

RESOLUTION 6-2012

RESOLUTION OF THE BOARD OF DIRECTORS OF COLORADO CITY METROPOLITAN DISTRICT PROVIDING FOR THE INDEMNIFICATION OF DIRECTORS AND EMPLOYEES OF THE DISTRICT

WHEREAS, Colorado City Metropolitan District (“District”) is a special district and political subdivision of the State of Colorado, acting pursuant to certain powers set forth in the Colorado Special District Act, C.R.S. § 32-1-101, *et seq.*; and

WHEREAS, past, present, and future directors and employees of the District may be subject to claims arising from acts or omissions occurring during the performance of their duties; and

WHEREAS, the District desires to defend and indemnify such persons against liability for acts or omissions occurring during the performance of their duties so as to encourage employment with or service as directors or officers to the District; and

WHEREAS, by encouraging persons to accept employment or to serve as directors and officers, it is in the best interests of the health, safety, and welfare of the District and its constituents to defend and indemnify its directors and employees against liability for which defense and indemnification may not otherwise be provided by Colorado law.

NOW, THEREFORE, be it resolved by the Board of Directors of the District as follows:

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

1. Director: Includes former, current, or future directors and officers of the District who are sued for acts or omissions occurring during their terms as directors and officers of the District.

2. Employee: Includes former, current, or future employees of the District. The term “Employee” specifically excludes any person or organization contracting to perform services or acting as an independent contractor.

3. Scope of Engagement: An act or omission of a director or employee of the District is within the “scope of engagement” if it reasonably relates to the business or affairs of the District, including participation on various boards or agencies reasonably related to the District’s public water and sewer services, and if the director or employee acted in good faith and in a manner that a reasonable person would have believed to be in, and not opposed to, the best interests of the District. “Scope of engagement” shall include any claims or allegations against a director or employee that are directed at a director or employee personally, but are intended to improperly influence the director’s or employee’s efforts on behalf of the District, subject to the remaining provisions of this Resolution.

B. Applicability.

1. Subject to the terms of this Resolution, the District shall pay the costs of defense of, 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 or contract or other claims, including any such action brought pursuant to federal law in any court of this State. As a prerequisite to such payment, the director or employee must furnish the District with an affidavit stating that the action against him or her is not purely personal, and that, to his or her reasonable belief, the act or omission upon which the claim is based reasonably relates to the business affairs of the District, and that the director or employee acted in good faith and in a manner that a reasonable person would have acted under the circumstances, and which was not opposed to the best interests of the District. However, the District shall not pay such judgment or settlement and shall seek reimbursement from the director or employee for the actual costs of his or her defense, including actual attorney fees, where it is determined by a court of competent jurisdiction: (a) that the injuries or damages did not arise out of an act or omission of the director or employee occurring as a result of his or her scope of engagement with the District, or (b) that the director's or employee's act or omission was willful and wanton, in bad faith, or constituted a conflict of interest.

2. All claims to be paid as a result of the indemnification provided hereunder shall be paid by the District or its insurer, except as set forth in paragraph D, below.

C. Notice of Action or Potential Action. In order for the director or employee to be entitled to relief under the terms of this Resolution, notice must be given to the District by the director or employee in writing within ten days after service of notice of the action.

D. No Indemnification. In no event will the District indemnify or pay the defense costs if it is adjudged that the director or employee has acted primarily for personal benefit or on the basis of other improper benefit, whether or not the director or employee is acting in his or her official capacity. Such defense and indemnification shall not be available to a former director or employee in the event that the tort or liability claim against him or her is asserted as a counterclaim or setoff in any suit brought by the director or employee against the District.

E. Settlement. In order for a director or employee to avail himself or herself of the benefits of this Resolution, the District, acting through its Board of Directors, shall approve in writing any settlement of claims and stipulated judgments against its directors or employees. The District shall not be liable for any such compromise or settlement without its written consent.

F. Legal Counsel. Provided that the above provisions are satisfied, the District shall obtain legal counsel to serve as counsel to the director or employee unless the interests of the District and the director or employee may be adverse. In such event, the director or employee may select independent legal counsel, who shall first be approved by the District. The director or employee shall cooperate in all respects with the District and its legal counsel in his or her defense. If the director or employee does not cooperate with the District, the District may elect not to pay defense costs or indemnify the director or employee.

G. Director's or Employee's Costs. The District shall not be responsible for costs or fees to its directors or employees associated with time spent in giving depositions, testifying, or otherwise cooperating with defense of claims against them or the District.

H. Effect of Other Insurance, Bond, or Indemnification Plan. If the District has insurance coverage for any act for which indemnification is provided by this Resolution, such coverage shall be primary. As to a claim potentially subject to reimbursement under this Resolution, if the director or employee has any other valid insurance, bond, or indemnification plan available that covers defense costs or the loss or damage alleged against him or her, and the District does not have adequate insurance coverage, such director's or employee's insurance, bond, or other plan will be first applied to the payment of any defense costs, attorney fees, or claim/judgment before resorting to a claim for indemnification hereunder. 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, the District's Rules and Regulations, and Colorado law.

I. Subrogation Rights of 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 the director or employee will take no action that would prejudice the rights of subrogation.

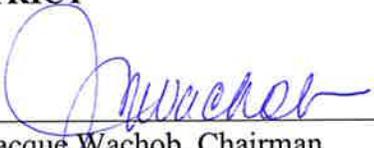
J. Purpose. The purpose of this Resolution is to protect directors and employees of the District against personal liability for their actions taken on behalf of the District. It is the intent of the District that this Resolution be liberally construed in favor of the protection of such directors and employees. By the adoption of this Resolution, the District does not waive its rights: (1) under the Colorado Governmental Immunity Act; (2) to claim immunity as a defense to any action; or (3) to set forth any other claim, defense or counterclaim provided by law.

K. 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.

L. Term. All indemnifications described in this Resolution shall be valid during the current calendar year and shall be considered automatically renewed on January 1 of each year thereafter unless repealed by resolution of the Board of Directors of the District within 60 days prior to the renewal date, or unless expressly modified or revised by subsequent Board resolution(s).

PASSED AND ADOPTED, this 29th day of May, 2012.

**COLORADO CITY METROPOLITAN
DISTRICT**

By: 
Jacquie Wachob, Chairman

ATTEST:


Roger Lowe, Secretary