

**TOWN COUNCIL  
TOWN OF GYPSUM COLORADO**

**RESOLUTION NO. 23 (SERIES 2022)**

**A RESOLUTION PROVIDING FOR THE INDEMNIFICATION OF TOWN  
COUNCIL MEMBERS, PLANNING AND ZONING COMMISSION MEMBERS,  
DESIGN REVIEW BOARD MEMBERS, OFFICERS, AND EMPLOYEES OF  
THE TOWN**

WHEREAS, the Town of Gypsum, Colorado (“Town”), is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town’s Home Rule Charter effective October 21, 1982; and

WHEREAS, past and present members of Town Council, Planning and Zoning Commission, the Design Review Board, other officers and employees of the Town (collectively “Public Officials”) may be subject to claims arising from acts or omissions occurring during the performance of their governmental duties; and

WHEREAS, the Town desires to defend and indemnify Public Officials against liability for acts or omissions occurring during the performance of their governmental duties so as to encourage employment with and/or service to the Town; and

WHEREAS, by encouraging persons to accept employment, it is in the best interests of the health, safety, and welfare of the Town and its inhabitants to defend and indemnify its Public Officials against liability for which defense and indemnification may not otherwise be provided by Colorado law.

NOW THEREFORE, be it resolved by the Town Council of Town of Gypsum as follows:

A. Definitions. For purposes of this Resolution, the terms below shall be defined as follows:

1. Council Member: Includes current and former members of the Town Council, whether elected or appointed, who are sued for acts or omissions occurring during their terms as council members of the Town.

2. Employee: Includes a current or former Council Member, officer, employee, authorized volunteer, or servant (hereinafter collectively referred to as “Employee”) of the Town, whether or not compensated, elected, or appointed. The term “Employee” specifically excludes any person or organization contracting to perform services or acting for the Town as an independent contractor.

3. Scope of Employment: An act or omission of an Employee of the Town is within the “scope of employment” if it reasonably relates to the business or affairs of the Town, and the Employee acted in good faith and in a manner which a reasonable person would have believed to be in, and not opposed to, the best interests of the Town.

4. Act: Means the Colorado Governmental Immunity Act set forth in Article 10, Title 24, C.R.S., as amended from time to time.

B. Applicability of the Act.

1. The Town shall pay the costs and expenses actually and reasonably incurred by an Employee in connection with the defense of any allegation, action and proceeding arising out of an act or omission of such person during the performance of such person’s duties within the scope of such person’s appointment, including reasonable attorneys’ fees, where the action lies or could lie in tort, including any such action brought pursuant to Federal law in any court of this State, in accordance with the Act. As a prerequisite to such payment, the Employee must furnish the Town with an affidavit stating that the action against him is not purely personal; that, to his reasonable belief, the act or omission upon which the claim is based reasonably relates to the business affairs of the Town; and that the Employee acted in good faith and in a manner which a reasonable person would have acted under the circumstances and which was not opposed to the best interests of the Town. However, the Town shall not pay such judgment or settlement and shall seek reimbursement from the Employee for the actual costs of his defense, including actual attorneys’ fees, where it is determined by a court of competent jurisdiction (a) that the injuries did not arise out of an act or omission of the Employee occurring during his term of employment with the Town and within his scope of employment, or (b) that, unless otherwise expressly authorized by the Town Council, the Employee’s act or omission was willful and wanton.

2. All claims to be paid as a result of the indemnification provided hereunder shall be paid by the Town or its insurer, except as set forth in paragraph K, below. The Town shall pay judgments and settlements in accordance with the Act even if sovereign immunity bars the action against the Town.

C. Limitations on Unlawful Acts. The Town, acting through its Council Members, shall have absolute discretion regarding the payment of costs of defense, including reasonable attorneys’ fees and any fines or penalties assessed, where a criminal action is brought against its Employee for acts or omissions occurring during his term of employment with the Town and within his scope of employment. Prior to such payment, the Employee must furnish the Town with an affidavit stating that the action against him is not purely personal; that to his reasonable belief the act of omission upon which the claim is based occurred within his scope of employment; and that he had no reasonable cause to believe his conduct was unlawful. The Town shall not pay such fines or

penalties, and shall be reimbursed by the Employee for the actual costs of his defense, including actual attorneys' fees, where it is determined by a court of competent jurisdiction (a) that the alleged criminal action did not arise out of an act or omission by the Employee occurring during his term of employment with the Town and within his scope of employment, or (b) that the Employee had reasonable cause to believe his conduct was unlawful.

