COLLECTIVE BARGAINING AGREEMENT

BETWEEN

TOWN OF HILLSBORO BEACH, FLORIDA

AND

BROWARD COUNTY POLICE BENEVOLENT ASSOCIATION

2010-2013
ARTICLE I PREAMBLE

In accordance with the State of Florida Public Employees Collective Bargaining Statute and the laws of the Town of Hillsboro Beach, this Agreement is entered into by and between the Town of Hillsboro Beach, Florida, a municipal corporation in the State of Florida, hereinafter called the "Employer" or "Town" and the Broward County Police Benevolent Association, hereinafter referred to as the "PBA" or "Association". This labor agreement is applicable for employees as defined in Certificate Number 1605 issued to the PBA in accordance with the Certificate granted by the Public Employees Relations Commission on July 7, 2006.

The purpose of this Agreement is to promote and maintain harmonious and cooperative relationships between the employer and employees, both individually and collectively, to provide an orderly and peaceful means for resolving differences which arise concerning the interpretation or application of this Agreement, and to set forth herein the basis and entire agreement between the parties in the determination of wages, hours and terms and conditions of employment.

The parties recognized that the basic interest of the community will be served by assuring the public, at all times, of orderly and uninterrupted operations and functions of the municipal government, and by providing in the most efficient manner, superior public service to the citizens of the Community.
ARTICLE 2
RECOGNITION

The Town of Hillsboro Beach hereby recognizes the Broward County Police Benevolent Association as the exclusive representative for the purpose of collective bargaining with respect to wages, hours, and terms and conditions of employment for all employees in the bargaining unit.

The bargaining unit for which this recognition is accorded is as defined in Certificate Number 1605 granted by the Public Employees Relations Commission (PERC) on July 7, 2006. The bargaining unit was defined in PERC Order No. 06E-100 issued May 9, 2006 and is comprised of all full-time and probationary personnel in the classifications of:

Police Officer
Police Corporal
Police Officer-Dispatcher
Dispatcher

Effective October 1, 2007, the Town will no longer assign employees to the position of Police Officer-Dispatcher. The parties will cooperate to obtain a unit clarification order from PERC. The Broward County Police Benevolent Association hereby recognizes the Town’s designated representatives as the Public Employer’s only representatives for the purpose of collective bargaining.

The following terms have the following meaning:

All reference to Town means the Town of Hillsboro Beach.

Reference to day means calendar day when it is used to measure the time in which an act must occur. Day, as used in reference to the accrual or use of a benefit (such as sick leave, holiday leave or vacation leave) means: one shift, as assigned.

All reference to member(s) means dues paying bargaining unit member(s).

All reference to employee(s) means bargaining unit member(s) regardless of dues paying status.

All reference to “contract term” or “term of agreement” means from date of ratification of the agreement until September 30, 2013.

All reference to “he” or “she” are intended to be gender neutral.
ARTICLE 3
NON DISCRIMINATION

The Town will not discriminate against any employee covered by this Agreement because of membership or non membership in the PBA.

The PBA will not discriminate against employees covered by this agreement as to membership, non membership, or representation with regard to terms and conditions of membership because of race, color, creed, sex, age, sexual orientation or national origin.

It is the responsibility of every bargaining unit employee to notify in writing the Chief of Police if the bargaining unit employee becomes aware of discrimination of any type.

It is agreed that allegations of employment discrimination cannot be processed through the contractual grievance/arbitration procedure.
ARTICLE 4
MANAGEMENT RIGHTS

The PBA and its members recognize and agree that the Town has the sole and exclusive right to manage and direct any and all of its operations. Accordingly, unless otherwise provided in this contract, the Town specifically, but not by way of limitation, reserves the sole and exclusive right to:

a. Exercise control to manage, direct and supervise all employees of the Town;

b. Decide the scope of service to be performed and the method of service;

c. Hire and/or otherwise determine the criteria and standards of selection for employment;

d. Fire, demote, suspend, or otherwise discipline employees for just cause pursuant to Article 17 of this Agreement;

e. Promote and/or otherwise establish the criteria and/or procedure for promotions within and without the bargaining unit; and, to determine the number and types of positions as well as the number and types of position in each grade, step or designation in any pay plan which is or may be developed by the Town;

f. Transfer employees from location to location from time-to time;

g. Lay off and/or relieve employees from duty due to lack of work as determined by the Town;

h. Rehire employees;

i. Determine the allocation and content of job classifications; and, determine all training parameters for all Town positions, including the extent and frequency of training;

j. Formulate and/or amend job descriptions;

k. Merge, consolidate, expand, curtail or discontinue operations, temporarily or permanently, in whole or in part, whenever in the sole discretion of the Town, good business judgment makes such curtailment or discontinuance advisable;

l. Contract and/or subcontract any existing or future bargaining unit work;
m. Expand, reduce, alter, combine, assign or cease any job;

n. Determine whether and to what extent the work required in its operation shall be performed by employees covered by this Agreement;

o. Control the use of equipment and property of the Town;

p. Determine the number, location and operation of all departments and divisions thereof;

q. Schedule and assign the work to the employees and determine the size and composition of the work force;

r. Set procedures and standards to evaluate Town employees job performances;

s. Determine the services to be provided to the public and the maintenance procedures, materials, facilities and equipment to be used; and, to introduce new or improved services, maintenance procedures materials, facilities and equipment;

t. Take whatever action may be necessary to carry out the mission and responsibility of the Town in unusual and/or emergency situations;

u. Formulate, amend, revise and implement Town and departmental policies, rules, regulations and directives;

v. Require employees to observe Town and departmental policies, rules, regulations and directives;

w. Establish, amend, revise and implement any programs and/or procedures; and, to determine the structure and organization of Town Government, including the right to supervise, subcontract, expand, consolidate, or merge any department or service; and, to alter, combine eliminate or reduce the structure of any Town department;

x. Maintain the efficiency of the operations of all departments of the Town and have complete authority to exercise those rights and powers which are incidental to the rights and powers enumerated above.

The above rights of the Town are not all inclusive but indicate the type of matters or rights which belong to and are inherent in the Town. Any of the rights, powers, and authority that the Town had prior to entering into this collective bargaining agreement are retained by the Town, except
as specifically abridged, delegated, granted or modified by this Agreement, so long as the exercise of those rights does not impact the terms and conditions of employment.

If the Town fails to exercise any one or more of the above functions from time to time, this will not be deemed a waiver of the Town's right to exercise any or all of such functions.
ARTICLE 5
WORK STOPPAGE

As mandated by Chapter 447.505, Florida Statutes, the PBA acknowledged that no public employee or employee organization may participate in a strike against a public employer by instigating or supporting, in any manner, a strike. Accordingly, the PBA agrees that, under no circumstances, shall there be any work stoppage, strike, sympathy strike, safety strike, jurisdictional dispute or refusal to perform assigned work for any reason whatsoever; or picketing in the furtherance of any of the above prohibited activities, nor shall any bargaining unit personnel refuse to cross any picket line at any location, whether the picketing is being engaged in by the PBA or any other employee organization or union.

The PBA agrees that the Town shall retain the sole and exclusive right to discharge or otherwise discipline some or all of the employees participating in or promoting any of the activities enumerated in Section 1. above.

It is recognized by the parties that the activities enumerated in Section 1, above, are contrary to the ideals of professionalism and to the Town's community responsibility. Accordingly, it in understood and agreed that in the event of any violation of this Article, the Town shall be entitled to seek and obtain legal and/or equitable relief in any court of competent jurisdiction.

