

**RESOLUTION OF THE BOARD OF DIRECTORS
OF
PODTBURG METROPOLITAN DISTRICT NO. 5**

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

WHEREAS, Podtburg Metropolitan District No. 5 (the "District") is a special district operating as a quasi-municipal corporation and political subdivision of the State of Colorado, by virtue of organization under Section 32-1-101, *et seq.*, C.R.S.; and

WHEREAS, past and present directors, officers, and employees of the District (collectively, "Public Employees" as further defined below) may be subject to claims arising from acts or omissions occurring during the performance of their governmental duties for the District or within the scope of their employment for the District; and

WHEREAS, pursuant to Section 24-10-101, *et seq.*, C.R.S. of the Colorado Governmental Immunity Act (the "Act"), the District and its Public Employees are immune from certain types of suits for injuries suffered by private persons; and

WHEREAS, the District recognizes that Public Employees should be provided with protection from liability in certain cases so that such Public Employees are not discouraged from providing the services or functions required by the District and its inhabitants or from exercising the powers authorized or required by law; and

WHEREAS, the District desires to adopt herein the immunity provisions of the Act, as such provisions are applicable to Public Employees of the District, and to set forth additional provisions in which the District shall defend and indemnify its Public Employees against certain types of actions due to the acts and omissions of its Public Employees that occurred during the performance of their duties for the District or within the scope of their employment for the District.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF PODTBURG METROPOLITAN DISTRICT NO. 5 THAT:

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

a. "**Injury**" shall mean death, injury to a person, damage to or loss of property, of whatsoever kind, which, if inflicted by a private person, would lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant.

b. "**Official Capacity**" shall mean a Public Employee who is serving at the request of the District and its inhabitants, and performing necessary District duties and undertaking such action or no action on behalf of the District.

c. **“Public Employee”** shall mean any current or former director, officer, employee, servant, or authorized volunteer of the District, whether or not compensated, elected, or appointed. Public Employee does not include an independent contractor. “Authorized volunteer” means a person who performs an act for the benefit of the District at the request of and subject to the control of the District.

2. Tort Actions.

a. Immunity from Tort Claims. A Public Employee shall be immune from liability in any claim for Injury, whether brought pursuant to the Act, Section 29-5-111, C.R.S., the common law, or otherwise, which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant and which arises out of an act or omission of such Public Employee occurring during the performance of the Public Employee’s duties for the District or within the scope of the Public Employee’s employment with the District unless the act or omission causing such Injury was willful and wanton or as otherwise prohibited pursuant to Section 24-10-106(1), C.R.S.

b. Indemnification by the District. Except as otherwise provided in Paragraph 2.c. herein, the District shall pay, in accordance with Section 24-10-110, C.R.S., the costs of the defense, reasonable attorney fees, judgments and settlements for its Public Employee where a claim against the Public Employee arises out of injuries sustained from an act or omission of such Public Employee and which occurred or is alleged in the complaint to have occurred during performance of the Public Employee’s duties for the District or within the scope of the Public Employee’s employment with the District.

c. No Indemnification by the District. The District shall not be required to pay any defense costs, judgments, and settlements on behalf of any Public Employee as provided in Paragraph 2.b. herein if:

1) The District is not made a party defendant in an action and the District is not notified of the existence of such action in writing by the plaintiff or the Public Employee within fifteen (15) days after commencement of the action; or

2) Such Public Employee 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; or

3) It is determined by a court that (i) the injuries did not arise out of an act or omission of such Public Employee occurring during the performance of his or her duties and within the scope of his or her employment, or (ii) the act or omission of such Public Employee was willful and wanton. If it is so determined, the District may request and the court shall order such Public Employee to reimburse the District for reasonable costs and reasonable attorney fees incurred in the defense of such Public Employee; or

4) The Public Employee compromises or settles the claim without the consent of the District; or

5) Sovereign immunity bars the action against the District.

d. Payment of Judgments. The District shall pay, to the extent funds are available in the fiscal year in which any compromise, settlement or judgment (collectively, the “judgment”) becomes final, any judgment out of any funds that are available from any or all of the following sources:

1) A self-insurance reserve fund;

2) Funds that are not appropriated for any other purpose unless the use of such funds is restricted by law or contract for other purposes;

3) Funds that are appropriated for the current fiscal year for the payment of such judgment and not previously encumbered.

If the District is unable to pay a judgment during the fiscal year in which it becomes final because of lack of available funds, the District shall levy a tax, in a separate item to cover such judgment, sufficient to discharge such judgment in the next fiscal year or in the succeeding fiscal year if the budget of the District has been finally adopted for the fiscal year in which the judgment becomes final; but in no event shall such annual levy for one or more judgments exceed a total of ten (10) mills, exclusive of existing mill levies. The District shall continue to levy such tax, not to exceed a total annual levy of ten (10) mills, exclusive of existing mill levies, but in no event less than ten (10) mills if such judgment will not be discharged by a lesser levy, until such judgment is discharged. In the event that more than one judgment is unsatisfied and a ten (10) mill levy is insufficient to satisfy the judgments in one year, the proceeds of the ten (10) mill levy shall be prorated annually among the judgment creditors in the proportion that each outstanding judgment bears to the total judgments outstanding.

e. Limitations on Judgments. The maximum amount that may be paid by the District for any judgment on behalf of a Public Employee shall be limited to those amounts set forth in Section 24-10-114, C.R.S., as may be amended from time to time.

f. Damages. A Public Employee of the District shall not be liable for punitive or exemplary damages arising out of an act or omission occurring during the performance of the Public Employee’s duties for the District or within the scope of the Public Employee’s employment for the District unless such act or omission was willful and wanton.

g. Notification. Where the District is made a codefendant with its Public Employee, it shall notify the Public Employee in writing within fifteen (15) days after the commencement of such action whether it will assume the defense of the Public Employee pursuant to this Resolution. Where the District is not made a codefendant, it shall notify such Public Employee whether it will assume such defense pursuant to this Resolution within fifteen (15) days after receiving written notice from the Public Employee of the existence of such action.

