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**City of Traverse City Resolution  
Establishing Policy for Defense and  
Indemnification of Officials and Employees**

- Whereas, the City of Traverse City wishes to protect its officials and employees when acting in the bona fide discharge of official duties; and
- Whereas, the City wishes to provide this protection in a uniform and comprehensive way; and
- Whereas, it is in the best interests of the City and within the sound discretion of the City Commission to provide for the defense and indemnification of those individuals serving the City; now therefore, be it
- Resolved, that it is hereby the policy of the City of Traverse City that officials and employees shall be defended and indemnified by the City against any and all civil claims and liabilities to which they have or shall become subject by reason of any act or omission while in the bona fide discharge of an official duty subject to the following:
1. **Defense:** The City Attorney shall provide legal representation for the official or employee whenever a claim is made or a civil action commenced against the official or employee. The City Commission pursuant to an insurance contract or upon recommendation of the City Attorney may authorize another attorney to represent the official or employee and may expend funds for legal expenses reasonable incurred in connection with any such claim or liability. Where the City, another City board or commission, or another department or City official or employee is the subject of the same claim, the City Attorney shall not represent more than one party unless all parties consent to the dual representation and such representation can be conducted in compliance with the Michigan Supreme Court's Professional Canons of Responsibility.
  2. **Indemnification:** The City shall pay judgments and shall pay settlements approved by the City Commission in connection with such claims and actions against officials and employees. Where the City is paying for legal representation of the official or employee, the City Commission shall have sole authority to control and settle the claim. The right of indemnification shall not be exclusive of any rights to which the official or employee may otherwise be entitled by law or by insurance contract.
  3. **Procedure:** If claim is made or civil action commenced against any official or employee which allegedly arose out of the bone fide discharge of duty, said official or employee shall immediately report such a claim or action to the City Attorney and submit a full report and copies of all relevant documents. The official or employee shall indicate whether representation and indemnification for potential damages is being requested. If the City Attorney decides that the alleged activity was in the bona fide discharge of an

official duty, the City Attorney shall undertake the representation of the official unless representation is provided by insurance or unless there would be dual representation. If a dual representation problem exists, a report on this matter shall be made to the City Commission and official or employee after which the City Commission and official or employee may consent to the dual representation if it is appropriate under the Professional Canons of Responsibility. If the City Attorney decides that the alleged activity was not in the bona fide discharge of an official duty, the official or employee shall have the right to appeal this decision to the City Commission; be it, further

Resolved, that it is hereby the policy of the City of Traverse City that officials and employees shall be defended by the City against criminal actions based upon the conduct of the official or employee in the course of employment, if the official or employee had a reasonable basis for believing that he or she was acting within the scope of his or her authority at the time of the alleged conduct subject to the following:

1. Defense: An attorney shall be provided at City expense to defend an official or employee pursuant to this policy. The City shall also pay all incidental costs of such defense.
2. Procedure: An official or employee requesting that the City pay criminal defense costs shall submit a claim and a full report to the City Commission. The City Commission shall determine whether the criminal action is based upon conduct in the course of City employment and whether the official or employee had a reasonable basis for believing that he or she was acting within the scope of his or her authority at the time of the alleged conduct. The attorney selected for such defense shall be mutually agreeable to the official or employee charged and to the City Attorney; be it, further

Resolved, that this Resolution shall take effect immediately and hereby rescinds all previous resolutions regarding defense and indemnification unless made pursuant to a contract. If defense and indemnification is provided for by contract, those contractual provisions shall be the sole source of the City's obligation unless the contractual provisions indicate otherwise.

I hereby certify that the above policy was adopted by the City Commission of the City of Traverse City at its regular meeting of October 20, 1986, held in the Commission Chambers, Governmental Center, 400 Boardman Avenue, Traverse City, Michigan.

  
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Benjamin C. Marentette, CMC, City Clerk