The Town agrees not to engage in any lock-out during the term of this agreement, or to subcontract bargaining unit work if the motive for subcontracting is to coerce or intimidate the bargaining unit.
ARTICLE 6
DUES DEDUCTION

The PBA will provide the Town is a current schedule of PBA dues. Any member of the PBA, who has submitted a properly executed dues deduction card or statement to the Town in accordance with a format prescribed or approved by the Town may, by request in writing, have his membership dues in the PBA deducted from his wages monthly. Dues shall be transmitted to the PBA within thirty (30) days after each monthly deduction. The exact dollar amount to be deducted from each employee’s salary shall be provided by the PBA to the Town. However, the Town shall have no responsibility or any liability for any monies once sent to the PBA nor shall the Town have any responsibility or any liability for improper deduction of dues. The PBA shall indemnify the Town and hold it harmless against any and all suits, claims, demands and liabilities which arise out of or by reason of any action taken or not taken by the Town to comply or attempt to comply with the provisions of this Article.

It shall be responsibility of the PBA to notify the Town of any change in the amount of dues to be deducted at least (30) days in advance of said change. Under no circumstances shall the Town be required to deduct PBA fines, penalties or assessments from wages of any member.

Employees may withdraw their authorization of dues deduction by submitting a written notice to the Town.
ARTICLE 7
P.B.A. BUSINESS

Union representatives will be granted paid leave to engage in representation activities on behalf of the Union or any member as follows:

A. Engaging in collective bargaining with the representatives of the TOWN.

B. Processing of grievances.

C. Accompany a fellow employee when:
   a. The employee is required to appear at a hearing related to a grievance.
   b. The employee is presenting or responding to a grievance.
   c. The employee is subject to interrogation in conjunction with an internal affairs investigation.
   d. The employee is attending a pre-determination hearing.

The TOWN may suspend the use of such time off if it interferes with productivity or manpower needs. However, the exercise of such right on the TOWN’S part shall not be arbitrary or capricious, nor shall it allow the TOWN to proceed in a manner which deprives the employee of his or her right of representation.

A UNION representative shall be permitted leave to attend functions of the Union, provided that such leave shall be at no cost (including the incurring of overtime expenses) to the TOWN and representative uses accrued vacation leave.

No employee shall engage in Union business while on duty except as referenced in Section 1.

A PBA representative may be granted time off, so long as it does not interfere with manpower needs, and paid from a pool of time donated as follows:

Each employee in the bargaining unit may donate, once annually during the first week of January of each year, a portion of his/her vacation leaves
ARTICLE 8
WORK IN OTHER CLASSIFICATIONS

All work in a higher classification shall be at the employee's regular rate of pay, but the time worked in other classifications will be considered as a factor when an employee is considered for promotional advancement.
ARTICLE 9
PROBATION

All newly hired employees shall serve a probationary period of 365 days. An employee may be terminated without a statement of cause during his/her probationary period and the termination is not subject to grievance or appeal.

All promoted employees shall serve a probationary period of 365 days. An employee may be returned to the position from which he/she was promoted during his/her probationary period with a statement of cause and the return is not subject to grievance or appeal.
A probationary period may be extended up to an additional 90 days, but only with the written consent of the employee and the PBA.

Any employee returned to a former position after a failed probationary period will maintain all seniority and benefits as if he/she was not promoted.
ARTICLE 10
BULLETIN BOARDS

10.1 The Town will furnish the PBA with bulletin board space in the Police Department for the exclusive use of the PBA. It shall be the responsibility of the PBA to keep any bulletin board in a neat and orderly fashion. Failure to do so may result in the Town removing the bulletin board.

10.2 The PBA shall utilize the bulletin board provided for in Section 10.1, above, only to post the following:

A. Notices of union elections and union election results.

B. Copies of the union's constitution and bylaws and amendments thereto.

C. Notices of recreational and social affairs of the union.

D. Copy of this Agreement.

E. Notices of dues increases,

F. Notices of death or illness of local union officials.

10.3 Under no circumstances shall the PBA or its representatives or members post any material of a political nature, material disparaging or demeaning the Town or any of its elected or appointed officials or employees.
ARTICLE 11
SENIORITY

Seniority shall consist of continuous accumulated paid service with the Town of Hillsboro Beach Police Department. Seniority shall be utilized for the following purposes of selection of vacations for each calendar year.

Vacation selection shall be drawn by employees on a basis of seniority preference; provided, however, that the Town shall retain the right to disregard seniority preference in the event that it becomes necessary to do so in order to provide adequate coverage in certain specialized areas during any given vacation period.

Nothing contained herein shall be interpreted as restricting the Town’s right to cancel all vacations during any given period in the event of disaster or emergency.

The following seniority rights apply in the event of layoff and recall:

In the event of reduction of the workforce, employees shall be laid off in reverse order of seniority in their classification. If more than one classification is affected, an employee laid off from a higher classification shall be given an opportunity to revert lower classification with a corresponding adjustment to compensation, provided that he/she is fully qualified to perform the work and at lower classification. Upon reverting to a lower classification, an employee’s seniority shall be determined by the date of his/her original permanent appointment to the classification. All temporary, provisional, limited term, or probationary employees shall be laid off prior to any reduction in the permanent workforce.

Employees shall be recalled from layoff in accordance with their seniority in the classification from which they were laid off. No new employee shall be hired in any classification until all employees on layoff status and that classification have had an opportunity to return to work; provided, however, that in the discretion of the Town, such recalled employee is physically and mentally capable of performing the work available at the time of recall and the employee meets all of the standards set by the Town of Hillsboro Beach Police Department that are in effect at the time of recall. No laid-off employee shall retain rights beyond six (6) months from the date of layoff.

In computing seniority, credit shall be given for all classified service in the police department, except that a resignation or discharge shall be considered a break in service and seniority credit shall not be given for any service rendered prior to that break, unless an arbitrator rules otherwise.
ARTICLE 12
GENERAL ORDERS

The Parties agree that each member of the Bargaining Unit has been provided with a copy of the current Departmental General Orders. Any new or revised Departmental General Orders shall be distributed to members as soon as practical after they are formally adopted.

The Town will also provide a copy of the Departmental Rule and Regulations, and any new Departmental General Orders when formally adopted, to the Broward County Police Benevolent Association, no less than thirty (30) days prior to implementation. The PBA, in its discretion, may, within 20 days of notice of the new rule or regulation, make a written request to the Town for bargaining over any new rule or regulation that affects wages, benefits or conditions of employment. The Town and the PBA shall thereafter expedite bargaining, but bargaining shall not delay implementation of the new rule or regulation.

The Department Rules have equal effect as the terms of this Agreement except when there is a conflict. In the event that any rule, regulation, policy or procedure conflicts with this Agreement, the language in this Agreement shall control.
ARTICLE 13
LEGAL SERVICES

Legal actions against an employee shall be handled pursuant to s. 111.065. Florida Statutes. (See Appendix 2)
ARTICLE 14
SPECIAL DETAILS

A special detail is defined as an assignment to perform law enforcement duties when the time of
the assigned activity is not within the employee’s normal work period. All special details require
prior written approval by the Chief of Police or his designee. All hours worked for a special
detail assignment constitute hours worked for overtime purposes. Since special details occur
rarely, shift schedules can be modified to accommodate the special detail.
ARTICLE 15
OFF DUTY DETAILS

An off-duty detail is work performed by an employee for a third party employer and not for the
Town. All off duty details require prior written approval by the Chief of Police or his designee.
No employee may work an off-duty detail until the third party employer executes and delivers to
the Town a Request For Off Duty Detail Agreement, in the form approved by the Town.

The rate of pay for off duty details is $50.00 per hour (plus an additional $10.00 per hour on
holidays) payable to the officer plus an hourly rate charge payable to the Town if a Town vehicle
is used. The hourly rate for the officer may be modified by the PBA with the consent of the Chief
of Police. Payment for off-duty details shall be made directly from the third party employer to
the officer working the detail for distribution to the employees. The Town is not responsible for
billing or collection of the off duty detail fee.

It is the understanding and agreement of the parties hereto that each employee working an off
duty detail is deemed to be an independent contractor during the detail and as such shall not be
covered by Town for benefits afforded to on duty police officers, unless the employee is required
to respond to take police action. However, employees on off duty details shall be permitted to
utilize a police uniform, radio and vehicle. Vehicle use is subject to Department Policy.

