

WATER AUTHORITY OF GREAT NECK NORTH
DEFENSE AND INDEMNIFICATION POLICY

As Re-Adopted February 3, 2025

WHEREAS, the Board finds that it is in the best interests of the Authority, for its proper operation, for its directors, officers, counsel, and employees to be free from intimidation. In order to encourage residents to partake in public office and to encourage others to accept public employment, it is important that such individuals be free of the fear of significant economic loss from a judgment, including one for punitive damages, when such individuals are acting in the proper discharge of their duties and within the scope of their office, appointment, or employment, and

WHEREAS, the Board seeks to provide legal and financial protection for those directors, officers, counsel, and employees serving the Authority from claims that may be made against them in their individual capacities for actions taken while in the performance of their duties and within the scope of their office, appointment, or employment with the Authority, and

WHEREAS, by the adoption of this resolution, the Board does not intend to abrogate or otherwise limit any existing right or responsibility of the Authority or its directors, officers, counsel, and employees with regard to indemnification or legal defense,

NOW THEREFORE, BE IT RESOLVED,

1. Definitions.

As used in this resolution, the following terms shall have the meanings indicated:

BOARD - Board of Directors of the Authority.

EMPLOYEE - Any person holding an office or other position by appointment or employment in the service of the Authority, whether or not compensated, or a volunteer expressly authorized to participate in an Authority sponsored volunteer program, including, but not limited to the directors and legal counsel, whether performing retainer or non-retainer services. The term "Employee" shall include a former employee as well as such employee's estate or judicially appointed personal representative.

GENERAL COUNSEL - General Counsel to the Authority.

2. Application of Public Officers Law.

The full benefits of §18 of the Public Officers Law of the State of New York are hereby conferred upon all of the Employees of the Authority, and the Authority shall be liable for all of the costs incurred under that section, as well as the costs incurred under the other provisions of this resolution.

3. Benefits to be in addition to other provisions.

The benefits accorded Employees of the Authority under §18 of the Public Officers Law shall be available in addition to defense and indemnification provisions conferred by any other enactment.

4. Obligations to provide indemnification and defense.

A. The Authority shall be liable for, and shall assume the liability to the extent that it shall save harmless, any Employee for any negligent act or tort, provided such Employee, at the time of the negligent act or tort complained of, was acting in the performance of such Employee's duties and within the scope of such Employee's office, appointment, or employment with the Authority. Such liability and saving harmless shall not apply when a civil action or proceeding is brought by or on behalf of the Authority, including, but not limited to, cross-claims and third-party claims interposed or brought by or on behalf of the Authority.

B. In addition to the requirements of subsection A of this section, the Authority shall provide for the defense of any civil action or proceeding brought against an Employee and shall indemnify and save harmless such Employee from any judgment of a court of competent jurisdiction, including, but not limited to, judgments for punitive or exemplary damages, fines or penalties, or in the amount of any settlement of a claim, 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 Authority. Whenever such action, proceeding, or judgment is for punitive or exemplary damages, fines or penalties, such defense, indemnification, and saving harmless, shall only pertain when such action, proceeding, or judgment arises out of a negligent act or other tort of such Employee committed while in the proper discharge of such Employee's duties and within the scope of such Employee's office, appointment, or employment, subject to the limitations as more fully set forth in subsection C. The Authority is authorized and empowered to purchase insurance to cover the cost of such defense and indemnification. The duty to provide for a defense as set forth in this resolution shall not arise where such civil action or proceeding is brought by or on behalf of the Authority, including, but not limited to, cross-claims and third-party claims interposed or brought by or on behalf of the Authority.

C. The duty to defend, indemnify, and save harmless set forth in this resolution shall not pertain if, based upon the facts and circumstances then known to the Board, the Employee's actions were not within the scope of such Employee's office, appointment, or employment or not within the scope of such Employee's duties. It shall be conclusively presumed that such actions were not within the scope of such Employee's office, appointment, or employment or not within the scope of such Employee's duties, when the actions were:

- (1) reckless, malicious, or grossly negligent;
- (2) not made in good faith or an intentional wrong doing; or
- (3) in willful violation of a clearly established provision of law or Authority policy.

D. It shall be conclusively presumed that any action taken by the directors or any officer while at any Authority meeting, or otherwise when acting, including, but not limited to speaking, with regard to the Authority or Authority activities, or applications presently before or proposed to the Authority, is an action within the scope of their office and in the discharge of their duties. In the event of any doubt, the benefit of the doubt shall be in favor of the directors and officers. The intent of this subdivision D is to give the broadest coverage and protection to the directors and officers permitted by law.

E. Upon entry of a final judgment against an Employee or upon the settlement of a claim, as provided for in Subsections A and B above, the Employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail, within 30 days of the date of entry or settlement, upon the Superintendent of the Authority, and, if not inconsistent with the provisions of this resolution, such judgment or settlement shall be certified for payment by the Superintendent. If the Board concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the Treasurer.

