

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

TOWNSHIP OF LIVINGSTON AND

THE SUPERIOR OFFICERS ASSOCIATION

January 1 2009 – December 31, 2013

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PREAMBLE

This AGREEMENT made this ____ day of _____, 2009 between the TOWNSHIP OF LIVINGSTON, hereinafter referred to as the "Township," and the Superior Officers Association, Local No. 263, hereinafter referred to as the "SOA".

WITNESSETH:

WHEREAS, the Township and the SOA recognize and declare that providing quality police protection of the Township is their mutual aim; and

WHEREAS, the Township Council and the Township Administration retain the basic decision-making powers over fiscal and management questions, although they are willing to consult with employee representatives on employee oriented matters; and

WHEREAS, the members of the police force are particularly qualified to advise the formulation of policies and programs designed to improve the standards of police protection; and

WHEREAS, the Township has an obligation, pursuant to Chapter 303, Public Laws 1968, as amended by Chapter 123, Public Laws 1974, to negotiate with the SOA as the representative of employees hereinafter designated with respect to the terms and conditions of employment; and

WHEREAS, the parties have reached certain understandings which they desire to confirm in this AGREEMENT.

In consideration of the following mutual covenants, it is hereby agreed as follows:

I. RECOGNITION OF BARGAINING UNIT

The Township hereby recognizes the SOA as the sole and exclusive representative of all employees of the Police Department holding the rank of Lieutenant or Captain, hereinafter referred to as "employees," for the purpose of collective negotiations with respect to terms and conditions of employment. A "new SOA

employee” is defined as any employee other than the following: Gary Marshuetz, Jeff Payne, John Durkin, Ed Kelly, Brian Rabbitt, Jay van de Beek, Ed Zielke.

II. REPRESENTATION FEE FOR NON-UNION MEMBERS

SECTION 1.

Purpose of Fee: If an employee covered by this Agreement does not become a member of the PBA during any membership year (i.e., from January 1 to the following December 31) which is covered in whole or in part by this Agreement, said employee will be required to pay a representation fee to the PBA for that membership year. The purpose of this fee will be to offset the employee’s per capita cost of services rendered by the PBA as majority representative.

SECTION 2.

Amount of Fee:

A. Notification: Prior to the beginning of each membership year, the PBA will notify the Township in writing of the amount of the regular membership dues, initiation fees and assessments charged by the PBA to its own members for that membership year. The representation fee to be paid by non-members will be equal to 85% of that amount.

B. Legal Maximum: In order to adequately offset the per capita cost of services rendered by the PBA as majority representative, the representation fee should be equal in amount to the regular membership dues, initiation fees and assessments charged by the PBA to its own members, and the representation fee has been set at 85% of that amount solely because that is the maximum currently allowed by law. If the law is changed in this regard, the amount of the representation fee automatically will be increased to the maximum allowed, said increase to become effective as of the membership year immediately following the effective date of the change.

SECTION 3.

Deduction and Transmission of Fee:

A. Notification: Once during each membership year covered in whole or in part by this Agreement, the PBA will submit to the Township a list of those

employees who have not become members of the PBA for the then current membership year. The Township will deduct from the salaries of such employees, in accordance with paragraph "B" below, the full amount of the representation fee and promptly will transmit the amount so deducted to the PBA.

B. Payroll Deduction Schedule: The Township will deduct the representation fee in equal installments, as nearly as possible, from the paychecks paid to each employee on the aforesaid list during the remainder of the membership year in question until such time as a new Agreement is executed. The deductions will begin with the first paycheck paid:

- (1) Ten (10) days after receipt of the aforesaid list by the Township; or
- (2) Twenty (20) days after the employee begins his/her employment in a bargaining unit position, unless the employee previously served in a bargaining unit position or was on layoff, in which event the deductions will begin with the first paycheck paid ten (10) days after the resumption of the employment in a bargaining unit position, whichever is later.

C. Termination of Employment: If an employee who is required to pay a representation fee terminates his/her employment with the Township before the PBA has received the full amount of the representation fee to which it is entitled under this Article, the Township will deduct the unpaid portion of the fee from the last paycheck paid to said employee during the membership year in question.

D. Mechanics: Except as otherwise provided in this Article, the mechanics for the deduction of representation fees and the transmission of such fees to the PBA will, as nearly as possible, be the same as those used for the deduction and transmission of regular membership dues to the PBA.

E. Changes: The PBA will notify the Township in writing of any changes in the list provided for in paragraph "A" above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than ten (10) days after the Township received said notice.