Details shall be assigned only to those employees who are off-duty and no employee shall accept
any off duty detail when it interferes with his/her normal working hours.

Each employee, while working off duty details shall adhere to all policies, General Orders of the
Town Police Department and the FDLE code of ethics. Any misconduct or breach of policies,
General Orders will be handled through the Department the same as any on duty activity.

Any employee who is on sick leave, workers’ compensation or limited to light duty work shall
not work any off duty detail during that period.

Any employee on leave due to disciplinary matters shall not work off duty jobs during the period
of that suspension or removal from active duty.
ARTICLE 16
EDUCATION

Upon successful completion of the course, the Town shall pay the cost of tuition based on State established tuition rates at a local, accredited junior college, community college or university provided said courses are job related and provided the member is approved to attend by the Chief of Police. Denial of a request is not grievable.

When feasible, the Town shall arrange the working schedules of members attending advance schools and college courses so that there shall be a minimum of interruption of their studies.

Under no circumstances shall the pursuit of a college education be allowed to interfere with an employee's duties or the efficient operation of the Police Department.

The Town has the right not to approve any educational course requested by a member if found not to be job related.

The Town agrees to pay for all course required textbooks related to police work as approved by the Chief of Police, purchased by members while attending accredited college courses and pursuing a degree program in law enforcement or administration of criminal justice.

At the completion of a class, course or seminar, the member shall submit their overall grade for the seminar, class or course, and the Town shall pay for the course in the following percentages;

<table>
<thead>
<tr>
<th>Grade</th>
<th>Town's Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>A or its equivalent</td>
<td>100%</td>
</tr>
<tr>
<td>B or its equivalent</td>
<td>100%</td>
</tr>
<tr>
<td>C or its equivalent</td>
<td>75%</td>
</tr>
<tr>
<td>D or its equivalent</td>
<td>0%</td>
</tr>
<tr>
<td>Inc/F or its equivalent</td>
<td>0%</td>
</tr>
</tbody>
</table>

Should the educational institution offer a pass/fail grading system which may be elected at the student's option, the Town shall pay 75% for a pass and 0% for a fail. Should the educational institution's grading method by only a pass/fail system, the Town shall pay 100% for a pass and 0% for a fail.

The foregoing education incentive benefit shall be subject to annual appropriations by the Town Commission. Total annual benefits will be capped by the amount of funds appropriated by the Town Commission. Reimbursement will be made on a first come first serve basis until the funds are expended.
An employee who separates from service within three years of receiving reimbursement from the Town will be required to fully reimburse the Town for any educational reimbursements the employee received from the Town.
ARTICLE 17
PERSONNEL RECORDS

No discipline shall be considered imposed until it is reduced to writing and a copy delivered to the employee. Employees covered by this Agreement shall be provided a copy of any disciplinary action received from the Town, which is memorialized in writing. An employee receiving a copy of disciplinary action from the Town may, within five (5) days of the issuance of such documents, file a written response thereto. At the employee's request, any such written response shall be included in the employee's official personnel file. Employee counseling shall be documented and a copy provided to the employee. A counseling is not discipline, but may be used to demonstrate that an employee was put on notice that his/her conduct was not consistent with departmental policy or protocol.

The Town agrees that at no time shall the news media be directly or indirectly provided with the employee's telephone number or photograph and without the employee's express permission, unless the Town is required to do so to comply with state or federal law.

The Town agrees that upon request, an employee shall have the right to inspect his personnel file. Said employee will have the right to make copies of their official personnel file for their use. No records shall be withheld from an employee's inspection, unless disclosure is prohibited by law.

Any record which reports or reflects on officer conduct or performance shall be provided to the officer in conjunction with the document being placed in the employee’s personnel file.
ARTICLE 18
DISCIPLINARY ACTION

No discipline shall be taken against any bargaining unit employee without just cause.

No discipline shall be taken against any bargaining unit employee unless such employee and the PBA are notified of the action and the reason or reasons therefore prior to the effective date of such action.

The Town will apply the principles of progressive discipline when considering and imposing discipline.

The Town will develop and implement guidelines for disciplinary action. The guidelines will contain guidelines for discipline for violations and repeat violations.

When an evaluation statement or record of discipline has been placed in an employee’s personnel folder the employee shall be given a copy.

An employee, at the employee’s discretion, shall have the right to Union representation in disciplinary actions.

Where a bargaining unit member is the subject of an interview, interrogation or investigation, for any reason which could lead to disciplinary action, the Town will comply with the provisions of Florida Statutes Chapter 112, the Law Enforcement Officers Bill of Rights. See Appendix 1

The Town shall follow the disciplinary procedures set forth in the Department General Orders and the procedures set forth in Part VI of Chapter 112, Florida Statutes, as amended from time to time. In the event of a conflict, the procedures set forth in Part VI of Chapter 112 will control.
ARTICLE 19
GRIEVANCE & ARBITRATION PROCEDURE

Members of the bargaining unit will follow all written and verbal orders given by superiors even if such orders are alleged to be in conflict with this agreement. Compliance with such orders will not prejudice the right to file a grievance within the time limits contained herein, nor shall compliance affect the ultimate resolution of the grievance. The following rule applies to all employees: Obey first, grieve later.

A grievance is defined as a dispute involving the interpretation or application of the collective bargaining agreement. Appeals of disciplinary action are not grievances, but shall be processed as set forth in the following Article 18A and this Article when applicable. No grievance will or need be entertained or processed unless prepared in writing in the manner described herein, and unless filed in the manner provided herein within the time limit prescribed herein. A grievance may only be filed by the Union on behalf of a member. The Union is under no obligation to process a grievance for an employee who is not a member of the Union. Grievances are limited to claims which are dependent for resolution exclusively upon interpretation or application of one or more express provisions of this agreement. The Town need not entertain or process under this Article and may refuse to entertain or process any dispute, claim or complaint or other matter not meeting this definition.

Grievances will be processed in the following manner and strictly in accordance with the following stated time limits.

Step 1: The Union shall present the grievance, in writing, to the Police Chief, within ten (10) calendar days of the act or omission which gave rise to the grievance. The Police Chief shall, within ten (10) calendar days of receipt of the written grievance, conduct a meeting with the Union. The Police Chief shall notify the Union in writing of the decision not later than ten (10) calendar days following the meeting date.

Step 2: If the grievance is not fully and conclusively resolved at Step 1, the Union, within seven (7) calendar days of receipt of the answer provided in Step 1, may forward the written grievance to the Town Commission. The Town Commission may, but need not, hold a meeting with the Union regarding the grievance. The Town shall notify the grievant and the Union of the Town Commission's decision within seven (7) calendar days following receipt by the Town Commission of the grievance. The decision of the Town Commission shall be determinative of the grievance (unless modified by a decision made in compliance with the following arbitration procedure).
If the grievance is not resolved by the foregoing grievance procedure, the Union, within fourteen (14) calendar days after the Town Commission's decision in Step 2, may request a list of seven (7) qualified arbitrators from the Federal Mediation and Conciliation Service. The Union and then the Town will alternately eliminate one at a time from said list the names of persons not acceptable until only one remains and this person will be the arbitrator.

As promptly as possible after the arbitrator has been selected, he shall conduct a hearing between the parties and consider the grievance. The decision of the arbitrator will be served upon the Town and the Union in writing. It shall be the obligation of the arbitrator to rule within twenty-one (21) calendar days after the hearing. The expense of the arbitration, including the fee and expenses of the arbitrator, shall be paid by the losing party. Each party shall be exclusively responsible for compensating its own representatives and witnesses.

The submission to the arbitrator shall consist exclusively and entirely of the written grievance as submitted in Steps 1 and 2 of the grievance procedure, and shall include a copy of this agreement.

The power and authority of the arbitrator shall be strictly limited to an interpretation of the express terms of this agreement. He shall not have the authority to add to or subtract from or modify any of said terms, or to limit or impair any right that is reserved by this agreement to the Town or the Union or the employees, or to establish or change any wages or rate of pay in this agreement.