3. Non-Tort Civil Actions.

a. Indemnification by the District. The District hereby agrees to pay the costs of defense for its Public Employees and any settlements and judgments against its Public Employees, including reasonable attorney fees, for all non-tort civil actions, including but not limited to, actions which lie or could lie in contract, or arise under state or federal law and are not governed by the Act, subject to such limitations as exist in law as of the date hereof. As a prerequisite to such payment, the Public Employee must furnish the District with an affidavit stating that: (1) the Public Employee did not derive an improper personal benefit upon which the claim is based; (2) it is the Public Employee's reasonable belief that the act or omission upon which the claim is based occurred within the Public Employee's Official Capacity and was not prohibited by law; (3) the Public Employee's conduct was in good faith; and (4) the Public Employee reasonably believed that such conduct was in the District's best interests.

b. No Indemnification by the District. The District shall not pay such defense costs, settlements or judgments, and shall be reimbursed by the Public Employee for such defense costs incurred, including reasonable attorney fees, where it is determined by a court of competent jurisdiction that (1) the Public Employee derived an improper personal benefit upon which the claim was based; and/or (2) the injuries did not arise out of an act or omission of the Public Employee while the Public Employee was acting in his or her Official Capacity for the District; and/or (3) the Public Employee acted in bad faith; and/or (4) the Public Employee had reasonable cause to believe that the Public Employee's conduct was prohibited by law.

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

d. Limitations on Judgments. Except as otherwise provided in Paragraph 3.b. and 3.c. herein, the maximum amount the District shall pay on behalf of a Public Employee for any judgment resulting from a non-tort civil action in which the Public 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.

e. Notification. Where the District is made a codefendant with its Public Employee, it shall notify the Public Employee in writing within fifteen (15) days after the commencement of such action whether it will assume the defense of the Public Employee pursuant to this Resolution. Where the District is not made a codefendant, it shall notify such Public Employee whether the District will assume such defense pursuant to this Resolution within fifteen (15) days after receiving notice from the Public Employee of the existence of such action and the Public Employee has provided the District with an affidavit as required pursuant to Paragraph 3.a. herein.

4. Criminal Actions.

a. Indemnification by the District. 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 Public Employees for acts or omissions occurring while acting within the Public Employee's Official Capacity for the District, subject to such limitations that exist in law

as of the date hereof. As a prerequisite to such payment, the Public Employee must furnish the District with an affidavit stating that: (1) the Public Employee did not derive an improper personal benefit upon which the claim was based; (2) it is the Public Employee's reasonable belief that the act or omission upon which the claim is based occurred within the Public Employee's Official Capacity for the District; and (3) the Public Employee had no reasonable cause to believe that the Public Employee's conduct was unlawful.

b. No Indemnification by the District. The District shall not pay such defense costs, fines or penalties and shall be reimbursed for such costs incurred by the Public Employee where it is determined by a court of competent jurisdiction that (1) the Public Employee derived an improper personal benefit upon which the claim was based; or (2) the criminal action did not arise out of an act or omission of the Public Employee while the Public Employee was acting in the Public Employee's Official Capacity for the District; or (3) the Public Employee had reasonable cause to believe that the Public Employee's conduct was prohibited by law. In addition, the District shall not pay any defense costs, fines or penalties if the Public Employee pleads guilty to any criminal charge brought against the Public Employee for any criminal act or omissions occurring while the Public Employee was acting within his or her Official Capacity for the District.

c. Notification. Within fifteen (15) days after receiving notice from the Public Employee of the existence of such criminal action and the Public Employee's affidavit as required pursuant to Paragraph 4.a. herein, the District shall notify the Public Employee whether the District will assume such defense of the Public Employee in accordance with Paragraph 4.a. herein.

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

6. No Waiver of Sovereign Immunity. No term or condition of this Resolution shall be construed or interpreted as a waiver, expressed or implied, of any of the notice requirements, immunities, limitations to liability, rights, benefits, protections, or other provisions by the District under the Act or under any other law.

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. 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 Public 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, 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 Public Employee shall, in all events, exist only to the extent permitted by this Resolution.

9. 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 Public Employee's rights of recovery therefor against any person or entity. The Public Employee shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Public Employee shall do nothing to prejudice such rights.

10. 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 other provisions of this Resolution.

11. Renewal of Indemnifications. Unless repealed by resolution of the Board of Directors of the District on or before January 30 of the then-current fiscal year, the indemnification established herein shall be effective from and after the date of adoption, and shall be deemed automatically extended from year to year to the extent permitted by law; provided, however, that nothing shall prevent the Board from separately appropriating funds from time to time for the purposes authorized in this Resolution.

12. Effective Date. This Resolution shall be effective as of the date of its adoption and shall be executed by the District President, and attested by a designated representative of the District, including the District's General Counsel or other officer of the District.

(Signatures Begin on Next Page)

APPROVED AND ADOPTED THIS 24TH DAY OF JANUARY, 2022.

PODTBURG METROPOLITAN DISTRICT NO. 5


By: GREG PODTBURG
Its: PRESIDENT