

**RESOLUTION
OF THE
BOARD OF DIRECTORS OF THE
CLOVERLEAF METROPOLITAN DISTRICT**

**A RESOLUTION PROVIDING FOR THE DEFENSE AND INDEMNIFICATION
OF DIRECTORS AND EMPLOYEES OF THE DISTRICT**

At an organizational meeting of the Board of Directors of the Cloverleaf Metropolitan District, El Paso County, Colorado, held at 9:00 A.M., on Friday, January 21, 2022 via video meeting at <https://us02web.zoom.us/j/85333351769?pwd=TDUrsZd3Y3Z2MkpxZDQ3eIM0ci8vUT09>, and via telephone at 1 669 900 9128, Meeting ID: 853 3335 1769, Passcode:644338, at which a quorum was present, the following resolution was adopted:

WHEREAS, present and future Directors and Employees of the Cloverleaf Metropolitan District (“District”) may be subject to claims arising from acts or omissions occurring during the performance of their governmental duties; and

WHEREAS, the District desires to encourage persons to serve on its Board of Directors and accept employment with the District by defending and indemnifying such persons against liability for acts or omissions occurring during the performance of their governmental duties; and

WHEREAS, it is in the best interest of the District and its inhabitants to defend and indemnify its Directors and Employees against liability for acts and omissions which occur within their Scope of Employment and for which such defense and indemnification is not otherwise provided by Colorado law.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CLOVERLEAF METROPOLITAN DISTRICT THAT:

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

a. Director: includes current directors and directors who are appointed or elected to the board hereafter, who are sued for acts or omissions occurring during their term as a director of the District.

b. Employee: includes current employees and employees employed in the future, who are sued for acts or omissions occurring during their employment with the District.

c. Scope of Employment: an act or omission of a Director or Employee of the District is within the “scope of employment” if it reasonably relates to the business or affairs of the District and the Director acted in good faith and in a manner a reasonable person would have believed to be in the best interests of the District. In addition to other acts or omissions which are not within the Scope of Employment, all acts or omissions which are a violation of law shall be

deemed not to be within the Scope of Employment.

2. Tort Actions Governed by the Colorado Governmental Immunity Act.

a. The District shall pay, in accordance with Sections 24-10-101 *et. seq.*, C.R.S., as amended from time to time (the “Governmental Immunity Act”), the costs of defense and settlements and judgments against a Director or Employee of the District, including reasonable attorney 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, but specifically excepting any actions brought by, on behalf of, or in the right of the District. As a prerequisite to such payment, the Director or Employee must furnish the District with an affidavit stating that: (1) the action against him/her is not purely personal, and (2) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment. The Director or Employee shall also be required to comply with all relevant provisions of the Governmental Immunity Act, including but not limited to, provision of timely notice to the District of claims in accordance with such Act. However, the District shall not pay such judgments and shall seek reimbursement from the Director or Employee for the reasonable costs of his/her defense, including reasonable attorney fees, where it is determined by a court of competent jurisdiction that the injuries did not arise out of an act or omission of the Director or Employee occurring during his/her term or employment with the District and within the Scope of Employment.

b. The District does not hereby waive the notice requirements of its Directors and Employees as set forth in Section 24-10-110(2), C.R.S.

3. Other Actions Except Criminal. The District hereby agrees to pay the costs of defense and settlements and judgments against its Directors and Employees, including reasonable attorney fees, for all other actions, including but not limited to, actions which lie or could lie in contract, or arise under state or federal laws and are not governed by Section 24-10-110, C.R.S., except for criminal actions and any actions brought by, on behalf of, or in the right of the District. As a prerequisite to such payment, the Director or Employee must furnish the District with an affidavit stating that: (1) the action against him/her is not purely personal, and (2) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment. The District shall not pay such judgments and shall be reimbursed by the Director or Employee for the reasonable costs of his/her defense, including reasonable attorney fees, where it is determined by a court of competent jurisdiction that the injuries did not arise out of an act or omission of the Director or Employee occurring during his/her term or employment with the District and within the Scope of Employment. The Director or Employee shall be required to immediately notify the District of claims against him or her, and the District will notify the Director or Employee whether the District will assume such defense following receipt of the Director’s or Employee’s affidavit as required above. The maximum amount the District shall pay on behalf of a Director or Employee for any judgment resulting from all actions other than tort and criminal actions in which the Director or Employee is found liable by a court of competent jurisdiction shall be limited to those amounts set forth in Section 24-10-114, C.R.S., as may be amended from time to time.