No decision of any arbitrator or of the Town in one case shall create a basis for retroactive adjustment in any other case.

All claims for back wages shall be limited to the amount of wages that the employee otherwise would have earned from the Town, less any unemployment compensation or compensation from other sources that the employee did receive during the period for which the back pay was awarded. In settlement or other resolution of any grievance resulting in retroactive adjustment including back wages, such adjustment shall be limited to a maximum of ten (10) calendar days prior to the date of the filing of the grievance at Step 1.

The decision of the arbitrator shall be final and binding on both parties, and the grievance shall be considered permanently resolved, subject to any judicial relief available to either party under Florida law.

It is agreed, with respect to this grievance and arbitration procedure, that:
A. It is the intent of the parties that grievances must be raised at the earliest possible time. Any grievance, in order to be entertained and processed, must be submitted in writing at Step 1 within ten (10) calendar days after initial knowledge of the action allegedly giving rise to the grievance, which means, as indicated in Step 1 above, within seven (7) calendar days after knowledge of an act or omission by management which will or may result in the adverse personnel action which is the subject of the grievance.

B. When arbitrability is raised by the Town with respect to any grievance, the issue of arbitrability shall be determined by the arbitrator no less than thirty calendar (30) days prior to commencement of arbitration hearing on the grievance itself.

C. If the Town does not agree that the matter is arbitrable, notification shall be sent to the UNION of such within ten (10) days of receipt of the UNION’S request to proceed to arbitration. The parties agree that in such an instance, the Town may submit solely the question of arbitrability either to an arbitrator or to a court. If the arbitrability issue is submitted to an arbitrator, the decision shall be based solely on written briefs, exhibits and affidavits submitted by the parties, with no oral argument allowed; and shall be submitted to the arbitrator within ten (10) calendar days of selection of the arbitrator. The arbitrator shall render the decision on arbitrability within fifteen (15) calendar days of receipt of the parties’ submissions. Whichever party loses on the issue of arbitrability shall pay the arbitrator’s costs involved in that portion of the proceeding.

D. If there is no objection by either party to the arbitrability of the grievance, and the above mentioned procedure has been fully complied with or results in a determination that the grievance is arbitrable, the parties shall proceed to arbitrate the grievance.

E. A matter otherwise constituting a grievance not presented at Step 1 within the time limit prescribed in Step 1 and in compliance with paragraph A above shall be conclusively barred on the merits following expiration of the prescribed time limit. Such a time-barred grievance need not be entertained or processed, and only factual disputes as to timing will be the subject of any arbitration resulting from the matter. A grievance which is for any reason not advanced to Step 2 or to arbitration within the time limits prescribed herein for such advancement shall be similarly permanently withdrawn and barred. Failure on the part of the Town to respond within the time limit set forth at any step shall require the aggrieved employee or Union to proceed to the next step, and failure on the part of the aggrieved employee or Union to so proceed within the time limit after expiration of the time limit for the Town’s response shall cause the matter to be barred as set forth in this paragraph.
F. A time limit at any stage of the grievance procedure may be extended by written mutual agreement of the Union and the Town Commission. No extension of time shall be inferred by any conduct or verbal exchange between the parties.

G. All grievances shall be dated and signed by the Union representative. Any decision rendered shall be in writing and shall be dated and signed by the Town's representative at that step.

H. In any grievance there shall be set forth in space provided on the grievance form or on attachments, if necessary, all of the following:

(1) a statement of the grievance and facts upon which it is based;

(2) the section or sections of this agreement claimed to have been violated;

(3) the remedy or correction requested.

I. All grievance hearings will be conducted during normal business hours.

J. Any grievances filed on behalf of or for the benefit of any employee or employees must specifically name all such employees, and may not be amended after submission to Step 1 to add names. No monetary or other relief shall be granted or awarded to any employee not so named. The only exception to this is that if the Union claims that a grievance affects the entire unit it may describe the unit generally.

K. In all cases requiring the Union to timely present or advance a grievance to a designated Town official, hand delivery by facsimile during the hours of 8:30 am. until 4:30 p.m., Monday through Friday to the office of that official shall be sufficient for compliance with prescribed time limits if the designated official is not personally available for service. Where the last day for such presentation or advancement falls on a Saturday, a Sunday or a holiday expressly recognized as such under this agreement, presentation or advancement shall be considered timely if made on the next business day following such Saturday, Sunday or holiday.
ARTICLE 20
APPEALS OF DISCIPLINARY ACTION

Appeals of disciplinary action shall be handled as follows:

Minor discipline: Written reprimands and suspensions with pay, suspensions without pay of 3 days or less and temporary (less than 30 days) demotions.

When an employee has received a written counseling, the employee's appeal is limited to submitting a written rebuttal which shall be attached to the written counseling documents in the employee's personnel file. The written rebuttal shall be submitted by the employee within ten (10) days of the employee's receipt of the written counseling.
All other minor discipline may be appealed to the Town Commission whose decision is final.

Major discipline: Suspensions without pay greater than 3 days, demotions, and terminations.

The UNION may file an appeal of major discipline on behalf of its members. Upon receipt of a notice of appeal for all discipline Police Chief shall have ten (10) calendar days to meet with the Union and employee and the employee's representative; shall review the proposed discipline following consideration of the information provided by the employee and shall advise the UNION that the discipline is either (i) sustained; (ii) reversed; or (iii) modified.

If the UNION is not satisfied with the Police Chief's disposition of the appeal the employee may further appeal a discipline to the Town Commission. Upon receipt of a notice of appeal, the Town Commission shall have ten (10) calendar days to review the discipline and to advise the UNION that the discipline is either (i) sustained; (ii) reversed; or (iii) modified.

If the UNION is not satisfied with the Town Commission’s ’s disposition of the appeal the employee may further appeal a discipline to arbitration using the same procedure for appointment of an arbitrator as set forth in Article 18 above. The procedures for arbitration are as set forth in Article 18. The arbitrator may sustain, reverse or modify the discipline which was set by the Town Commission. The decision of the arbitrator is final and binding on the parties. The expense of the arbitration, including the fee and expenses of the arbitrator, shall be paid by the losing party. Each party shall be exclusively responsible for compensating its own representatives and witnesses. In the event the discipline is modified the expense of the arbitrator shall be split by the parties.
No employee shall be subject to discipline of any type without cause. The Town has the burden of proof to establish that discipline is based on just cause. The Union has the burden of proof to establish any defense or mitigation to the discipline.
ARTICLE 21
SEVERABILITY CLAUSE AND PROHIBITION
AGAINST REOPENING OF NEGOTIATIONS

Should any provision of this collective bargaining agreement, or any part thereof, be rendered or declared invalid by reason of any existing or subsequently enacted state or federal law, or by any decree of a court of competent jurisdiction, all other articles and sections of this agreement shall remain in full force and effect for the duration of this agreement. The parties agree to immediately meet and confer concerning any invalidated provision(s).

Except as specifically provided in this agreement, neither party hereto shall be permitted to reopen or renegotiate this agreement or any part thereof. This agreement contains the entire agreement of the parties on all matters relative to wages, hours, and terms and conditions of employment as well as all other matters which were or could have been negotiated prior to the execution of this agreement.
ARTICLE 22
HOSPITAL MEDICAL/DENTAL

Bargaining unit employees shall continue to receive the same insurance benefits that are provided to all other Town employees. In the event insurance benefits are reduced in a manner that requires an employees contribution, excluding co-payments, the PBA may request a reopener of bargaining on this Article.
ARTICLE 23
UNPAID LEAVE OF ABSENCE

An unpaid leave of absence shall not exceed six (6) months.

Employees covered by this Agreement who are on a Town approved unpaid leave of absence shall retain previously accrued seniority, but shall not continue to accrue additional seniority when on such leave.

Employees covered by this Agreement who are on a Town approved unpaid leave of absence shall be given the opportunity to continue hospital/medical/dental insurance coverage, at their own expense, subject to the provisions and conditions of the applicable policies. It is understood and agreed that this will not, in any manner, result in any cost to the Town.
ARTICLE 24
SICK LEAVE

Accrual Rate: Each employee will earn 96 hours of sick leave per year, accrued 3.6923 hours per pay period.

