

## DEFENSE AND INDEMNIFICATION

### Chapter 11

## DEFENSE AND INDEMNIFICATION

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[HISTORY: Adopted by the Board of Trustees of the Village of Lansing 10-1-1991 as L.L. No. 15-1991. Amendments noted where applicable.]

#### § 11-1. Purpose and intent.

The purpose of this chapter is to provide the Village with the authority established under § 18 of the Public Officers Law of the State of New York to defend and hold harmless the employees and officers of the Village of Lansing against costs and losses incurred in connection with civil litigation brought against them in either their official or individual capacity for actions or omissions which occurred while the employee or officer was acting within the scope of his or her duties for the Village of Lansing. The intent of this chapter is to set forth the terms and conditions of such defense and indemnification.

#### § 11-2. Terms of this chapter.

The following provisions shall constitute the text of the Village of Lansing law regarding reimbursement of defense costs and indemnification of Village officers and employees in civil actions.

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### **§ 11-3. Defense of officers and employees.**

Subject to the limitations set forth in subsequent sections of this chapter, the Village of Lansing desires to and hereby does provide for the defense of its officers and employees, whether the individual is sued individually or in his or her capacity as a Village officer or employee, in all civil actions and proceedings, whether in State or federal court, based on acts or omissions alleged to have occurred while the officer or employee was acting within the scope of his or her duties for the Village of Lansing or any agency thereof.

### **§ 11-4. Employee defined.**

The term "employee" shall mean any commissioner, member of a public board, council, committee, agency or commission, trustee, director, officer, employee or volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment or employment, in the service of the Village of Lansing, whether or not compensated. The term "employee" shall include a former employee, his or her estate or judicially appointed personal representative.

### **§ 11-5. Limited right to defense.**

Following compliance with the provisions of § 11-13 of this chapter, the Village of Lansing shall defend or provide for the defense of its employees and officers in any civil action or proceeding, State or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his or her public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the Village.

### **§ 11-6. Limited right to private representation.**

Subject to the conditions set forth in § 11-5 above, the employee shall be entitled to be represented by private counsel of his or her choice in any civil action or proceeding whenever the Village Attorney or other counsel designated by the Village determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by counsel of his or her choice. The Village Attorney or other counsel designated by the Village may require, as a condition of the payment of the fees and expenses of such representation, that appropriate groups of employees be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Village to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the Trustees of the Village.

### **§ 11-7. Disputes.**

Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorney's fees shall be resolved by a court upon motion or by way of a special proceeding if it cannot be resolved by the employee and the Village Attorney or the Village Trustees.

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### **§ 11-8. Duty to avoid default.**

Where an employee delivers process and a written request for defense to the Village pursuant to § 11-13 below, the Village shall take the necessary steps on behalf of the employee to avoid the entry of a default judgment pending resolution of any question pertaining to the obligation to provide a defense.

### **§ 11-9. Payment of judgments.**

The Village shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a State or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his or her public employment or duties; provided, further, that in the case of a settlement the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the Trustees of the Village of Lansing.

### **§ 11-10. Exception for intentional wrongdoing or negligence.**

Except as otherwise provided by applicable law, the Village shall have no obligation or duty to indemnify and save harmless its employees in any event that the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

### **§ 11-11. Exception for certain damages and penalties.**

Notwithstanding any provision of this chapter that could be construed to the contrary, the Village shall have no duty to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties or money recovered from an employee pursuant to § 51 of the General Municipal Law; provided, however, that the Village shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed, by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State of New York or of the United States.

### **§ 11-12. Final judgments.**

Upon entry of a final judgment against the employee or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Mayor of the Village; and if not inconsistent with the provisions of this chapter, the amount of such judgment or settlement shall be paid by the Village.

### **§ 11-13. Conditions on duty to defend.**

The duty to defend or indemnify and save harmless prescribed by this chapter shall be conditioned upon:

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- A. Delivery by the employee to the Village Attorney of a written request to provide for the employee's defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading, within ten (10) days after the employee is served with such document; and
- B. The full cooperation of the employee in the defense of any such action or proceeding, in the defense of any action or proceeding against the Village based on the same act or omission and in the prosecution of any appeal.

### **§ 11-14. Parties covered.**

The benefits of this chapter shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this Article be construed to effect, alter or repeal any provision of the workers' compensation law.

### **§ 11-15. Other notices.**

This chapter does not in any way effect the obligation of any claimant to give notice to the Village as required under Section Ten of the Court of Claims Act, § 50-e of the General Municipal Law or any other provision of law.

### **§ 11-16. Applicability of other provisions.**

Except as otherwise specifically provided in this chapter, the provisions of this chapter shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any unit, entity, officer or employee of the Village of Lansing by, in accordance with or by reason of any other provision of New York State or federal statutory or common law.