F. New Employees: On or about the last day of each month, beginning with the month of this Agreement becomes effective, the Township will

submit to the PBA a list of all employees who began his/her employment in a bargaining unit position during the preceding thirty (30) day period. The list will include names, job titles and dates of employment for all such employees.

SECTION 4. The PBA agrees to establish and maintain a “demand and return” system whereby employees who are required to pay the representation fee in lieu of dues may demand the return of the “pro rata share,” if any, subject to refund in accordance with the provisions of N.J.S.A. 34:13A-5.4, as amended. The demand and return system shall also provide the employees who pay the representation fee in lieu of dues may obtain review of the amount paid through full and fair proceedings placing the burden of proof on the PBA. Such proceedings shall provide for an appeal by either the PBA or the employee to the review board established for such purposes by the Governor in accordance with N.J.S.A. 34:13A-5.4, as amended.

III. NONDISCRIMINATION

The parties hereto agree that neither shall discriminate against any employee because of his/her membership or non-membership in the SOA or his/her participation in activities herein prescribed, nor discriminate against any member of the SOA for any action involving his/her management duties on behalf of the Department of Police, Township of Livingston, New Jersey.

IV. MANAGEMENT RIGHTS

SECTION 1. Except to the extent expressly modified by a specific provision of this Agreement, the Township of Livingston reserves and retains solely and exclusively all of its statutory and common law rights to manage the operation of the Police Department of the Township of Livingston, New Jersey, as such rights existed prior to the execution of this or any other previous Agreement with the SOA.

SECTION 2. The sole and exclusive rights of the Township of Livingston, New Jersey, which are not abridged by this Agreement, shall include but are not limited to:

- (a) its rights to determine the existence or nonexistence of facts which are the basis of the Township Police Department and/or management decision, to establish or continue policies, practices or procedures for the conduct of the Police Department and its services to the citizens of Livingston, and, from time to time, to change or abolish such practices or procedures;
- (b) to the right to determine and from time to time redetermine the number, locations and relocation and types of its employees or to discontinue any performance by employees of the Township of Livingston;
- (c) to determine the number of hours per day or week any operation of the Police Department may be carried on;
- (d) to select and to determine the number and types of employees required;
- (e) to assign such work to such employees in accordance with the requirements determined by the Department of Police and Township management authorities;
- (f) to establish training programs and upgrading requirements for employees within the Department;
- (g) to establish and change work schedules and assignments;
- (h) to transfer, promote or demote employees for just cause, or to layoff, terminate or otherwise relieve employees from duty for lack of work or other legitimate reasons and to determine the fact of lack of work;
- (i) to continue, alter, make and enforce reasonable rules for the maintenance of discipline; and
- (j) to suspend, discharge or otherwise discipline employees for just cause and otherwise to take such measures as the Township may determine to be necessary for the orderly and efficient operation of the Department of Police provided, however, nothing herein shall prevent an employee from presenting his/her grievance for the alleged violation of any article or specific term of this Agreement.

V. POLICE OFFICERS RIGHTS

SECTION 1. Pursuant to Chapter 303, P.L. 1968, as amended by Chapter 123, P.L. 1974, the Township hereby agrees that every employee shall have the right freely to organize, join and support the SOA and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As

an elected body exercising governmental power under the Laws of the State of New Jersey, the Township undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any employee in the enjoyments of any rights conferred by Chapter 303, P.L. 1968, as amended by Chapter 123, P.L. 1974 or other Laws of New Jersey or the Constitution of New Jersey and the United States; that is shall not discriminate against any employee with respect to hours, wages, or any terms or conditions of employment by reason of his/her membership in the PBA and its affiliates, his/her participation in any activities of the PBA and its affiliates, collective negotiation with the Township, or employees' institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

SECTION 2. Representatives of the PBA shall be permitted time off, with no loss of compensation, to attend negotiating sessions, grievance sessions and meetings of the joint PBA-Management Committee provided the efficiency of the Department is not affected thereby. The PBA President, President's designee, State Delegate or Alternate Delegate shall be granted time off, with no loss of compensation, to attend State PBA Conventions and State Delegate Meetings.

SECTION 3. The Township will maintain one separate and confidential personnel file for each employee. An employee shall have the right to inspect his/her personnel file on reasonable notice and at reasonable times provided a designated superior officer is present at the time of inspection. A representative of the PBA may be present when requested by the employee concerned.

