order to advance the resolution of issues raised in the Notices of Claim in a way that avoids litigation or places the Clients in a favorable position to defend against potential challenges from third parties while protecting the Clients’ respective rights and interests; and

WHEREAS, the Parties enter into this Agreement in the informed belief that the law permits parties with common interests and their counsel to share and exchange information in a common effort to prepare for and conduct litigation in which they are or may in reasonable likelihood become parties, and to enhance their respective counsel’s ability to represent them in defending against such litigation without thereby waiving any privilege or claim of confidentiality with respect to the information shared; and

WHEREAS, the Parties have a special relationship and interest in regulating unreasonable noise in Moab and the County resulting from the use of ATVs; and

WHEREAS, the Clients wish to continue and pursue the Clients’ common interests, and to avoid any suggestion or claim of waiver of the confidentiality or immunity of communications and documents protected by the attorney-client privilege, the work-product doctrine, or any other

privilege or immunity; and

WHEREAS, it is the undersigned counsel's intent and understanding that communications between the undersigned counsel and their respective Clients, and any joint interviews of, and discussions with, their respective Clients and the Clients' representatives and/or prospective witnesses or any interviews obtained by the undersigned counsel with the knowledge, consent, and on behalf of the other undersigned counsel, are and will remain confidential and are and will continue to be protected from disclosure to any third party by the Clients' attorney-client privilege, the attorneys' work-product immunity, Utah Code Ann. § 63G-2-305(17), (18), and (23), and other applicable privileges and immunities, except as set forth herein; and

WHEREAS, the undersigned counsel have mutually concluded, on the basis of currently available information, that no conflict of interest appears to exist between the Clients with respect to the limited scope of this Agreement covering strategy for investigation into and resolution of the Notices of Claims and any related potential disputes or litigation by third parties, and that the respective interests of their Clients will be best served by a common and joint defense with respect to any allegations anticipated to be asserted by third parties (the "**Joint Defense**"); and

WHEREAS, in order to pursue the Clients' common interest, including, if necessary, a joint defense, effectively, the undersigned counsel also have concluded that, from time to time, the mutual interests of their respective Clients will be best served by sharing documents, drafts, factual material, mental impressions, memoranda, interview reports, interviews of clients, investigative reports, litigation strategies, expert analyses and opinions, and other information, including confidential and/or privileged communications relevant to the Joint Defense, all of which will hereinafter be referred to as the "**Joint Defense Materials**" (but only to the extent that such materials and/or information were not already in possession of a signatory to this Agreement prior to the communication of such material and/or information or was thereafter independently obtained); and

WHEREAS, it is this Agreement's purpose to ensure that any exchange and/or disclosure of Joint Defense Materials contemplated herein does not in any way diminish their confidentiality nor constitute a waiver of any privilege or immunity otherwise available; and

WHEREAS, the Parties would not disclose the Joint Defense Materials to each other but for their common legal interests and the existence of this Agreement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Clients agree to exchange or disclose Joint Defense Materials to one another, and each authorizes its counsel to disclose Joint Defense Materials to the other Client's counsel, where relevant, helpful, and/or necessary in the pursuit of the Clients' common or mutual legal interests.

2. The Parties agree that such exchanges or disclosures are not intended to diminish the confidentiality of any exchanged or disclosed Joint Defense Materials or to waive any privilege or immunity applicable to the Joint Defense Materials.

3. Except as provided herein, all Joint Defense Materials will remain confidential and will be protected from disclosure to any other parties as a result of the attorney-client privilege, the

work-product doctrine, Utah Code Ann. § 63G-2-305(17), (18), and (23), and/or other applicable privileges or immunities.

4. The Parties agree to maintain at all times the confidentiality of any exchanged or disclosed Joint Defense Materials. Absent prior written approval from the Client and its respective counsel, the Parties will only disclose the Joint Defense Materials to the Clients, their undersigned counsel, and those individuals under their direct supervision or control who are involved in the Joint Defense (including the Parties' officers, employees, agents, insurers, and attorneys within undersigned counsels' firms, all of whom also will be bound by this Agreement). It is expressly understood that nothing contained in this Agreement will limit the right of any of the Parties to disclose to anyone as they see fit any of their own documents or information, or any documents or information obtained independently and not pursuant to this Agreement.

