

**RESOLUTION NO. 2023-04-04**

**AMENDED AND RESTATED RESOLUTION OF THE BOARD OF DIRECTORS OF  
RED BARN METROPOLITAN DISTRICT PROVIDING FOR THE DEFENSE AND  
INDEMNIFICATION OF DIRECTORS AND EMPLOYEES OF  
RED BARN METROPOLITAN DISTRICT**

A. Past and present Directors, Officers and Employees of Red Barn Metropolitan District (the “**District**”) may be subject to claims arising from acts or omissions occurring during the performance of their governmental duties.

B. The District desires to encourage persons to serve on its Board of Directors, accept employment with the District and/or serve as an officer of the District, by defending and indemnifying such persons against liability for acts or omissions occurring during the performance of their governmental duties.

C. It is in the best interest of the District and its inhabitants to defend and indemnify its Directors, Officers 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.

D. On December 9, 2019, the District previously adopted a Resolution Providing for the Indemnification of Directors, Officers and the Employees of the District (“**Prior Resolution**”).

E. This Resolution shall entirely replace and supersede the Prior Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Red Barn Metropolitan District, Weld County, Colorado that:

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

(a) Director: is defined as current, including any director appointed or elected during the current fiscal year, and former 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: is defined as current, including any employee hired during the current fiscal year, and former employees of the District, from the date of organization, who are sued for acts or omissions occurring during their employment with the District.

(c) Officer: is defined as current, including any officer appointed or elected during the current fiscal year, and former officers of the District, from the date of organization, who are sued for acts or omissions occurring during their term as an officer of the District.

(d) Scope of Employment: an act or omission of a Director, Officer and/or Employee of the District is within the “scope of employment” if: (i) the act or omission reasonably relates to the business or affairs of the District; (ii) the Director, Officer and/or

Employee acted in good faith and in a manner a reasonable person would have believed to be and/or the best interests of the District; and (iii) the act or omission was not willful or wanton.

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

(a) In accordance with Section 24-10-110, C.R.S., the District shall pay the costs of defense of and settlements and judgments against a Director, Officer and Employee of the District, including reasonable attorneys' 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. As a prerequisite to such payment, the Director, Officer and Employee must furnish the District with an affidavit stating that: (i) the action against him/her is not purely personal; and (ii) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment. However, the District shall not pay such judgments and shall seek reimbursement from the Director, Officer and Employee for the reasonable costs of his/her defense, including reasonable attorneys' 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, Officer and 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, Officers 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, Officers and Employees, including reasonable attorneys' 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 which other actions are not governed by Section 24-10-110, C.R.S., except for criminal actions. As a prerequisite to such payment, the Director, Officer and/or Employee must furnish the District with an affidavit stating that: (a) the action against him/her is not purely personal; and (b) 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, Officer and/or Employee for the reasonable costs of his/her defense, including reasonable attorneys' 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, Officer and/or Employee occurring during his/her term or employment with the District and within the Scope of Employment.

4. Criminal Actions. The District hereby agrees to pay the costs of defense, including reasonable attorneys' fees, and any fines or penalties assessed, where a criminal action is brought against its Directors, Officers and Employees for acts or omissions occurring during their term or employment with the District and within the Scope of Employment. As a prerequisite to such payment, the Director, Officer and/or Employee must furnish the District with an affidavit stating that: (a) the action against him/her is not purely personal; (b) to his/her reasonable belief the act or omission upon which the claim is based occurred within the Scope of Employment; and (b) 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, Officer and/or Employee for the reasonable costs of his/her defense, including reasonable attorneys' 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, Officer and/or Employee occurring during his/her term or employment with the District and within the Scope of Employment; or

(b) The Director, Officer and/or Employee 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) Consent to Compromise or Settlement. The District shall pay no judgment or settlement of claims against its Director, Officer and/or Employee where the latter has compromised or settled the claim without the District's written consent.

(b) Legal Representation of the Director and/or Employee. The District's legal counsel shall serve as counsel to the Director, Officer and/or Employee, unless it appears to such counsel that the interests of the District and the Director, Officer and/or Employee may be adverse. In the latter event, the Director, Officer and Employee may select separate counsel to be approved in writing by the District. The Director, Officer and Employee shall cooperate with the District and its legal counsel in his/her defense.

(c) Director's and/or Employee's Costs. The District shall not be responsible for costs to its Director, Officer and Employee 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 of insurance coverage with respect to any liability assumed by the District under 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. Liberal Construction. The purpose of this Resolution is to protect Director, Officer and Employee of the District against personal liability for their actions taken on behalf of the District. Therefore, it is the intent of the District that this Resolution be liberally construed in favor of protection of such Directors, Officers and Employees.

9. 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.

10. Renewal of Indemnifications. All indemnifications described in this Resolution shall be valid during the current fiscal year, and shall be considered automatically renewed on each January 1 thereafter, unless repealed by resolution of the Board of Directors of the District on or before January 30 of the then current fiscal year.

RESOLUTION APPROVED AND ADOPTED ON April 6, 2023.

**RED BARN METROPOLITAN DISTRICT**

By: DocuSigned by:  
*Cody Williams*  
28B7D27F5FC9431...  
President

Attest:

DocuSigned by:  
*Taylor Lilly*  
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Secretary