SECTION 4. An employee will be given the opportunity to review and acknowledge any material derogatory or disciplinary in nature, or otherwise related to job performance, before such material is added to his/her personnel file. The employee shall also have the right to submit a written answer to such material and his/her answer shall be reviewed by the Chief of Police, or his/her designee, and attached to the file copy.

SECTION 4(A). The Township will promulgate procedures for the processing of internal affairs complaints and will inform employees of such procedures. The records of any internal affairs complaints that have a disposition of exonerated,

unfounded, or not sustained shall not be used in any fashion to effect progressive discipline and shall not in any way impact any condition of employment, including promotion. When a complaint has a disposition of exonerated, not sustained or unfounded, there shall be no indication in the employee's personnel file that a complaint was made.

SECTION 5. The Township shall adopt and implement guidelines which shall be consistent with the guidelines governing "Internal Affairs Policy and Produces" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety and shall not supersede any provision of this agreement.

SECTION 6. Should the Township decide to reduce the number of police officers for reasons of economy or efficiency, a layoff of employees will be accomplished in reverse order of seniority provided those remaining are qualified to perform the tasks required.

SECTION 7. An officer, bargaining agent or counsel for the SOA or the SOA's designee may enter the police department at reasonable times during working hours for the purpose of investigating facts relating to employee grievances or other matters relating to the operation of the agreement. Under emergent circumstances only, an aggrieved employee and a SOA representative may be released from duty for no more than a sufficient period of time as needed to confer with each other, and/or SOA counsel, subject to the reasonable scheduling demands of the employer. An emergent circumstance is one which must be resolved on that shift.

VI. GRIEVANCE PROCEDURE

The intent of the parties to this Agreement is that the procedures hereinafter set forth shall serve as a means of peaceful settlement of all disputes that may arise between the parties as to the meaning or application of the provisions of this Agreement.

It is further understood that suspension, demotion and discharge shall be finally determined by the Township Manager. The Township Manager shall cause a

hearing to be held on the above actions. Counsel, SOA & PBA officers may be present. In the event such actions are sustained, the aggrieved employee shall possess all rights of appeal as an individual to the County Court as provided by R.S. 40-47-8, 9 and 10. A disciplinary proceeding shall not be subject to the grievance procedure.

STEP 1. As to grievances, the aggrieved employee shall present the grievance orally or in writing to his/her immediate Superior. The grievance must be presented within ten (10) working days of its occurrence or knowledge of its occurrence. The Superior will give his/her verbal answer or written answer within three (3) working days of the date of presentation of the grievance.

STEP 2. If the grievance is not settled in Step 1, it shall be reduced to writing and presented to the Chief of Department. The grievance shall be prepared in detail and be dated. The Chief will reply to the grievance in writing within five (5) working days of the date.

STEP 3. If the grievance is not settled in Step 2, the written grievance shall be presented to the Township Manager within five (5) working days after the Chief's response is given. The Township Manager will conduct a hearing within sixty (60) days after presentation of the written grievance. This period of time may be enlarged by agreement of the parties. The employee shall have the right to have his/her representative present at the grievance hearing.

The Township Manager will reply to the grievance in writing within seven (7) business days (Saturday, Sunday and holidays excluded) of the date of conclusion of the grievance hearing. No action by the Township Manager shall be considered a denial of the grievance.

STEP 4. If the SOA believes the grievance should be carried further, it will, within ten (10) working days of the Township Manager's answer, refer the grievance to arbitration. The arbitrator shall be selected under the rules of the Public Employment Relations Commission (PERC). The fees and expenses of the arbitration shall be borne equally by both parties and the arbitrator shall have no power or authority to alter, amend, add or subtract from the terms of this Agreement. The arbitrator's decision shall be final and binding on both parties.

VII. BASE SALARIES

Effective January 1, 2009 the following differentials will apply in each year of the contract:

- Lieutenants shall be paid 13.5% differential cost of living upon the maximum base salary of Sergeants in each year of the contract;
- Lieutenant-Detectives shall be paid 13.5% differential cost of living upon the base salary of Sergeants-Detective in each year of the contract;
- Captains shall be paid 13.5% differential cost of living upon the maximum base salary of Lieutenants in each year of the contract.