5. The Parties will advise all persons permitted access to shared Joint Defense Materials that the information is privileged and subject to the terms of this Agreement.

6. Nothing in this Agreement will be construed to affect, restrain, or inhibit the separate and independent representation of each Client by its respective counsel according to what counsel believes to be in its Client's best interests. The Parties recognize each other's right to conduct separate investigations and witness interviews, and to devise separate legal strategies, without necessarily sharing any such information with the other Party to this Agreement. Nothing in this Agreement will obligate any signatory to share or communicate any Joint Defense Materials with the other Party.

7. The Clients' counsel will use exchanged or disclosed Joint Defense Materials and the information contained therein solely for the Joint Defense and for no other purpose. If another person or entity requests or demands any Joint Defense Material by discovery request, subpoena, or otherwise, the Clients' counsel will take all steps necessary to assert and protect any privilege for the Joint Defense Materials, including, but not limited to, permitting the other Party a reasonable opportunity to intervene and be heard, and otherwise cooperating with the other Party to enable it to take any other appropriate steps to protect its rights under this Agreement.

8. Any Party may assert the privilege afforded under this Agreement as to any privileged and confidential communication in any proceeding.

9. The Parties agree that they will not make any claim that the exchange or disclosure of any Joint Defense Materials pursuant to this Agreement constitutes a waiver of any privilege applicable to the Joint Defense Materials.

10. The Parties are prohibited from using any Joint Defense Materials that are clearly identified by a disclosing party as Joint Defense Materials against the interests of the disclosing Party. Notwithstanding the foregoing, this Section 10 will not preclude a Party from using information that is discovered independently of any Joint Defense Materials.

11. This Agreement does not preclude any Party from taking any position or engaging in any representation that is adverse to another Party or Client. In the event any Party determines that its interests may be adverse to the interests of any other Party, or becomes aware of any other circumstances inconsistent with the maintenance of a joint defense privilege, such Party will immediately notify the other Party and withdraw from this Agreement, and both Parties will return to

the other Party all previously received Joint Defense Materials. The withdrawal will not affect the privileged nature of any Joint Defense Materials exchanged or disclosed prior to the date of withdrawal, and the Clients and their counsel will continue to honor the obligations of confidentiality in this Agreement notwithstanding the withdrawal.

12. Nothing contained herein will be deemed to create an attorney-client relationship between any attorney and anyone other than the client of that attorney, and the fact that any attorney has entered into this Agreement will not in any way preclude that attorney from representing any interests that may be construed to be adverse to any other party to this Agreement or be used as a basis for seeking to disqualify any counsel in the above-identified matter or any other present or future proceeding. No attorney who has entered into this Agreement will be disqualified from examining or cross-examining any party to this Agreement who testifies at any proceeding because of such attorney's participation in this Agreement, and it is herein represented that each undersigned counsel has specifically advised its respective clients regarding this clause.

13. Nothing in this Agreement alters any Party's rights to obtain Joint Defense Materials or other confidential information from another party, where the seeking party would otherwise have such rights through pretrial discovery absent this Agreement. Notwithstanding any other provision herein, in the event of any other adversarial action, proceeding, or litigation between the parties hereto, nothing in this Agreement will be construed to prevent a party hereto from revealing, using, or introducing in such action, proceeding, or litigation any Joint Defense Materials or other confidential information that is otherwise obtained through discovery or from independent third-party sources.