Use: The procedures for reporting and using sick leave are as set forth in the Departments General Orders.

Cap on accrual: 500 hours

Payout on ratification: All hours above 500 hours at the time of ratification of this agreement may be maintained by the employee or, at the employee's option, paid at 50% of the employees base rate of pay.

Annual Payout of accruals over 500 Hours: Employees can maintain all sick leave accrued prior to ratification of this agreement. Time accrued following ratification over 500 hours must be used in the year accrued or will be paid out at 100% of the employee's base rate of pay.

If, during the term of this Agreement Management encounters difficulty obtaining shift coverage when an officer calls in sick, the following procedure shall be implemented on the twenty (20) days notice to the PBA:

When an officer is out on sick leave and the Department calls in another officer to fill that officer's absence, the Police Chief or his designee will fill the vacancy by the use of a selection wheel, in order of seniority. The first officer called may refuse the shift, but the second officer called must work the shift. Officers are responsible for knowing their position on the selection wheel and must remain available for call in if they are one of the next three officers on the rotation. An officer who is on approved leave will automatically be passed over for call back. Officers may swap their position on the rotation wheel.
ARTICLE 25
COURT TIME

Any member who is required to appear as a witness as a result of employment with the Town, shall be entitled to the following:

A. Regular pay if called to testify during regularly scheduled work hours.
B. If called to testify outside the employee's regularly scheduled work hours, the employee will be paid at the overtime rate consistent with current policy with a minimum of two hours.
C. In such cases, the employee will be permitted to keep any witness fee received.

Any employee subpoenaed to appear as a witness in a case not involving the Town and not directly related to the employee's personal affairs, (such as performing a civic duty as a witness to a crime or an accident) will be allowed Town time off with pay for this purpose. In such cases, if the employee is on duty, the employee will submit the witness fee received to the Town. If the employee is off duty, all witness fees and travel expenses will be kept by the employee.

Time off to respond to a subpoena to appear as a witness in a case related to an employee's personal affairs will be at the employee's own expense and accrued leave. Such leave shall not be denied.
ARTICLE 26  
ANNUAL LEAVE (VACATION)

Annual Leave (vacation) will be accrued, calculated from date of hire, as follows:

Five days on the employee’s first anniversary of employment;

Ten days on the employee’s second anniversary of employment;

Ten days on all subsequent anniversaries plus one additional day of vacation for each year of employment over two years of employment with a maximum of ten (10) additional days after twelve years of employment (example: an employee accrues 11 days of vacation on the employees 3rd anniversary, 12 day on the employees 4th anniversary, and so on until capped;)

After twenty years of service, employees shall receive an additional five days of Vacation.
Five days after one year of employment;

Employees may not take vacation during the first year of employment.

An employee may only take vacation that has accrued at the time the vacation is taken.

If an employee’s scheduled vacation is involuntarily cancelled due to the Town’s needs, occasioned by civil disorder or emergency, the employee shall be permitted to reschedule at a mutually agreeable time.

An employee who has sustained an injury in the line of duty and who has vacation time previously scheduled which falls within the period of disability shall be entitled to reschedule the vacation time after return to duty. Previously scheduled vacation time falling within a period of disability incurred in the line of duty shall not be forfeited or otherwise expended due to the unforeseeable circumstances of the injury.

Annual leave shall be selected in three rounds each calendar year, as follows:

Year One: the selection process currently employed will be honored for all vacations occurring prior to January 1, 2008.

Year Two and Year Three: Commencing October 1, 2007, bargaining unit employees shall select, by seniority, vacation from available dates on the department’s master vacation calendar for the next calendar year, in no less than 4 day increments. Dates shall be blocked off on the master calendar to reflect vacation date selections by the Police Chief, Lieutenant, and Sergeant,
as well as training dates. Selection shall be conducted in three rounds to afford employees with lesser seniority some opportunity for vacation in commonly sought months of the year. Selection in all rounds is unlimited.
ARTICLE 27
HOLIDAYS

The Town agrees to continue its current policy for paid holidays. Paid holidays will include:

Martin Luther King, Jr. Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day
New Year's Day
Veteran's Day
Memorial Day
Independence Day
Labor Day
ARTICLE 28
BEREAVEMENT LEAVE

The Chief of Police may grant an employee paid time off up to fourteen consecutive days of work in cases of the death of a member of the Department’s spouse or child. In the event of the death of a member of the Department’s mother, father, sister, brother, mother-in-law, father-in-law, this shall be seven and five days respectfully. Additional time off in these cases must be requested from the Chief of Police.
ARTICLE 29
WAGES

During the term of this Agreement employees will receive wage adjustments as follows:

YEAR ONE (10/1/10 – 9/30/10)

There will be a wage freeze and no movement in steps for fiscal year 2010-2011.

YEAR TWO (10/1/11-9/30/12)

Effective 10/1/11, each Bargaining unit employee will receive a COLA adjustment based on the percentage change in the CPI/All Urban Consumer/Miami-Fort Lauderdale area using the August reports as the basis for the calculation of percentage change with a 3% cap on the increase. In the event of a negative change in the CPI, there will be no corresponding base wage reduction.

YEAR THREE ((10/1/12-9/30/13)

Effective 10/1/12 each Bargaining Unit employee will receive a COLA adjustment based on the percentage change in the CPI/All Urban Consumer/Miami-Fort Lauderdale area using the August reports as the basis for the calculation of percentage change with a 3% cap on the increase. In the event of a negative change in the CPI, there will be no corresponding base wage reduction.

The foregoing base wage increases are the only base wage increases employees will receive during the term of the Agreement. Bargaining unit employees will not receive step increases once their base pay reaches step ten of the step plan.

When a position in the bargaining unit is filled by hiring a candidate with experience from another agency, the Police Chief, in consultation with the Commission may fix the salary of the new hire taking into consideration the years of service and experience of the new hire, provided the salary is within the pay range for the position.
ARTICLE 30
PREVAILING RIGHTS

There is no past practice that is monetary in nature except those expressly incorporated in this Agreement. All non-monetary benefits and privileges currently enjoyed by employees covered by this agreement which are not specifically provided for or abridged by this agreement shall continue in full force under the same conditions which they have previously enjoyed.
ARTICLE 31
LIFE INSURANCE

The Town agrees to provide, without cost to each employee, group term life insurance equal to one and one quarter times (1 ¼) the employee's annual salary rounded to the next highest multiplier of each thousand dollars, subject to a minimum of $7,000 and a maximum of $50,000. The employee shall have the option of purchasing, at his/her own expense through payroll deduction an additional amount of group term insurance.
ARTICLE 32
DISABILITY LEAVE

No disability benefits are currently provided by the Town. In the event a short or long term disability program is developed, it will be offered to all bargaining unit members who otherwise meet the program qualification guidelines.
ARTICLE 33
DRUG AND ALCOHOL POLICY

The Town and the Union agree that substance abuse poses a great threat to the health and safety of each employee and his/her co-workers. Employees in the bargaining unit are subject to reasonable suspicion and random drug or alcohol testing. Drug testing shall be administered following the procedures set forth in the Florida Drug Free Workplace Program, as provided in Section 440.102, Florida Statutes, and the regulations of the Florida Department of Labor and Employment Security, Division of Workers Compensation Rules 38F9. 001, at seg. Florida Administrative Code. For the purpose of this agreement, the term “drug” has the same meaning as set forth in the definitions section 440.102 F.S.

When ordered to submit to a drug test, an employee must promptly and without delay submit to the test. By submitting, an employee does not waive his/her right to challenge the test results, or the order compelling the test. However, the rule “Obey first, Grieve later: applies. An employee who refuses an order to submit to a drug test, or who intentionally delays the test, or who interferes or tampers with the test, shall be terminated from employment.
ARTICLE 34
RETIREES INSURANCE STIPEND

All department retirees currently receiving an insurance premium stipend shall continue to receive that stipend until age 65, or until the retiree is re-employed and eligible for employer paid health insurance.