BASE SALARY GUIDE

<u>2009</u>	P5	<u>\$ 115,958</u>	Lieutenant
	P6	<u>\$ 117,895</u>	Lieutenant-Detective
	P7	<u>\$ 131,613</u>	Captain
<u>2010</u>	P5	<u>\$ 120,887</u>	Lieutenant
	P6	<u>\$ 122,905</u>	Lieutenant-Detective
	P7	<u>\$ 137,206</u>	Captain
<u>2011</u>	P5	<u>\$ 126,025</u>	Lieutenant
	P6	<u>\$ 128,129</u>	Lieutenant-Detective
	P7	<u>\$ 143,038</u>	Captain
<u>2012</u>	P5	<u>\$ 131,381</u>	Lieutenant
	P6	<u>\$ 133,574</u>	Lieutenant-Detective
	P7	<u>\$ 149,117</u>	Captain
<u>2013</u>		<u>TBD</u>	

VIII. LONGEVITY PAYMENTS

SECTION 1. In addition to the above annual base salary, each employee shall be paid a longevity increment based upon his/her years of continuous employment in accordance with the following schedule:

At least 05 years of service – 02% of base salary

At least 10 years of service – 04% of base salary

At least 15 years of service – 06% of base salary

At least 20 years of service – 08% of base salary

At least 24 years of service – 10% of base salary

SECTION 2. Longevity shall be considered as part of the employee's base pay for pension purposes.

SECTION 3. Longevity increments will be credited as of January 1st of each calendar year.

SECTION 4. New SOA employees hired by the Township of Livingston on or after January 1, 2005 are not eligible for longevity payments.

IX. HOURS OF WORK AND OVERTIME

SECTION 1. Lieutenants shall be paid at time and one-half (1 ½) the employee's straight time hourly rate, including holiday pay, educational credits and longevity payments for all work (including but not limited to, off duty court appearances) in excess of the employee's regularly scheduled work day of either 8, 10 or 12 hours.

SECTION 2. Effective June 1, 2009, Captains are not eligible for overtime payments per FLSA designation as exempt employees.

SECTION 3. Lieutenants will be entitled to compensatory time off with the Chief of Police or designee establishing the procedure and approval of such time off. Lieutenants called back to work or scheduled for court during scheduled time off or any employee who is required to appear before a Grand Jury, Juvenile Court, Superior Court, Municipal Court, etc., during non-shift hours shall receive time and one half (overtime rate) with a minimum guarantee of two (2) hours overtime pay.

SECTION 4. Effective January 1, 1997, all employees shall work two-thousand and forty (2040) hours per year.

SECTION 5. All reference to days in contract will be computed to employees respective hours worked per day (either 8, 10, 12).

SECTION 6. For new SOA employees with the rank of Lieutenant hired by the Township of Livingston on or after May 1, 2008 the accumulation of overtime hours shall not exceed 480 hours in time due.

X. HOLIDAYS

SECTION 1. A day off without loss of compensation shall be granted within the month of the holiday specified below, subject to manpower needs of the Police Department and approval of the Chief and Captain of Police with the Township retaining the option to grant the holiday on the day of the holiday, should available manpower permit:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
Lincoln's Birthday	General Election Day
Washington's Birthday	Veteran's Day
Good Friday	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	

SECTION 2. Effective January 1, 2003 the Township will provide employees with compensation for thirteen (13) holidays. Holidays for which employees receive compensation will not be included as compensatory time.

SECTION 3. Whenever Township employees are excused by an executive order by the Governor, President, Legislative Body, or Township Manager of the Township of Livingston for more than 3-1/2 hours, all employees covered by this agreement shall be granted equivalent compensatory time-off accordingly, without need for further negotiations.

SECTION 4. Effective January 1, 2005 employees hired by the Township of Livingston prior to May 1, 2008 will be compensated for holidays, as follows: 156 hours of pay per year.

SECTION 5. For new SOA employees hired by the Township of Livingston prior to May 1, 2008, all holiday time shall be computed in hours (either 8, 10, 12) actually worked on the employee's regular assigned tour of duty.

SECTION 6. For new SOA employees hired by the Township of Livingston on or after May 1, 2008, all holidays are to be computed on eight (8) hours per holiday.

XI. VACATION SCHEDULE

SECTION 1: Effective January 1, 1994 each employee will be entitled to thirty (30) vacation days per year. For all members of SOA vacation time will be computed in hours (either 8, 10, 12) actually worked on regular assigned tour of duty. Effective January 1, 2005 employees hired by the Township of Livingston prior to May 1, 2008 will be compensated for vacation time as follows: 360 hours of paid compensation per year.

