

RESOLUTION 09-2021

**RESOLUTION OF THE BOARD OF DIRECTORS OF
COLORADO CITY METROPOLITAN DISTRICT PROVIDING FOR THE
INDEMNIFICATION OF VOLUNTEERS**

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, the District relies on citizens to volunteer to assist the District by serving on District committees and boards; and

WHEREAS, past, present, and future volunteers 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 persons serving as volunteers of the District against liability for acts or omissions occurring during the performance of their duties, in order to encourage service as volunteers to the District; and

WHEREAS, the Board of Directors of the District (the “Board”) hereby finds that it is in the best interests of the health, safety, and welfare of the District and its constituents to defend and indemnify its volunteers against liability for good faith actions relating to their engagement as District volunteers, which defense and indemnification may not otherwise be provided by Colorado law, because such indemnification will encourage persons to serve as volunteers; and

WHEREAS, this Resolution supersedes Resolution 13-2012, Providing for the Indemnification of Volunteers Serving on the Colorado City Architectural Control Committee, the Parks and Recreation Advisory Board or the Friends of the Hollydot.

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. Volunteer: Includes former, current or authorized volunteers who perform an act for the benefit of the District at the request of and subject to the control of the District, as recognized by the District’s Board or manager.

2. Scope of Engagement: An act or omission of a volunteer of the District is within the “scope of engagement” if it occurs during the performance of the volunteer duties and reasonably relates to the business or affairs of the District, and if the volunteer 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 volunteer that are directed at a volunteer personally, but are intended to improperly influence the volunteer’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 volunteer 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, for claims or actions arising out of an act or omission within the scope of the volunteer's engagement. As a prerequisite to such payment, the volunteer 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 volunteer 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 volunteer 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 volunteer occurring as a result of his or her scope of engagement with the District, or (b) that the volunteer'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 a volunteer to be entitled to relief under the terms of this Resolution, notice must be given to the District by the volunteer in writing within ten days after service of notice of the action or claim. In addition, the volunteer shall not be entitled to relief under the terms of this Resolution, where such volunteer willfully and knowingly fails to notify the District of the incident or occurrence which led to the claim within a reasonable time after such incident or occurrence, if such incident or occurrence could reasonably have been expected to lead to a claim.

D. No Indemnification. In no event will the District indemnify or pay the defense costs if it is adjudged that the volunteer has acted primarily for personal benefit or on the basis of other improper benefit, whether or not the volunteer is acting in his or her official capacity or scope of engagement. Such defense and indemnification shall not be available to a volunteer 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 volunteer against the District.

E. Settlement. In order for a volunteer 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 volunteers. 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 volunteer unless the interests of the District and the volunteer may be adverse. In such event, the volunteer may select independent legal counsel, who shall first be approved by the District. The volunteer shall cooperate in all respects with the District and its legal counsel in his or her defense. If the volunteer does not cooperate with the District, the District may elect not to pay defense costs or indemnify the volunteer.

G. Volunteer's Costs. The District shall not be responsible for costs or fees to its volunteers associated with the volunteer's 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 volunteer 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 volunteer'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 volunteer 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 volunteer's rights of recovery therefor against any person or entity. The volunteer shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights, and the volunteer will take no action that would prejudice the rights of subrogation.

J. Purpose. The purpose of this Resolution is to protect volunteers 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 volunteers. 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 or limitation on damages to any action; or (3) to set forth any other claim, defense or counterclaim provided by law.

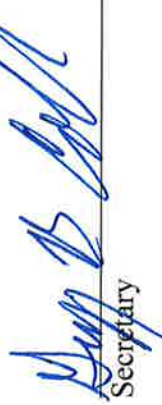
K. Severability. If any provision of this Resolution is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of the remainder of the Resolution.

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).

ADOPTED, this 10 day of August, 2021.

**COLORADO CITY METROPOLITAN
DISTRICT**

ATTEST:


Secretary

By: 
President