

The Corporation of the Town of Grand Valley

By-law 2025-

Being a By-law to provide Indemnification for members of Council, Officers and Employees with respect to certain Actions or Proceedings arising from their duties while acting on behalf of the Corporation of the Town of Grand Valley

WHEREAS Section 279 of the *Municipal Act, 2001* authorizes Council to pass By-laws for paying any damages or costs awarded against the Members of Council including the Mayor, Officers and Employees for expenses incurred by them for assuming the defense costs incurred as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as members of Council, Officers or Employees of the Town of Grand Valley,

WHEREAS Section 14 of the *Municipal Conflict of Interest Act* provides that a municipality may indemnify members of a municipal council for costs or expenses incurred to defend a proceeding brought under the *Municipal Conflict of Interest Act*, provided that the Councillor is found not guilty of the allegation brought under section 5 of the *Act*;

NOW THEREFORE the Council of the Corporation of the Town of Grand Valley enacts as follows:

1. Short Title

- 1.1. This By-Law may be cited as the "Indemnification By-Law" for the Town of Grand Valley.

2. Definitions

- 2.1. In this By-Law, the following terms shall have the following meanings:

- a) "Action" shall mean a civil, criminal or administrative action or proceeding commenced or threatened to be commenced seeking damages or some other remedy related to an alleged act or omission of an Employee or Councillor acting in the course of their employment or office with the Town. Action is deemed to include any counterclaim or third-party claim, but shall not include a legal proceeding related to a grievance filed under the provisions of a collective agreement, or to disciplinary action taken by the Town as an employer, except insofar as the Employee or Officer, including the Mayor, is exercising a bona fide management function;
- b) "Council" shall mean the duly elected Council of the Town of Grand Valley;
- c) "Councillor" shall mean an elected representative of the Town of Grand Valley or a former elected representative of the Town of Grand Valley Council who, during their term of office with the Town, did or failed to do an act which is

alleged to be related to the Action commenced against the Councillor;

- d) "Damages" shall mean all sums to be paid to satisfy any settlement or order of a court of competent jurisdiction, monetary penalties, fines and interest thereon;
- e) "Employee" shall mean an employee, former employee, salaried officer or former salaried officer, including the Mayor, who, during the term of their employment with the Town of Grand Valley, did or failed to do an act alleged to be related to the Action commenced against the Employee.
- f) "Town" shall mean the Corporation of the Town of Grand Valley.

3. Exclusions

3.1. This By-Law does not apply to:

- a) an Action or proceeding where the legal proceeding relates to a grievance filed under the provisions of a collective agreement or to disciplinary action taken by the Town as an employer;
- b) an Action or proceeding arising from a Code of Conduct enacted pursuant to section 223.2 of the *Municipal Act*;
- c) an Action or proceeding resulting from any dishonest, bad faith, fraudulent or criminal act committed by an Individual, including but not limited to abuse of public office, but this exclusion does not apply to any other individual who did not participate in such act or who did not have personal knowledge thereof;
- d) an Action or proceeding resulting from an Individual gaining a personal profit or advantage to which they were not legally entitled, or the return by the individual of any money paid to them, if payment of such money is held to be in violation of law;
- e) an Action or proceeding relating to conduct which falls outside the scope of the individual's duty or authority, unless the individual was acting in good faith and held an honest and reasonable belief that the conduct was within their duty or authority and was in the best interest of the Town;
- f) an Action or proceeding involving sexual misconduct;
- g) any expenses incurred by a Council member in obtaining legal advice to determine whether the member has a pecuniary interest in a matter which is the subject of a determination or consideration by Council or a board; and
- h) any indemnification which is otherwise covered by insurance provided to the Town or the individual by any policy of insurance. Where partial coverage is provided, the indemnification pursuant to this By-Law shall only extend to that portion not covered by insurance.

4. Indemnification

4.1. Subject to the exclusions set out in Section 3 of this By-Law, the Town shall indemnify an individual in the manner and to the extent provided by Section 5 of this By-Law in respect of any civil or administrative action or proceeding,

including appeals, by a third party for:

- a) acts or omissions arising out of the scope of the individual's authority or duty, or within the course of an individual's employment or office if:
 - i. the Individual was acting within the individual's scope of authority or duty;
 - ii. the Individual acted honestly and in good faith; and
 - iii. in the case of administrative action or proceeding, that is enforced by a monetary penalty, the Individual had reasonable grounds for believing that his or her conduct was lawful.
- b) acts or omissions relating to the conduct which falls outside of the Individual's duty or authority, provided that:
 - i. the Individual was acting in good faith and held an honest and reasonable belief that the conduct was within their duty or authority and was in the best interest of the Town; and
 - ii. in the case of administrative action or proceeding, that is enforced by a monetary penalty, the Individual had reasonable grounds for believing that his or her conduct was lawful.