SECTION 2. New SOA employees hired by the Township of Livingston prior to May 1, 2008 will receive thirty (30) vacation days per year, with all vacation time computed in hours (either 8, 10, 12) actually worked on the employee's regular assigned tour of duty

SECTION 3. New SOA employees hired by the Township of Livingston on or after May 1, 2008 will receive twenty-seven (27) vacation days per year. All vacation time computed in hours (either 8, 10, 12) actually worked on the employee's regular assigned tour of duty.

XII. SICK LEAVE

SECTION 1. Each employee shall be granted twelve (12) days sick leave with pay for each employee as of January 1st of each year. For all members of SOA sick

days shall be computed in hours (either 8, 10, 12) actually worked on regular assigned tour of duty. Effective January 1, 2005 the Township will compensate SOA employees hired by the Township of Livingston prior to May 1, 2008 for sick time as follows: 144 hours of sick leave.

SECTION 1(A). For new SOA employees hired by the Township of Livingston on or after May 1, 2008 sick time shall be computed in hours (either 8, 10, 12) actually worked on the employee's regular assigned tour of duty.

SECTION 2. Sick leave means absence from duty because of personal illness by reason of which such employee is unable to perform the usual duties of his/her position or because of exposure to contagious disease.

SECTION 3. In the event of an emergency situation, he/she shall be permitted to use a maximum of three (3) sick days per year for said purpose. Use of emergency days is subject to approval by the Chief of Police with the Township retaining the option to deny the emergency day(s) per management rights. Emergency days, as used, shall be deducted from accumulated sick leave days.

SECTION 4. Special cases involving extenuating circumstances where an employee's cumulative sick time has been exhausted by illness of a long duration may be referred to the Township Manager for special consideration.

SECTION 5. – Terminal Leave at Retirement

a. Unused accumulated sick leave shall be paid at seventy-five percent (75%) of the total number accumulated by an employee at time of retirement, separation due to disability, or death (upon application by the appropriate authority on behalf of the employee's estate) with maximum terminal leave limited to 1440 hours effective January 1, 2008.

b. In addition to terminal leave, one additional day will be added to terminal leave for each year of perfect attendance recorded while an SOA employee.

c. Employees may request terminal leave be paid in one of the following options:

- i. Lump sum, requires 6-months notice
- ii. Two (2) payments over two (2) years

- iii. Four (4) payments over four (4) years
 - iv. Continue on payroll
 - v. Per agreement with the Township Manager.
- d. Effective January 1, 2013 employees will receive paid leave benefits (including holiday, vacation, sick and overtime) calculated to the date their terminal leave begins and are not eligible for any additional paid leave benefits after that date.

SECTION 6. Employees may donate accrued sick time to another employee covered under the agreement, who suffers a catastrophic illness or injury, after the injured or ill employee has exhausted all of his/her sick time, subject to the following:

- a. No employee may donate such number of days as would bring his or her total below 240 hours without the written, advanced approval of the Township Manager;
- b. No hours which are donated pursuant to this provision shall be paid to the donee at the time of retirement; and
- c. All donations of sick time shall be made in hours and upon the return of the donee, any unused hours shall be reaccredited to the donor.

XII (A). FAMILY LEAVE.

Effective January 1, 2009, the Township's policy on Family and Medical Leave shall apply to each employee covered under this Agreement as set forth in Schedule A, and as amended in the future.

XIII. FUNERAL LEAVE

SECTION 1. An employee who is excused from work because of death in his/her immediate family, as defined below, shall be paid his/her regular rate of pay for the first three (3) working days, of scheduled working time following the death. Days shall be computed in hours (either 8, 10, 12) actually worked on the employee's regular assigned tour of duty.

SECTION 2. Time off with pay as provided in this article is to be used for the purpose of handling necessary arrangements and attendance at the funeral of the deceased member of the immediate family. Immediate family is defined to mean parents, children, brothers or sisters, spouse, domestic partner, spouse's or domestic partner's immediate family and grandparents. Special cases will be referred to the Township Manager.

SECTION 3 In the event the deceased is the employee's spouse, domestic partner or child, funeral leave will be increased to a maximum of five (5) days per the requirements in Section 1.

XIV. DISABILITY LEAVE WITH PAY

SECTION 1. An employee who is disabled by injury in the performance of his/her duty or by illness as a direct result of or arising out of his/her employment may, on the recommendation of the Chief of Police, be granted leave or absence with full pay, with reduced pay, or with full pay for a certain period and reduced pay thereafter, for a period not to exceed one (1) year, provided that said disability or illness was a direct result of or arising out of his/her employment and is certified as such by a physician designated by the Township. The Chief of Police shall require evidence in the form of a physician's certificate from said physician as to the original and continued disability of such employee as a result of injuries sustained in the line of duty or illness as the direct result of or arising out his/her employment.

