

1.3 **Defense and Indemnification of Trustees and Employees - Resolution**

Fort Collins Regional Library District
Board of Trustees: Res. 07-02

A RESOLUTION PROVIDING FOR THE DEFENSE AND INDEMNIFICATION OF TRUSTEES AND EMPLOYEES OF THE DISTRICT

WHEREAS, trustees and employees of the District may be subject 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 Trustees and accept employment with the District; and

WHEREAS, the District may, within the bounds of Article XI and Article XII of the Constitution of the State of Colorado and §24-10-110, C.R.S., defend and indemnify such persons against claims of 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 Trustees and employees against liability for acts and omissions that occur within the Scope of Employment and for which such defense and indemnification is not otherwise provided by Colorado law.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE FORT COLLINS REGIONAL LIBRARY DISTRICT THAT:

1. Definitions.

a. Trustee: includes current and former Trustees of the District, from the date of organization, and Trustees who are appointed to the board hereafter, who are sued for acts or omissions occurring during their term as a director of the District.

b. Employee: includes current and former employees of the District, from the date of organization, and employees employed in the future, 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 director acted in good faith and in a manner that a reasonable person would have believed to be in the best interests of the District. Criminal acts, "Willful and Wanton" acts as defined in Colorado case law and acts or omissions that violate any law, rule or regulation are not within the Scope of Employment.

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

a. The District shall pay, in accordance with § 24-10-110, C.R.S., as amended from time to time, 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, 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: (1) the action against him/her is not purely personal, and (2) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment. The director or employee shall also be required to comply with all relevant provision of the Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., including but not limited to, provision of timely notice to the District of claims in accordance with such Act. However, the District shall not pay such judgments and shall seek reimbursement from the Trustee or employee for the reasonable costs of his/her defense, including reasonable attorney 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 Trustee or employee occurring during his/her term or employment with the District and within the Scope of Employment.

b. The District does not waive the notice requirements set forth in § 24-10-110(2), C.R.S.

3. Other Non-Criminal Actions. The District will pay the costs of defense, settlements and judgments against its Trustees and employees, including reasonable attorney fees, for all other actions, including but not limited to, actions that lie or could lie in contract, or arise under state or federal laws and is not governed by § 24-10-110, C.R.S., except for criminal actions. As a prerequisite to such payment, the Trustee or employee must furnish the District with an affidavit stating that: (1) the action against him/her is not purely personal, and (2) 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 Trustee or employee for the reasonable costs of his/her defense, including reasonable attorney 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 or employee occurring during his/her term or employment with the District and within the Scope of Employment.

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

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

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

c. Director's or Employee's Costs. The District shall not be responsible for

costs to its Trustees or employees associated with time in depositions, testifying or otherwise cooperating in their defense.

5. 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.

6. No Waiver of Insurance Coverage. The adoption of this Resolution shall not constitute a waiver by the District of insurance coverage with respect to any claim or liability covered by this Resolution. The Resolution shall render the District secondarily liable in the event the District's insurance covers such liability and the conditions of this Resolution are met.

7. Liberal Construction. The purpose of this Resolution is to protect Trustees and employees of the District against personal liability for their actions taken on behalf of the District and 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 Trustees and employees.

8. Invalidation. Judicial invalidation of any provision 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 its intent.

9. Renewal of Indemnifications. All obligations of the District described in this Resolution shall be subject to annual appropriation and automatically renew each January 1 unless terminated by action of the Board of Trustees.

APPROVED AND ADOPTED THIS 19th DAY OF MARCH, 2007.

FORT COLLINS REGIONAL LIBRARY DISTRICT

By: Mary Robertson
Mary Robertson, President

ATTEST:

Michelle S. Kalkowski