LOCAL LAW No. 1 of 1984

COUNTY OF OTSEGO, NEW YORK

Pursuant to Section 10 of the Municipal Home Rule Law and Section 18 of the Public Officers Law

A LOCAL LAW PROVIDING FOR THE DEFENSE AND INDEMNIFICATION OF CERTAIN COUNTY EMPLOYEES

BE IT ENACTED by the Board of Representatives of the County of Otsego as follows:

SECTION 1. Legislative Intent. The New York State Legislature has enacted legislation permitting public entities, including counties, to provide for the defense and indemnification of officers and employees. This local law implements that concept.

SECTION 2. Definition of "Employee." The term "employee" shall mean any commissioner, member of a public board or commission, trustee, director, officer, employee, 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 Otsego County, whether or not compensated, but shall not include the sheriff of the county or an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.


(a) Upon compliance by the employee with the provisions of Section 5 of this local law, Otsego County shall provide for the defense and indemnification of the employee 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 public employment or duties. This duty to provide for a defense and indemnification shall not
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arise where such civil action or proceeding is brought by, or at the behest of, Otsego County.

(b) Subject to the conditions set forth in paragraph (a) of this section, the employee shall be entitled to be represented by private counsel of his choice in any civil action or proceeding whenever the County Attorney determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by counsel of his choice, provided, however, that the County Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. Reasonable attorney's fees and litigation expenses shall be paid by Otsego County to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the Otsego County Board of Representatives.

(c) 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 the court upon motion or by way of a special proceeding.

(d) Where the employee delivers process and a written request for a defense to Otsego County under Section 5 of this local law, Otsego County shall take the necessary steps 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.

SECTION 4. Indemnification.

(a) Otsego County 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 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 Otsego County Board of Representatives. This obligation by the County to indemnify shall apply to all claims against officers and employees of Otsego County currently outstanding, not reduced to judgment, or settlement, provided such claims or actions are currently being defended by the County's insurance company for which coverage may not be given and provided the settlement or judgment was not for any act or acts committed in violation of, or contrary to, the terms of this local law and specifically for intentional wrongdoing or recklessness.

(b) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

(c) Nothing in this section shall authorize Otsego County 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 section fifty-one of the general municipal law.

(d) 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 days of the date of entry or settlement, upon the Clerk of the Board of Representatives of Otsego County and the Otsego County Treasurer, and if not inconsistent with the provisions of this local law, the amount of such judgment or settlement shall be paid by Otsego County.

SECTION 5. Duty to Notify. The duty to defend or indemnify and save harmless prescribed by this local law shall be conditioned upon:

(i) delivery by the employee to the County Attorney or to the Clerk of the Board of Representatives of Otsego County a written request to provide for his defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he is served with such document, and

(ii) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against Otsego County based upon the same act or omission, and in the prosecution of any appeal.

(iii) Any action or claim against a county officer or employee for which the County is providing a defense through its insurance company and not yet reduced to judgment or settled, shall be entitled to the provisions of indemnification as set forth in this law, if insurance coverage is not provided and provided any judgment or settlement was not for any act or acts committed in violation of or contrary to the terms of this local law and specifically for intentional wrongdoings or recklessness.

SECTION 6. Other Rights. The benefits of this local law 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 local law be construed to affect, alter or
repeal any provision of the Workers' Compensation Law.

SECTION 7. Notice. This local law shall not in any way affect the obligation of any claimant to give notice to Otsego County under section ten of the court of claims act, section fifty-e of the general municipal law, or any other provision of law.

SECTION 8. Insurance. Otsego County is hereby authorized and empowered to purchase insurance from any insurance company created by, or under, the laws of the State of New York, or authorized by law to transact business in this state, against any liability imposed by the provisions of this local law, or to act as a self-insurer with respect thereto.

SECTION 9. Payments. All payments made under the terms of this local law, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

SECTION 10. Insurer Rights. The provisions of this local law shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

SECTION 11. Immunity. Except as otherwise specifically provided in this local law, the provisions of this local law 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 Otsego County by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

SECTION 12. Other Enactments. Except as otherwise provided in this local law, benefits accorded to employees under this local law shall supplement, and be available in addition to, defense or indemnification protection conferred by any other enactment of
the Otsego County Board of Representatives, State of New York or common law.

SECTION 13. **Severability.** If any provision of this local law or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this local law, or the application of any such provision to any other person or circumstance.

SECTION 14. **Effective Date.** This local law shall take effect immediately.

This local law is offered by the Buildings and Insurance Committee, consisting of members Bateman, Waddington and Franzese.
WHEREAS, it has been determined that a continuation of these services is mutually advantageous to the County and to the State of New York; and

WHEREAS, it is necessary for the County and the State of New York, operating through the Office of Court Administration, to enter into a written agreement setting forth the duties, obligations and fees to be charged for the services to be rendered by the County; now, therefore, be it

RESOLVED, that the Chairman is hereby authorized to enter into an agreement with the State of New York, operating through the Office of Court Administration, to provide computerized data processing services to the Office of Court Administration for a term retroactive to April 1, 1984 through and including May 31, 1985, at a fee to the County not to exceed $3,500.00 annually, and containing such other terms, provisions and conditions as are in the best interests of the County of Otsego.


RESOLUTION—ADOPTING A LOCAL LAW OF 1984 PURSUANT TO SECTION 10 OF THE MUNICIPAL HOME RULE LAW AND SECTION 18 OF THE PUBLIC OFFICERS LAW, PROVIDING FOR THE DEFENSE AND INDEMNIFICATION OF CERTAIN COUNTY EMPLOYEES

RESOLVED, that a Local Law of 1984 providing for the defense and indemnification of certain County employees pursuant to Section 10 of the Municipal Home Rule Law and Section 18 of the Public Officers Law is hereby adopted, effective as provided in such Local Law.