

**RESOLUTION OF THE
BOARD OF DIRECTORS OF THE
SPRUCE MEADOWS METROPOLITAN DISTRICT**

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

WHEREAS, Spruce Meadows Metropolitan District (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 §§ 32-1-101, *et seq.*, C.R.S.; and

WHEREAS, past and present directors and employees of the District may be subject, from time to time, 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, as defined below, and for which such defense and indemnification is not otherwise provided by Colorado law.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD THAT:

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

a. Director: “Director” includes former, current, and future directors of the District, from the date of organization, who are sued for acts or omissions occurring during their term as a director of the District.

b. Employee: “Employee” includes former, current, and future employees of the District, from the date of organization, 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 act was made in good faith and in a manner a reasonable person would have believed to be in the best interests of the District.

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

The District shall pay, in accordance with §§ 24-10-110, *et seq.*, C.R.S., as amended from time to time (the “Act”), the costs of defense of and settlements and judgments against a Director or Employee of the District, including reasonable attorney fees, where the action is brought by a third party and lies or could lie in tort or are otherwise governed by the Act. As a prerequisite to such payment, the Director or Employee must furnish the District with an affidavit in the form attached hereto as “Exhibit A”, incorporated herein by reference, stating that: (1) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment, as defined above; and (2) the act or omission was not willful or wanton. The Director or Employee shall also be required to comply with all relevant provisions of the Act, including but not limited to, provision of timely notice to the District of claims in accordance with such Act. The District shall not pay such judgments under this paragraph and shall be reimbursed by the Director or Employee for the reasonable costs of his/her defense under this paragraph, including reasonable attorney fees, if it is determined by a court of competent jurisdiction that: (1) the injuries did not arise out of an act or omission of the Director or Employee occurring within the Scope of Employment; or (2) the act or omission was willful and wanton.

3. Other Non-Criminal Acts and Omissions. 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 third party 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 § 24-10-110, C.R.S., except for criminal actions, and subject to such limitations as exist in law as of the date of the claim against the Director or Employee. As a prerequisite to such payment, the Director or Employee must furnish the District with an affidavit in the form attached hereto as Exhibit A stating that: (1) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment; and (2) the act or omission was not willful or wanton. The District shall not pay such judgments under this paragraph and shall be reimbursed by the Director or Employee for the reasonable costs of his/her defense under this paragraph, including reasonable attorney fees, where it is determined by a court of competent jurisdiction that: (1) the injuries did not arise out of an act or omission of the Director or Employee occurring within the Scope of Employment; or (2) the act or omission was willful and wanton.

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, to the extent allowed by law. As a prerequisite to such payment, the Director or Employee must furnish the District with an affidavit in the form attached hereto as Exhibit A stating that: (1) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment, and (2) he/she had no reasonable cause to believe his/her conduct was unlawful. 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, arbitrator, mediator, or other third-party binding decision maker that: (1) 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 (2) the Employee or Director had reasonable cause to believe his/her conduct was unlawful.

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

- a. No Waiver of Notice Requirements. The District does not hereby waive the notice requirements of its Directors and Employees as set forth in § 24-10-110(2), C.R.S. Indemnification will not be made and the District shall not be liable for defense costs unless written notice of the action is given to the District by either the plaintiff, the Director or Employee within fifteen (15) days after commencement of such action. The District shall not indemnify or pay the defense costs of a Director or Employee who willfully and knowingly fails to notify the District of the act or omission which led to the claim within a reasonable time after such act or omission, if such act or omission could reasonably have been expected to lead to a claim.
- b. Consent to Compromise or Settlement. The District shall pay no judgment or settlement of claims against its Director or Employee where the Director or Employee has compromised or settled the claim without the District's written consent.
- c. Legal Representation of the Director or Employee. The District's legal counsel shall serve as counsel to the Director or Employee, unless it appears to such counsel that the interests of the District and the Director or Employee may be adverse. In the latter event, the Director or Employee may select separate counsel to be approved in writing by the District. The Director or Employee shall cooperate with the District and its legal counsel in his defense.
- d. No Indemnification. In no event will the District indemnify or pay defense costs if it is adjudged by the Board of Directors 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 official capacity.
- e. 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. This 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. 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.

9. Liability Limitations. The District shall indemnify a Director or Employee up to, but not in excess of, the applicable limitations of the Act. The District specifically reserves any defenses which are available to Directors or Employees under the Act or by common law.

10. 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, 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 shall be required to obtain 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.

11. 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. The Director or Employee shall do nothing to prejudice such rights.

12. Effective Date. This Resolution shall be effective as of the date of the organization of the District by Order of the Broomfield County District Court on May 26th, 2004.

13. Severability and Invalidation. If any provision, paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstance 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 this Resolution, unless such invalidation would act to destroy the intent or essence of this Resolution.

14. 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.

15. Attorneys. In the event there is litigation over the enforceability of this Resolution, the prevailing party in such litigation shall be awarded its reasonable attorneys fees.

ADOPTED THIS 10th DAY OF November, 2021.

SPRUCE MEADOWS METROPOLITAN
DISTRICT


SCOTT HASDAY (Jan 7, 2022 14:04 MST)

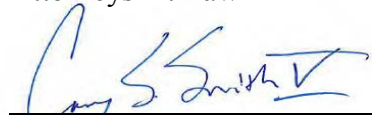
Officer of the District

ATTEST:


Todd A Maul (Jan 10, 2022 10:46 MST)

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys At Law



General Counsel to the District

*Signature Page to Resolution Providing for the Defense and Indemnification of Directors and
Employees*

EXHIBIT A

Form of Indemnification Affidavit

AFFIDAVIT OF ELIGIBILITY FOR INDEMNIFICATION

“I, _____, who reside at _____, Colorado, affirm under oath that I have been subjected to legal action in connection with actions that I have taken or omissions that I have suffered in my capacity as a Director or Employee of Spruce Meadows Metropolitan District (the “**District**”), and that I am eligible for indemnification by the District because: (1) these actions or omissions reasonably relate to the business or affairs of the District; (2) the actions or omissions were undertaken in good faith, and in a manner a reasonable person would have believed to be in the best interests of the District; (3) these actions or omissions were not willful or wanton; and (4) I did not have reasonable cause to believe that these actions or omissions were unlawful. Should a court of competent jurisdiction determine any of the following: (1) these actions or omissions were not reasonably related to the business or affairs of the District; (2) I did not take these actions or suffer these omissions in good faith, and in a manner a reasonable person would have believed to be in the best interests of the District; (3) these actions or omissions were willful or wanton; or (4) one or more of these actions or omissions was unlawful and I had reasonable cause to believe that said action or omission was unlawful; then I agree that the District shall have no further obligations to indemnify or defend me, and I shall reimburse the District for its prior costs in indemnifying and defending me, including reasonable attorneys’ fees.”

Date

Signature of Director or Employee

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____.