All bargaining unit employees who retire prior to 9/30/10 will also receive the retiree insurance stipend.
ARTICLE 35
HOURS OF WORK

The work schedules/cycles and procedures for paying overtime which are in effect at the time of ratification of this agreement shall be maintained as the status quo until changed as hereinafter set forth.

The TOWN has the right to change work/shift schedules, work cycles, and starting times during the term of this Agreement subject to the following:

A. The work cycle shall not exceed 28 days. The hours of work within the established work cycle shall be 6.1 (rounded) hours per day and as set forth in 29 C.F.R. section 553.230. Hours worked in excess of the maximum hours provided by the referenced regulation shall be paid at time and one-half the employees rate of pay.

B. The TOWN shall provide the ASSOCIATION with no less than thirty (30) days written notice of its intent to alter work/shift schedules, work cycles, and starting times. The notice shall include a proposed date of implementation.

C. The ASSOCIATION may request impact bargaining over the proposed change.

D. If the ASSOCIATION requests impact bargaining, the implementation date shall be delayed thirty (30) days and the parties shall meet as soon as possible and engage in good faith bargaining over the impact issues identified by the ASSOCIATION. Notwithstanding the status of bargaining when requested by the PBA, the schedule change shall take effect the first pay period following the expiration of the thirty (30) day extension period.

The TOWN retains the right to make changes in schedules when extenuating circumstances such as hurricanes or other states of emergencies dictate.

E. Effective October 1, 2007, the Police Chief shall have the right to designate one bargaining unit employee to work a forty hour shift (Monday through Friday from 7 a.m. to 3 p.m.). The “day shift” position will be equally rotated every month. No employee working the days shift can take a vacation during their assignment to the day shift.
ARTICLE 36
DURATION

This Agreement shall be in effect for a three year term commencing October 1, 2010 and ending September 30, 2013. No base wage increase or cost of living adjustment shall be paid beyond September 30, 2013 except as provided in a subsequent collective bargaining agreement.
ARTICLE 37
WAGES-REOPENER

In the event of the passage of a State constitutional amendment or State Legislative enactment which will alter or affect the flow of revenue to the Town during the term of this Agreement, the wage/rate of pay articles of the Agreement may, at the written request of the Town, be reopened for negotiations.

Reopened negotiations shall be commenced and concluded within thirty (30) calendar days of the date the Town gives written notice to the PBA of the Town’s request to reopen negotiations. If an agreement is not reached within thirty (30) calendar days, the negotiations shall be deemed at impasse.

During the negotiations and the impasse process, if any, the base wages of bargaining unit employees will be frozen at the levels in place at the time the Town requests to reopen negotiations and no subsequent base wage increases will occur except as thereafter negotiated by the Town and the PBA, or, in the event the reopened negotiations do not result in a ratified agreement, as imposed by the Town Commission through the impasse process.
TOWN OF HILLSBORO BEACH, FLORIDA

MAYOR

TOWN CLERK

BROWARD COUNTY POLICE BENEVOLENT ASSOCIATION

PRESIDENT

Date of ratification by BARGAINING UNIT: 3/28/2011

Date of ratification by the TOWN: 3/1/2011
APPENDIX I

PART VI

LAW ENFORCEMENT AND
CORRECTIONAL OFFICERS
112.531
Definitions.
112.532
Law enforcement officers' and correctional officers' rights.
112.533
Receipt and processing of complaints.
112.534
Failure to comply; official misconduct.
112.535
Construction.
112.531
Definitions.

As used in this part:
(1)
"Law enforcement officer" means any person, other than a chief of police, who is employed full
time by any municipality or the state or any political subdivision thereof and whose primary
responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or
highway laws of this state; and includes any person who is appointed by the sheriff as a deputy
sheriff pursuant to s. 30.07.
(2)
"Correctional officer" means any person, other than a warden, who is appointed or employed full
time by the state or any political subdivision thereof whose primary responsibility is the
supervision, protection, care, custody, or control of inmates within a correctional institution; and
includes correctional probation officers, as defined in s. 943.10(3). However, the term
"correctional officer" does not include any secretarial, clerical, or professionally trained
personnel.

History.

s. 1, ch. 74-274; s. 1, ch. 75-41; s. 34, ch. 77-104; s. 1, ch. 82-156; s. 1, ch. 89-223; s. 1, ch. 93-
19; s. 3, ch. 2000-161.
112.532
Law enforcement officers' and correctional officers' rights.

All law enforcement officers and correctional officers employed by or appointed to a law enforcement agency or a correctional agency shall have the following rights and privileges:

(1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL OFFICERS WHILE UNDER INVESTIGATION.—Whenever a law enforcement officer or correctional officer is under investigation and subject to interrogation by members of his or her agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal, the interrogation must be conducted under the following conditions:

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer or correctional officer is on duty, unless the seriousness of the investigation is of such a degree that immediate action is required.

(b) The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct, police unit, or correctional unit in which the incident allegedly occurred, as designated by the investigating officer or agency.

(c) The law enforcement officer or correctional officer under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by or through one interrogator during any one investigative interrogation, unless specifically waived by the officer under investigation.

(d) The law enforcement officer or correctional officer under investigation must be informed of the nature of the investigation before any interrogation begins, and he or she must be informed of the names of all complainants. All identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of the investigative interview of the accused officer. The complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each officer who is the subject of the complaint before the beginning of any investigative interview of that officer. An officer, after being informed of the right to review witness statements, may voluntarily waive the provisions of this paragraph and provide a voluntary statement at any time.

(e) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

(f)
The law enforcement officer or correctional officer under interrogation may not be subjected to offensive language or be threatened with transfer, dismissal, or disciplinary action. A promise or reward may not be made as an inducement to answer any questions.

(g) The formal interrogation of a law enforcement officer or correctional officer, including all recess periods, must be recorded on audio tape, or otherwise preserved in such a manner as to allow a transcript to be prepared, and there shall be no unrecorded questions or statements. Upon the request of the interrogated officer, a copy of any recording of the interrogation session must be made available to the interrogated officer no later than 72 hours, excluding holidays and weekends, following said interrogation.

(h) If the law enforcement officer or correctional officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he or she shall be completely informed of all his or her rights before commencing the interrogation.

(i) At the request of any law enforcement officer or correctional officer under investigation, he or she has the right to be represented by counsel or any other representative of his or her choice, who shall be present at all times during the interrogation whenever the interrogation relates to the officer’s continued fitness for law enforcement or correctional service.

(j) Notwithstanding the rights and privileges provided by this part, this part does not limit the right of an agency to discipline or to pursue criminal charges against an officer.

(2) COMPLAINT REVIEW BOARDS.—A complaint review board shall be composed of three members: One member selected by the chief administrator of the agency or unit; one member selected by the aggrieved officer; and a third member to be selected by the other two members. Agencies or units having more than 100 law enforcement officers or correctional officers shall utilize a five-member board, with two members being selected by the administrator, two members being selected by the aggrieved officer, and the fifth member being selected by the other four members. The board members shall be law enforcement officers or correctional officers selected from any state, county, or municipal agency within the county. There shall be a board for law enforcement officers and a board for correctional officers whose members shall be from the same discipline as the aggrieved officer. The provisions of this subsection shall not apply to sheriffs or deputy sheriffs.

(3) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS OR CORRECTIONAL OFFICERS.—Every law enforcement officer or correctional officer shall have the right to bring civil suit against any person, group of persons, or organization or corporation, or the head of such organization or corporation, for damages, either pecuniary or otherwise, suffered during the performance of the officer’s official duties, for abridgment of the officer’s civil rights arising out
of the officer’s performance of official duties, or for filing a complaint against the officer which
the person knew was false when it was filed. This section does not establish a separate civil
action against the officer’s employing law enforcement agency for the investigation and
processing of a complaint filed under this part.