D. Contract or Other Actions. The Town shall pay the cost of defense of, and settlements and judgments against, its Employees, including reasonable attorneys' fees, where the action lies, or could lie, in contract or arises under State or Federal laws and is not governed by the Act, except for criminal actions as hereinbefore addressed. As a prerequisite to such payment, the Employee must furnish the Town with an affidavit stating that the action against him is not purely personal and that, to the best of his reasonable belief, the act or omission upon which the claim is based occurred within the scope of his employment. The Town shall not pay such judgments and shall be reimbursed by the Employee for the actual costs of his defense, including actual attorneys' fees, where it is determined by a court of competent jurisdiction that (a) the damages did not arise out of an act or omission of the Employee occurring during his term of employment with the Town and within the scope of his employment, or that (b) the Employee had reasonable cause to believe such action or contract was prohibited by law.

E. Notice of Action or Potential Action. The Town hereby incorporates the notice prerequisite to defense and indemnification of its Employees pursuant to all provisions of the Act for tort, contract or any and all other forms of action. Notice must be given to the Town by the Employee in writing within fifteen (15) days after commencement of the action or indemnification will not be made.

F. No Indemnification. In no event will the Town indemnify or pay the defense cost if it is adjudged that the Employee has acted primarily for personal benefit or on the basis of other improper benefit, whether or not the Employee is acting in his official capacity. Such defense and indemnification shall not be available to a former Employee in the event that the tort or liability claim against him is asserted as a counterclaim or setoff in any suit brought by the Employee, except to the extent that the liability of such Employee may exceed the amount of his own claim or suit.

G. Settlement. The Town, acting through its Council Members, shall approve in writing any settlement of claims and stipulated judgments against its Employees. The Town shall not be liable for any such compromise or settlement given without its consent.

H. Legal Counsel. The Town shall obtain legal counsel to serve as counsel to the Employee unless it appears to such counsel that the interests of the Town and the Employee may be adverse. In the latter event, the Employee may select independent

legal counsel, who shall first be approved by the Town. The Employee shall cooperate in all respects with the Town and its legal counsel in his defense. If the Employee does not cooperate with the Town for any reason, and such action results in a judgment against the Town or the Employee, the Town may elect not to indemnify the Employee or to pay defense costs.

I. Employee's Costs. The Town shall not be responsible for costs to its Employees associated with time spent in giving depositions, testifying, or otherwise cooperating with their defense.

J. Liability Limitations. The Town shall indemnify any Employee up to but not to exceed the applicable limitations under the Act. The Town specifically reserves any defenses which are available to Employees under the Act or by common law.

K. Effect of Other Insurance, Bond, or Indemnification Plan. If the Town has insurance coverage for any act for which indemnification is provided by this Resolution, its coverage shall be primary. If the Employee against whom a claim reimbursable under this Resolution is asserted has any other valid insurance, bond, or indemnification plan available covering the loss or damage alleged against him, and the Town does not have adequate insurance coverage, and the act for which indemnification is sought is other than an action sounding in tort, such insurance, bond, or other plan will be first applied to the payment of any defense costs, attorneys' fees, or claim/judgment before the Town's resort to obtaining funds for indemnification from sources other than insurance. The obligation of the Town to indemnify and save harmless the Employee shall, in all events, exist only to the extent permitted by this Resolution.

L. Subrogation Rights of the Town. In the event of any payments pursuant to this Resolution, the Town or its assigns shall be subrogated to all of the Employee's rights of recovery therefor against any person or entity. The Employee shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Employee shall do nothing to prejudice such rights.

M. Purpose. The purpose of this Resolution is to protect Employees of the Town against personal liability for their actions taken on behalf of the Town. It is the intent of the Town that this Resolution be liberally construed in favor of the protection of such Employees. By the adoption of this Resolution, the Town does not waive its rights to claim sovereign immunity as a defense to any action or any other defense under the Act or provided by law.

N. Severability. If any provision of this Resolution is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of the remainder of the Resolution.

O. Term. All indemnifications described in this Resolution shall be valid during the current fiscal and calendar year and shall be considered automatically renewed on January 1 of each year thereafter unless repealed by resolution of the Town Council within sixty (60) days prior to the renewal date.

P. Repeal of Previous Indemnification Provisions. This Resolution shall supersede any and all previous Indemnification Resolutions adopted by any Town Council and shall amend any bylaws or policies to the extent of any inconsistency between such indemnification provisions.

Q. Statute Controls. The provisions of this Resolution shall be subject to, and, to the extent of any inconsistency therewith, shall be modified by the Colorado Governmental Immunity Act.

Approved and Resolved this 8<sup>th</sup> day of November, 2022 at a regular meeting of the Town Council of the Town of Gypsum, Colorado by a vote of 6 in favor and 0 against.

TOWN OF GYPSUM

By: 

Steven Carver, Mayor

ATTEST:

By: 

Becky Close, Town Clerk