4. Criminal Actions. The District hereby agrees to pay the costs of defense, including

reasonable attorney fees, and any fines or penalties assessed where a criminal action is brought against its Directors or Employees for acts or omissions occurring during their term or employment with the District and within the Scope of Employment as long as such action is not brought on behalf of or in the right of the District. As a prerequisite to such payment, the Director or Employee must furnish the District with an affidavit stating that: (1) the action against him/her is not purely personal, (2) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment, and (3) he/she had no reasonable cause to believe his/her conduct was unlawful. However, the District shall not pay such fines or penalties and shall be reimbursed by the Director or Employee for the reasonable costs of his/her defense, including reasonable attorney fees, where it is determined by a court of competent jurisdiction that:

a. The injuries did not arise out of an act or omission of the Director or Employee occurring during his/her term or employment with the District and within the Scope of Employment; or

b. The Employee or Director had reasonable cause to believe his/her conduct was unlawful.

The Director or Employee shall be required to immediately notify the District of any criminal action against him or her, and the District will notify the Director or Employee whether the District will assume such defense following receipt of the Director's or Employee's affidavit as required above. The maximum amount the District shall pay on behalf of a Director or Employee for fines or penalties resulting from all criminal actions in which the Director or Employee is found liable by a court of competent jurisdiction shall be limited to those amounts set forth in Section 24-10-114, C.R.S., as may be amended from time to time.

5. Miscellaneous Provisions. The following provisions shall apply to any of the actions discussed in Sections 2, 3 or 4 above:

a. Consent to Compromise or Settlement. The District shall pay no judgment or settlement of claims against its Director or Employee where the latter has compromised or settled the claim without the District's written consent.

b. Legal Representation of the Director or Employee. To the extent legal counsel for the Director or Employee is not provided by the District or the District's insurance provider, the Director or Employee may select his or her own legal counsel subject to approval in writing by the District. The Director or Employee shall cooperate with the District and its legal counsel in his defense. The Director or Employee shall cooperate with the District and its legal counsel in his defense.

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

6. No Waiver of Sovereign Immunity. By the adoption of this Resolution, the District does not waive its defense of sovereign immunity as to any action.

7. No Waiver of Insurance Coverage. The approval and adoption of this Resolution shall not constitute a waiver by the District of insurance coverage with respect to any liability covered by this Resolution. The Resolution shall render the District secondarily liable in the event the District's insurance does cover such liability and the conditions of this Resolution are met.

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

9. Effect of Other Insurance, Bond or Indemnification Plans. If the District has insurance coverage for any act for which indemnification is provided by this Resolution, its coverage shall be primary. If the Director or Employee against whom a claim is subject to indemnification under this Resolution is asserted had any other valid insurance, bond or indemnification plan available covering the loss or damage alleged against him or her, and the District 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 District's resort to obtaining funds for indemnification from sources other than insurance. The obligation of the District to indemnify and save harmless the Director or Employee shall, in all events, exist only to the extent permitted by this Resolution.

10. Liberal Construction. The purpose of this Resolution is to protect Directors and Employees of the District against personal liability for their actions taken on behalf of the District and reasonably believed to be in the best interest of the District. Therefore, it is the intent of the District that this Resolution be liberally construed in favor of protection of such Directors and Employees.

11. Invalidation. Judicial invalidation of any of the provisions of this Resolution or of any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstance, shall not affect the validity of the remainder of this Resolution, unless such invalidation would act to destroy the intent or essence of this Resolution.

12. Renewal of Indemnifications. All obligations of the District described in this Resolution shall be subject to annual appropriation and automatically renew each January 1 thereafter.

[Remainder of page intentionally left blank.]

Whereupon, a motion was made and seconded, and upon a majority vote this Resolution was approved by the Board.

ADOPTED AND APPROVED THIS 21ST DAY OF JANUARY, 2022.

CLOVERLEAF METROPOLITAN DISTRICT

DocuSigned by:
Andrew Biggs
830CC12727494B8...

Andrew J. Biggs, President

ATTEST:

DocuSigned by:
Joseph DesJardin
E976D347AEE64DB...

Joseph W. DesJardin, Secretary