(4)(a)
NOTICE OF DISCIPLINARY ACTION.—A dismissal, demotion, transfer, reassignment, or
other personnel action that might result in loss of pay or benefits or that might otherwise be
considered a punitive measure may not be taken against any law enforcement officer or
correctional officer unless the law enforcement officer or correctional officer is notified of the
action and the reason or reasons for the action before the effective date of the action.

(b)
Notwithstanding s. 112.533(2), whenever a law enforcement officer or correctional officer is
subject to disciplinary action consisting of suspension with loss of pay, demotion, or dismissal,
the officer or the officer’s representative shall, upon request, be provided with a complete copy
of the investigative file, including the final investigative report and all evidence, and with the
opportunity to address the findings in the report with the employing law enforcement agency
before imposing disciplinary action consisting of suspension with loss of pay, demotion, or
dismissal. The contents of the complaint and investigation shall remain confidential until such
time as the employing law enforcement agency makes a final determination whether or not to
issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or
dismissal. This paragraph does not provide law enforcement officers with a property interest or
expectancy of continued employment, employment, or appointment as a law enforcement officer.

(5)
RETAILIATION FOR EXERCISING RIGHTS.—No law enforcement officer or correctional
officer shall be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or
otherwise discriminated against in regard to his or her employment or appointment, or be
threatened with any such treatment, by reason of his or her exercise of the rights granted by this
part.

(6)
LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

(a)
Except as provided in this subsection, disciplinary action, suspension, demotion, or dismissal
may not be undertaken by an agency against a law enforcement officer or correctional officer for
any act, omission, or other allegation of misconduct if the investigation of the allegation is not
completed within 180 days after the date the agency receives notice of the allegation by a person
authorized by the agency to initiate an investigation of the misconduct. If the agency determines
that disciplinary action is appropriate, it shall complete its investigation and give notice in
writing to the law enforcement officer or correctional officer of its intent to proceed with
disciplinary action, along with a proposal of the specific action sought, including length of
suspension, if applicable. Notice to the officer must be provided within 180 days after the date the agency received notice of the alleged misconduct, except as follows:

1. The running of the limitations period may be tolled for a period specified in a written waiver of the limitation by the law enforcement officer or correctional officer.

2. The running of the limitations period is tolled during the time that any criminal investigation or prosecution is pending in connection with the act, omission, or other allegation of misconduct.

3. If the investigation involves an officer who is incapacitated or otherwise unavailable, the running of the limitations period is tolled during the period of incapacitation or unavailability.

4. In a multijurisdictional investigation, the limitations period may be extended for a period of time reasonably necessary to facilitate the coordination of the agencies involved.

5. The running of the limitations period may be tolled for emergencies or natural disasters during the time period wherein the Governor has declared a state of emergency within the jurisdictional boundaries of the concerned agency.

6. The running of the limitations period is tolled during the time that the officer’s compliance hearing proceeding is continuing beginning with the filing of the notice of violation and a request for a hearing and ending with the written determination of the compliance review panel or upon the violation being remedied by the agency.

(b) An investigation against a law enforcement officer or correctional officer may be reopened, notwithstanding the limitations period for commencing disciplinary action, demotion, or dismissal, if:

1. Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

2. The evidence could not have reasonably been discovered in the normal course of investigation or the evidence resulted from the predisciplinary response of the officer.

Any disciplinary action resulting from an investigation that is reopened pursuant to this paragraph must be completed within 90 days after the date the investigation is reopened.

History.

s. 2, ch. 74-274; s. 2, ch. 82-156; s. 2, ch. 93-19; s. 721, ch. 95-147; s. 1, ch. 98-249; s. 1, ch. 2000-184; s. 1, ch. 2003-149; s. 3, ch. 2005-100; s. 1, ch. 2007-110; s. 1, ch. 2009-200.

112.533
Receipt and processing of complaints.

(1)(a)
Every law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person, which shall be the procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary. When law enforcement or correctional agency personnel assigned the responsibility of investigating the complaint prepare an investigative report or summary, regardless of form, the person preparing the report shall, at the time the report is completed:
1. Verify pursuant to s. 92.525 that the contents of the report are true and accurate based upon the person’s personal knowledge, information, and belief.
2. Include the following statement, sworn and subscribed to pursuant to s. 92.525:
“I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes.”
The requirements of subparagraphs 1. and 2. shall be completed prior to the determination as to whether to proceed with disciplinary action or to file disciplinary charges. This subsection does not preclude the Criminal Justice Standards and Training Commission from exercising its authority under chapter 943.
(b)(1)
Any political subdivision that initiates or receives a complaint against a law enforcement officer or correctional officer must within 5 business days forward the complaint to the employing agency of the officer who is the subject of the complaint for review or investigation.
2. For purposes of this paragraph, the term “political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof and includes, but is not limited to, an authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.
(2)(a)
A complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation by the agency of the complaint is confidential and exempt from the provisions of s. 119.07(1) until the investigation ceases to be active, or until the agency head or the agency
head’s designee provides written notice to the officer who is the subject of the complaint, either personally or by mail, that the agency has either:

1. Concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or
2. Concluded the investigation with a finding to proceed with disciplinary action or to file charges.

Notwithstanding the foregoing provisions, the officer who is the subject of the complaint, along with legal counsel or any other representative of his or her choice, may review the complaint and all statements regardless of form made by the complainant and witnesses and all existing evidence, including, but not limited to, incident reports, analyses, GPS locator information, and audio or video recordings relating to the investigation, immediately before beginning the investigative interview. All statements, regardless of form, provided by a law enforcement officer or correctional officer during the course of a complaint investigation of that officer shall be made under oath pursuant to s. 92.525. Knowingly false statements given by a law enforcement officer or correctional officer under investigation may subject the law enforcement officer or correctional officer to prosecution for perjury. If a witness to a complaint is incarcerated in a correctional facility and may be under the supervision of, or have contact with, the officer under investigation, only the names and written statements of the complainant and nonincarcerated witnesses may be reviewed by the officer under investigation immediately prior to the beginning of the investigative interview.

(b)
This subsection does not apply to any public record which is exempt from public disclosure pursuant to chapter 119. For the purposes of this subsection, an investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. An investigation shall be presumed to be inactive if no finding is made within 45 days after the complaint is filed.

(c)
Notwithstanding other provisions of this section, the complaint and information shall be available to law enforcement agencies, correctional agencies, and state attorneys in the conduct of a lawful criminal investigation.

(3)
A law enforcement officer or correctional officer has the right to review his or her official personnel file at any reasonable time under the supervision of the designated records custodian. A law enforcement officer or correctional officer may attach to the file a concise statement in response to any items included in the file identified by the officer as derogatory, and copies of such items must be made available to the officer.

(4)
Any person who is a participant in an internal investigation, including the complainant, the subject of the investigation and the subject’s legal counsel or a representative of his or her choice, the investigator conducting the investigation, and any witnesses in the investigation, who willfully discloses any information obtained pursuant to the agency’s investigation, including, but not limited to, the identity of the officer under investigation, the nature of the questions asked, information revealed, or documents furnished in connection with a confidential internal investigation of an agency, before such complaint, document, action, or proceeding becomes a public record as provided in this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. However, this subsection does not limit a law enforcement or correctional officer’s ability to gain access to information under paragraph (2)(a). Additionally, a sheriff, police chief, or other head of a law enforcement agency, or his or her designee, is not precluded by this section from acknowledging the existence of a complaint and the fact that an investigation is underway.

History.

s. 3, ch. 74-274; s. 3, ch. 82-156; s. 1, ch. 82-405; s. 1, ch. 83-136; s. 1, ch. 87-59; s. 2, ch. 89-223; s. 1, ch. 90-32; s. 31, ch. 90-360; s. 3, ch. 93-19; s. 722, ch. 95-147; s. 39, ch. 96-406; s. 2, ch. 98-249; s. 2, ch. 2000-184; s. 2, ch. 2003-149; s. 33, ch. 2004-335; s. 42, ch. 2005-251; s. 2, ch. 2007-110; s. 1, ch. 2007-118; s. 2, ch. 2009-200.

