

RESOLUTION 2020-09

CHEROKEE METROPOLITAN DISTRICT

A RESOLUTION OF THE BOARD OF DIRECTORS PROVIDING FOR THE SPECIFIC INDEMNIFICATION OF AMY LATHEN, GENERAL MANAGER REGARDING PB PATEL AND SONS PARTNERSHIP V. CEDERBERG, ET AL, CASE NO. 2019 CV 32757, EL PASO COUNTY DISTRICT COURT

WHEREAS, the Board of Directors (“Board”) of the Cherokee Metropolitan District (“District”) has the following powers: To enter into contracts and agreements affecting the affairs of the special district; to have the management, control, and supervision of all the business and affairs of the District; to appoint, hire, and retain agents, employees, engineers, and attorneys; to adopt, amend, and enforce bylaws, rules and regulations not in conflict with the constitution and laws of this state for carrying on the business, objects, and affairs of the Board; to have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to special districts. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent; and

WHEREAS, in the exercise of its powers, the Board has entered into an Employment Agreement, dated September 1, 2018, with Amy Lathen (“Lathen”), under which Lathen serves as General Manager of the District (“Employment Agreement”); and

WHEREAS, as part of her duties as General Manager of the District, pursuant to an Operating Agreement of Cherokee Water LLC, a Manager-Managed Limited Liability Company, Lathen is also designated by the Board as the Manager of Cherokee Water LLC; and

WHEREAS, every action taken by Lathen as Manager of the Cherokee Water LLC, by express definition and designation of the Board, is taken by her as General Manager of the District; and

WHEREAS, the Board affirms that authorized actions taken by Lathen as Manager of the Cherokee Water LLC are also taken by her as General Manager of the District, and are done in the best interests of the District in furtherance of its purposes, powers and authority to serve the public use and promote the health, safety, prosperity, security, and general welfare of the inhabitants of the District, and in the best interest of the Cherokee Water LLC in fulfillment of its intents and purposes; and

WHEREAS, among other defendants, the District, the Board, and Lathen have been named as defendants in a lawsuit captioned in the El Paso County District Court as Case No. 2019 CV 32757 (“Case”); and

WHEREAS, after notifying its insurance carrier, the District has been notified that at this time its insurance carrier has denied coverage to Lathen “in her capacity as

manager for Cherokee Water LLC.” Lathen was named in the Case “in her capacity as manager for Cherokee Water LLC;” and

WHEREAS, Lathen’s Employment Agreement expressly states that Lathen shall be covered by the District’s liability insurance protection equal to that provided to the Board. The Employment Agreement further expressly states that Lathen shall not be liable for harm caused by an act or omission within the scope of her responsibilities as General Manager of the District; and

WHEREAS, it is the standard practice of the District to indemnify its board members and employees against liability when its board members and employees are acting within the scope of their responsibilities on behalf of the District, and

WHEREAS, the Employment Agreement, the practice of indemnification in general, and the specific indemnification provided by this Resolution are consistent with the intent and purposes of Title 32 of the Colorado Revised Statutes, and the Colorado Governmental Immunity Act.

NOW, THEREFORE, be it resolved by the Board of Directors of Cherokee Metropolitan District as follows:

1. Ratification. The District formally ratifies its policies of indemnification of board members and employees, and the express terms of the Employment Agreement regarding insurance, defense and indemnification of Lathen.

2. Indemnification for the Case. The District expressly extends its existing indemnification of Lathen in her role as General Manager of the District to include her required role as Manager of Cherokee Water LLC, and shall pay all the costs of defense of, and settlements and judgments against, Lathen in connection with the Case.

3. Legal Counsel. Subject to any mutually acceptable legal services agreement and Joint Defense Agreement that may be necessary, the District shall provide legal counsel to serve as counsel for Lathen during the full defense of the Case, inclusive of all necessary actions in defense, and all settlements and judgments that may result. It is anticipated that the District’s General Counsel (Paul C. Rufien, P.C.) and Water Counsel (Vranesh and Raisch, LLP) shall collaborate to provide Lathen with that full defense. In the event Lathen desires to obtain different legal counsel, she may present that counsel to the Board for their approval, such approval to be denied only if the fees proposed by such alternative counsel are unreasonable. Lathen shall cooperate in all respects with the District and legal counsel in her defense.

4. Settlement. The District shall approve in writing any settlement of claims and stipulated judgments against Lathen. The District shall not be liable or otherwise responsible for any such settlement or stipulated judgment without such prior consent. In that event, the District’s full defense and indemnification of Lathen shall continue as the Case continues. Lathen shall approve in writing any settlement of claims and stipulated

judgments against her. Lathen shall not disapprove any such settlement or stipulated judgment if it is in the best interests of and previously approved by the District.

5. Duration of Indemnification. All indemnifications set forth in this Resolution were already effective prior to this Resolution, but shall be expressly reaffirmed immediately. Indemnification for the Case shall continue throughout the duration of the Case, inclusive of any appeals that may ensue. In the event that the District's financial responsibilities under this Resolution shall continue beyond the current fiscal year, they shall be expressly reaffirmed by appropriations for any subsequent fiscal years.

6. No Indemnification of Cherokee Water LLC. Nothing within this Resolution shall be interpreted as the District's indemnification of the Cherokee Water LLC entity itself, which is a separately named defendant in the Case. The Cherokee Water LLC shall be solely responsible for its own defense in the Case, including all defenses, settlements, and judgments.


This Resolution was approved and adopted this 24th day of February, 2020, by vote of the Board of Directors of Cherokee Metropolitan District.

ADOPTED, this 24th day of February, 2020.

CHEROKEE METROPOLITAN DISTRICT

By: 
_____, President

ATTEST:

By: 

Rene Sintas, Secretary