14. Shared Joint Defense Materials will not be disseminated to any other counsel representing individuals or entities involved or concerned with the above-identified matters unless the Parties consent and unless such counsel has executed an addendum to this Agreement that incorporates every provision of this Agreement ("**Addendum**"). If any of the Clients retain other counsel, the Parties will not disclose Joint Defense Materials to such other counsel until they have executed an Addendum. Any disclosure in accordance with this paragraph will not diminish in any way the confidentiality of the Joint Defense Materials disclosed and will not constitute a waiver of any applicable privilege.

15. The Parties intend by this Agreement to protect from disclosure all information and documents shared among any Parties or between counsel or any consultant to the greatest extent permitted by law, regardless of whether the sharing occurred before execution of this Agreement. The Parties recognize and agree that a joint defense/common interest agreement existed between the Parties prior to the execution of this Agreement.

16. Each of the Clients is free to withdraw from this Agreement upon prior written notice to the others. If a Party withdraws from this Agreement, the withdrawing Party will promptly return or destroy all received Joint Defense Materials and copies thereof and will continue to preserve the confidentiality of all Joint Defense Materials learned or disclosed pursuant to this Agreement. After the date of a Party's withdrawal, the withdrawing Party and the remaining Parties will remain obligated to preserve the confidentiality of all Joint Defense Materials received or disclosed pursuant to this Agreement. In the event this Agreement is terminated, the Parties agree to preserve after the date of termination the confidentiality of all Joint Defense Material received or disclosed pursuant to this Agreement. Injunctive relief may be sought by any of the Parties to

prevent another party to this Agreement from disclosing or using shared Joint Defense Materials in violation of this Agreement.

17. This Agreement will not constitute or be interpreted, construed, or used as evidence of any admission of liability, law, or fact, a waiver of any right or defense, or an estoppel against any Party by the Parties as among themselves or by another person not a Party. Additionally, nothing in this Agreement is intended or should be construed to limit, bar, or otherwise impede the enforcement of any term or condition of the Agreement against any Party to this Agreement.

18. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

19. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter covered by the Agreement.

20. This Agreement will be interpreted under the substantive laws of the State of Utah, without giving effect to choice-of-law principles thereof.

21. This Agreement is effective upon the execution of all the Parties and will remain in effect until the Parties individually decide or jointly agree to terminate this Agreement. Either Party may terminate this Agreement at any time upon 30 days' written notice to the other Party.

22. The recitals of this Agreement are incorporated as if set forth fully herein.

23. Moab and the County are both governmental entities subject to the Governmental Immunity Act (the "Act"), Utah Code § 63G-7-101, et seq. Except as may be provided in § 63G-7-301 of the Act (i.e., waiver as to contractual obligations under this agreement), neither Party waives any other rights, defenses or limitations available under the Act.

24. All notices and other communications, required or permitted to be given hereunder, will be in writing and will be deemed to have been duly given and delivered as of the date the notice is sent, if delivered by mail or email to the following addresses, which the parties may change from time to time in writing:

City of Moab  
c/o Kathryn Steffey  
257 E. 200 S., Suite 500  
Salt Lake City, Utah 84009  
[ksteffey@shutah.law](mailto:ksteffey@shutah.law)

Grand County  
c/o of Christina Sloan  
Grand County Attorney  
125 East Center Street  
Moab, Utah 84532  
[csloan@grandcountyutah.net](mailto:csloan@grandcountyutah.net)

With a copy to:  
Nathan Bracken  
Moab City Attorney  
[nbracken@shutah.law](mailto:nbracken@shutah.law)

[signatures on following page]



Dated: \_\_\_\_\_

CITY OF MOAB

\_\_\_\_\_  
Mayor Joette Langianese

Attest:

\_\_\_\_\_  
City Recorder

Counsel for CITY OF MOAB

\_\_\_\_\_  
Nathan S. Bracken  
Smith Hartvigsen, PLLC

Dated: \_\_\_\_\_

GRAND COUNTY

\_\_\_\_\_  
Mary McGann  
County Commissioner Chair

Attest:

\_\_\_\_\_  
County Recorder

Counsel for GRAND COUNTY

\_\_\_\_\_  
Christina Sloan  
Grand County Attorney