112.534
Failure to comply; official misconduct.

(1)
If any law enforcement agency or correctional agency, including investigators in its internal affairs or professional standards division, or an assigned investigating supervisor, intentionally fails to comply with the requirements of this part, the following procedures apply. For purposes of this section, the term “law enforcement officer” or “correctional officer” includes the officer’s representative or legal counsel, except in application of paragraph (d).

(a)
The law enforcement officer or correctional officer shall advise the investigator of the intentional violation of the requirements of this part which is alleged to have occurred. The officer’s notice of violation is sufficient to notify the investigator of the requirements of this part which are alleged to have been violated and the factual basis of each violation.

(b)
If the investigator fails to cure the violation or continues the violation after being notified by the law enforcement officer or correctional officer, the officer shall request the agency head or his designee be informed of the alleged intentional violation. Once this request is made, the interview of the officer shall cease, and the officer’s refusal to respond to further investigative questions does not constitute insubordination or any similar type of policy violation.

(c)
Thereafter, within 3 working days, a written notice of violation and request for a compliance review hearing shall be filed with the agency head or designee which must contain sufficient information to identify the requirements of this part which are alleged to have been violated and the factual basis of each violation. All evidence related to the investigation must be preserved for review and presentation at the compliance review hearing. For purposes of confidentiality, the compliance review panel hearing shall be considered part of the original investigation.

(d)
Unless otherwise remedied by the agency before the hearing, a compliance review hearing must be conducted within 10 working days after the request for a compliance review hearing is filed, unless, by mutual agreement of the officer and agency or for extraordinary reasons, an alternate date is chosen. The panel shall review the circumstances and facts surrounding the alleged intentional violation. The compliance review panel shall be made up of three members: one member selected by the agency head, one member selected by the officer filing the request, and a third member to be selected by the other two members. The review panel members shall be law enforcement officers or correctional officers who are active from the same law enforcement discipline as the officer requesting the hearing. Panel members may be selected from any state, county, or municipal agency within the county in which the officer works. The compliance review hearing shall be conducted in the county in which the officer works.

(e)
It is the responsibility of the compliance review panel to determine whether or not the investigator or agency intentionally violated the requirements provided under this part. It may hear evidence, review relevant documents, and hear argument before making such a determination; however, all evidence received shall be strictly limited to the allegation under consideration and may not be related to the disciplinary charges pending against the officer. The investigative materials are considered confidential for purposes of the compliance review hearing and determination.

(f)
The officer bears the burden of proof to establish that the violation of this part was intentional. The standard of proof for such a determination is by a preponderance of the evidence. The determination of the panel must be made at the conclusion of the hearing, in writing, and filed with the agency head and the officer.

(g)
If the alleged violation is sustained as intentional by the compliance review panel, the agency head shall immediately remove the investigator from any further involvement with the investigation of the officer. Additionally, the agency head shall direct an investigation be initiated against the investigator determined to have intentionally violated the requirements provided under this part for purposes of agency disciplinary action. If that investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position.
(2)(a)
All the provisions of s. 838.022 shall apply to this part.
(b)
The provisions of chapter 120 do not apply to this part.

History.

s. 4, ch. 74-274; s. 35, ch. 77-104; s. 1, ch. 78-291; s. 4, ch. 82-156; s. 4, ch. 93-19; s. 3, ch.
112.535
Construction.

The provisions of chapter 93-19, Laws of Florida, shall not be construed to restrict or otherwise
limit the discretion of the sheriff to take any disciplinary action, without limitation, against a
deputy sheriff, including the demotion, reprimand, suspension, or dismissal thereof, nor to limit
the right of the sheriff to appoint deputy sheriffs or to withdraw their appointment as provided in
chapter 30. Neither shall the provisions of chapter 93-19, Laws of Florida, be construed to grant
collective bargaining rights to deputy sheriffs or to provide them with a property interest or
continued expectancy in their appointment as a deputy sheriff.

History.

s. 6, ch. 93-19.
APPENDIX 2

111.065 Law enforcement or correctional officers, legal action against; employer payment of costs and attorney's fees or provision of attorney.--

(1) For the purpose of this section only, the term "officer" means any law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), or (3), who is employed full time by any municipality or the state or any political subdivision thereof.

(2) The employing agency of any officer has the option to pay reasonable attorney's fees and costs for any officer in any civil or criminal action commenced against such officer in any court when the action arose out of the performance of the officer's official duties and:

(a) The plaintiff requests dismissal of the suit; or

(b) The officer is found to be not liable or not guilty.

(3) The employing agency shall provide an attorney and pay the reasonable attorney's fees and costs for any officer in a criminal action commenced against the officer in any court if the employing agency determines that the officer's actions that gave rise to the charges:

(a) 1. Occurred in response to what the officer reasonably believed was an emergency;

2. Occurred when the officer reasonably believed that his or her action was necessary to protect the officer or others from imminent death or bodily harm; or

3. Occurred in the course of the officer's fresh pursuit, apprehension, or attempted apprehension of a suspect whom the officer reasonably believed had perpetrated, or attempted to perpetrate, a forcible felony as defined in s. 776.08, or the offense of escape;

(b) Arose within the course and scope of the officer's duties; and

(c) Were not acts of omission or commission which constituted a material departure from the employing agency's written policies and procedures, or generally recognized criminal justice standards if no written policies or procedures exist.

(4)(a) If legal representation is requested under subsection (3) and the employing agency determines that the conditions set forth in subsection (3) have not been satisfied or the officer does not choose to use the employing agency's designated attorney, the officer may:

1. Select from a list of attorneys provided by the employing agency; or

2. Choose his or her own attorney.

The officer may request the employing agency to reimburse reasonable attorney's fees and costs if the officer's actions giving rise to the charge did not result in the entry of a plea of guilty or nolo contendere or in a finding of guilt by a court or jury to any offense charged or any lesser or included offense that is substantially related to the offense charged.

(b) If legal representation is provided in accordance with paragraph (a), the amount of reasonable attorney's fees and costs shall be determined as follows:
1. The officer shall submit an application for payment of reasonable attorney's fees and costs to the employing agency no later than 30 days after termination of the criminal action. Thereafter, the employing agency and the officer must agree on reasonable attorney's fees and costs to be paid within 30 days after submitting the application for payment. The officer may only apply for attorney's fees and costs incurred in the actual defense of the prosecution of criminal charges, and the officer is not entitled to seek or collect attorney's fees and costs related to efforts to collect attorney's fees and costs under this section.

2. The application for reasonable attorney's fees and costs must include an itemization statement from an attorney or expert witness representing or appearing in behalf of the officer which states the actual time expended and the rate at which fees and other expenses were computed.

3. If the officer and the employing agency do not reach an agreement or if payment is not provided within the specified time, the officer requesting payment of attorney's fees and costs may submit the application to the court having jurisdiction over the criminal action within 30 days after the termination of the criminal action, failure to reach an agreement, or failure to pay the fees or costs, whichever is later. The court shall retain jurisdiction of the matter in order to determine entitlement to payment and the amount of reasonable attorney's fees and costs.

4. If the officer files an application for attorney's fees and costs with the court, the employing agency shall have the right to respond to the application. The court shall make its determination as to entitlement and amount of reasonable attorney's fees and costs based on:
   a. Whether the officer's actions complied with the requirements of paragraphs (3)(a), (b), and (c); and
   b. Prevailing market rates in the appropriate market area for defense of similar actions, as well as other relevant factors.

(c) A lodestar or fee multiplier provision may not be used in any criminal prosecution defended under this subsection and the attorney's fees and costs awarded may not exceed $100,000.

History.--s. 1, ch. 76-191; s. 676, ch. 95-147; s. 2, ch. 2004-38.
In accordance with the Wage Article, there will be no movement in the Plan in fiscal year 2010-11. Movement in the Plan will resume October 1, 2011.