4.2. In the event that any determination is required as to whether an individual meets the requirements of this section, the Town solicitor shall provide a legal opinion in that regard, including advice on any terms and conditions that should apply to the indemnification of an individual.

5. Manner and Extent of Indemnification

5.1. The Town shall indemnify an individual who meets the requirements of Section 4.1 of this By-Law by:

- a) assuming the cost of defending such individual in an action or proceeding;
- b) paying any damages or costs, including a monetary penalty, awarded against such individual as a result of an Action or proceeding;
- c) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such Individual as a result of an action or proceeding; and
- d) paying any sum required in connection with the settlement of an action or proceeding to the extent that such costs, damages, expenses or sums are not assumed, paid or reimbursed under any provision of the Town insurance for the benefit and protection of such individual against any liability incurred by such individual.

6. Persons Served with Process

6.1. Where an individual is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body, other than a subpoena, in connection with any action or proceeding relating to their activities as an employee, the individual shall forthwith deliver

the process or a copy thereof to the Chief Administrative Officer, who in turn shall deliver a copy thereof to the solicitor.

7. Lawyers Retained by Municipality's Insurers

- 7.1. Notwithstanding any other provision of this By-Law to the contrary, any lawyer retained by the Town's insurers from time to time to defend the Town in any action or proceeding shall represent an individual with respect to that action or proceeding unless the Town instructs such individual otherwise.
- 7.2. Subject to Section 11 of this By-Law, the Town shall have the right to select and retain the lawyer to represent an individual and the Chief Administrative Officer shall:
 - a) advise such individual of the lawyer selected to represent them; and
 - b) advise the Council of the final disposition of the matter, as applicable.
- 7.3. Subject to approval from the Chief Administrative Officer, an individual may request approval to be represented by the lawyer of the Individual's choice by writing to the Chief Administrative Officer. Compensation will be in accordance with the Town's insurance policy.

8. Settlement

- 8.1. Council shall have the right to approve the settlement of any Action or Proceeding.

9. Conduct of Defense

- 9.1. The use of outside legal counsel may be retained having regard to:
 - a) whether the Solicitor has the required expertise;
 - b) whether the Solicitor can provide the commitment of time and resources which is required; and
 - c) whether the Solicitor is (are) or may be in a conflict of interest situation by virtue of conducting the defense of the individual.

10. Duty to Co-Operate

- 10.1. An individual involved in any Action or Proceeding shall:
 - a) co-operate fully with the Town, the Chief Administrative Officer, applicable Director as the case may be, and any lawyer retained by the Town to defend such Action or Proceeding,
 - b) make available to the Chief Administrative Officer or such lawyer all information and documentation relevant to the matter as are within their knowledge, possession or control, and
 - c) attend at all proceedings when requested to do so by the Chief Administrative Officer or such lawyer.

11. Failure to Comply with By-Law

- 11.1. If an individual fails or refuses to comply with the provisions of this By-Law, the

Town shall not be liable to assume or pay any of the costs, damages, expenses or sums arising from the Action or Proceeding and shall not be subject to the requirements of Sections 4 or 5 of this By- law.

12. Conflict

12.1. The Town maintains many different policies of insurance for the Town, Members, Officers and Employees. The provisions of this By-Law are intended to supplement the protection provided by such policies of insurance. In the event of conflict between this By-Law and the terms of such policy of insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

13. Appeals

13.1. Where an individual seeks to appeal a judgment in a covered Action or Proceeding, the Town shall have the sole discretion to determine whether an appeal should be pursued, and whether the cost of the appeal will be covered by this By-Law. If an Individual pursues an appeal without representation by the Town and is successful in that appeal, the Town shall have the sole discretion to determine whether the Individual shall be indemnified for his or her legal fees.

14. Reimbursement

14.1. Where an individual is indemnified pursuant to the provisions of this By- law, the amount of the indemnity shall be reduced by the amount of any costs recovered by the individual and where the indemnity has been paid, any costs recovered by the individual shall be paid or assigned to the Town up to the amount of the indemnity.

15. Severability

15.1. If any sections, section or part of a section of this By-Law are found by any Court to be illegal or beyond the power of Council to enact, such sections or section or part of a section shall be deemed to be severable and all other sections or parts of sections of this By-Law shall be deemed to separate and independent and shall continue in full force and effect.

16. Force and Effect

16.1. All by-laws or parts of by-laws inconsistent with this by-law are hereby repealed.

16.2. This By-Law shall come into full force and effect upon the final passing thereof.

Enacted this 27 day of May, 2025

Steve Soloman, Mayor

Meghan Townsend, Clerk