5. Representation by private counsel.

Subject to the conditions set forth in §4 and §7¹, an Employee shall be entitled to be represented by General Counsel or other counsel designated by the Board or the Authority's insurance carrier; provided, however, that the Employee shall be entitled to representation by private counsel of such Employee's choice in any civil action or proceeding whenever General Counsel, or other counsel designated by the Board or the Authority's insurance carrier, determines, based upon the General Counsel, other counsel, or the insurance carrier's investigation and review of the facts and circumstances of the case, that representation by General Counsel or other designated counsel would be inappropriate or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the Employee is entitled to be represented by private counsel of such Employee's choice. General Counsel, or other counsel designated by the Board or the insurance carrier, shall notify the Employee, in writing, of such determination that the Employee is entitled to be represented by private counsel of such Employee's choice. The Board or the insurance carrier may require, as a condition to payment of the fees and expenses of such representation, that the same counsel represent appropriate groups of such Employees. If the Employee or group of Employees is entitled to representation by private counsel under the provisions of this resolution, General Counsel, other designated counsel, or the insurance carrier shall so certify to the Board. Reasonable attorneys' fees and litigation expenses shall be paid by the Authority or the insurance carrier to such private counsel from time to time during the pendency of the civil action or proceeding, upon the audit and warrant of the Treasurer or the approval of the insurance carrier. Any dispute with respect to representation of multiple Employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

6. Preparation by General Counsel or insurance carrier to avoid default.

Where the Employee delivers process and a request for defense to General Counsel as required by this resolution, General Counsel shall take the necessary steps, including the retention of private counsel under the terms and conditions provided herein, on behalf of the Employee to avoid entry of a default judgment, pending resolution of any question pertaining to the obligation to provide for a defense. In the event that insurance is available for such defense, in lieu of the foregoing, the Secretary of the Authority shall forward such process to the insurance carrier or carriers that are responsible for providing such defense.

7. Responsibility of Employee, settlement.

A. The duty to defend, indemnify, and save harmless provided by this resolution shall be conditioned upon delivery to the Superintendent of the Authority by the Employee of the original or a copy of any summons, complaint, process, notice, demand, or pleading within five days after such Employee is served with such document and the full cooperation of the Employee in the defense of such action or proceeding and in defense of any action or proceeding against the Authority based upon the same act or omission and in the prosecution of any appeal. Such delivery shall be deemed a request by the Employee that the Authority provide for such Employee's defense pursuant to this resolution.

B. In the event that the Authority or its insurance carrier recommends settlement of any such action or proceeding, and the Employee refuses to agree to the settlement, the Authority and its insurance carrier, if any, shall have no liability for any judgment, including, but not limited to, judgments for punitive or exemplary damages, fines or penalties, or any settlement to the extent that the amount of such judgment or settlement exceeds the settlement recommended and refused by the Employee.

8. Reimbursement of costs and expenses in criminal actions.

¹ §4 and §7 were inadvertently referred to as §9-5 and §9-8 in the Board resolution adopting the policy.

A. Upon compliance by an Employee with the provisions of this section, and subject to the conditions set forth in this section, it shall be the duty of the Authority to pay reasonable attorneys' fees and litigation expenses incurred by or on behalf of an Employee, as a reimbursement of expenses, in his or her defense of a criminal proceeding in a state or federal court arising out of any act which occurred while such Employee was acting within the scope of such Employee's public employment or duties upon such Employee's acquittal or upon the dismissal of the criminal charges against such Employee or reasonable attorneys' fees incurred in connection with an appearance before a grand jury which returns no true bill against such Employee where such appearance was required as a result of any act which occurred while such Employee was acting within the scope of such Employee's public employment or duties, unless such appearance occurs in the normal course of the public employment or duties of such Employee, in which event such reimbursement shall be made without the requirement that no true bill is returned.

B. Upon the application for reimbursement for reasonable attorneys' fees or litigation expenses or both made by or on behalf of an Employee as provided in this section, the Board shall determine, based upon their investigation and review of the facts and circumstances, whether such reimbursement shall be paid. In the event that recusal prevents a sufficient number of members of the Board with the necessary voting power from making such determination, the Chairperson shall make such determination. In the event that such recusals prevent the Board and the Chairperson from making such determination, such determination shall be made by the Vice Chairperson. The Board, the Chairperson, or the Vice Chairperson, as the case may be, shall notify the Employee in writing of such determination and shall file the determination with the Secretary of the Authority. The Secretary shall certify such determination to the Treasurer. Upon such certification, reimbursement shall be made for such fees or expenses or both upon the audit and warrant of the Board.

C. Reimbursement of reasonable attorneys' fees or litigation expenses or both by the Authority as prescribed by this section shall be conditioned upon (a) delivery to the Superintendent, or, if the reimbursement is sought by the Superintendent, to the Chairperson, of a written request for reimbursement of expenses together with, in the case of a criminal proceeding, the original or a copy of an accusatory instrument within ten days after the Employee is arraigned upon such instrument or, in the case of a grand jury appearance, written documentation of evidence of such appearance and (b) the full cooperation of the Employee in defense of any action or proceeding against the Authority based upon the same act, and in the prosecution of any appeal.

9. Construal of provisions; applicability.

A. The benefits of this resolution shall inure only to Employees as defined herein and shall not enlarge or diminish the right of any other party, nor shall any provision of this resolution be construed to affect, alter, or repeal any provision of the Workers Compensation Law.

B. The provisions of this resolution shall not be construed to impair, alter, limit, or modify the rights and obligations of any insurer under any policy of insurance.

C. The provisions of this resolution shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.

D. The reimbursements provided for herein shall be deemed reimbursement of necessary expenses as such phrase is used in § 1197-d (1) of the Public Authorities Law.

E. Except as otherwise specifically provided in this resolution, the provisions of this resolution shall not be construed in any way to impair, alter, limit, modify, abrogate, or restrict any immunity or any right to defense and/or indemnification available to or conferred upon any Employee in accordance with, or by reason of any other provisions of state or federal statutory or common law.

10. Severability.

If any provision of this resolution or the application thereof to any person or circumstance shall be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this resolution or the application of any such provision to any other person or circumstance to the maximum extent permitted by such determination.