SECTION 2. Any temporary disability payments from Worker's Compensation Insurance received by the employee shall be credited toward the pay referred to above.

XV. INSURANCE PLAN COVERAGE

SECTION 1. The Township agrees to provide health benefits under the NJ State Health Benefits Program, for all employees and his/her dependents at no premium cost to the employees. If the Township should opt to change to an independent carrier, the policy shall contain the same benefits.

SECTION 2. The Township agrees to provide a full-family Dental Insurance Plan for all employees and his/her dependents which coverage shall be Delta Dental Premier or its equivalent.

SECTION 3. At time of renewal Township will endeavor to pursue multi-year contracts.

XV (A). FLEXIBLE SPENDING ACCOUNTS

Effective January 1, 2010, the Township's policy on Flexible Spending Accounts shall apply to each employee covered under this Agreement as set forth in Schedule B, and as amended in the future.

XVI. CLOTHING ALLOWANCE

SECTION 1. Effective January 1, 2009 the Township agrees to provide a uniform allowance of nine hundred twenty-five (\$925.00) dollars per employee in each year of the contract. The said clothing allowance shall be for replacement of uniforms and equipment due to normal wear and tear and shall be ordered from suppliers designated by the Township. The Township will pay the vendor directly or reimburse the employee, based on the documentation submitted for payment.

SECTION 2. In the event that an employee's uniform is damaged or destroyed in the line of duty, the Township agrees to replace said clothing and the cost of replacement of said clothing will not be charged to the employee's annual uniform allotment. Effective January 1, 2009, the Township agrees to provide a maintenance allowance of six hundred twenty-five dollars (\$625.00) per employee in each year of the contract. Said payment shall be made by separate check not later than the first pay period after February 1.

SECTION 3. The Township will be permitted the right of prior approval of clothing requests for employees in his/her last year of service before retirement and employees giving notice of early separation.

SECTION 4. In the event the Township requires a change in uniform, said costs for change shall be borne by the Township.

SECTION 5. Employee at time of permanent reassignment is entitled to additional clothing allowance equal to one-half of yearly allowance.

SECTION 6. Employees shall be permitted to wear black turtlenecks with long sleeve shirts and shall not be required to wear ties except for ceremonial purposes, such as parades or funerals.

SECTION 7. The wearing of hats by employees shall be controlled by Standard Operating Procedure 55.

SECTION 8. Employees are not permitted to smoke in police vehicles while on duty.

SECTION 9. Sixty (60) days prior to expiration of employees current bulletproof vest warranty or in the event that a vest is unsafe for use the Township shall provide a replacement vest allowance to employee in an amount not to exceed one thousand dollars (\$1,000.00). Each Employee who is provided replacement body armor vest shall be required to wear it except those employees assigned to desk duty and those instances when a superior employee determines that a vest is not required.

XVII. EDUCATIONAL BENEFITS

SECTION 1. In addition to the regular salaries and wages set forth herein employees shall receive additional payments for advanced education as provided below:

- a. COLLEGE DEGREE
an additional payment of \$500

ASSOCIATE DEGREE IN SCIENCE IN LAW ENFORCEMENT

FOR MEMBERS OF POLICE DIVISION
AS OF DECEMBER 31, 1977

- | | | |
|-----|---------------------------------------|--------|
| (1) | on completion of Sixteen credits | \$300 |
| (2) | on completion of Thirty-three credits | \$600 |
| (3) | on completion of Forty-nine credits | \$900 |
| (4) | on completion of Sixty-six credits | \$1200 |

FOR MEMBERS OF POLICE DIVISION BETWEEN
JANUARY 1, 1978 AND DECEMBER 31, 1996

(1)	on completion of Sixteen credits	\$150
(2)	on completion of Thirty-three credits	\$300
(3)	on completion of Forty-nine credits	\$450
(4)	on completion of Sixty-six credits	\$600

FOR MEMBERS OF THE POLICE DIVISION HIRED ON OR
AFTER JANUARY 1, 1997

No additional payments shall be made for an Associated Degree.

SECTION 2. The Township agrees that if an employee obtains both a Bachelor of Science Degree and an Associate Degree in Police Science, the employee will receive the stipends provided for each degree.

SECTION 3. The Township will distribute training and school opportunities among employees based on the recommendations of the employee's immediate supervisor. The total number of employees to be trained or given school opportunities is a management prerogative. Lieutenants in charge of specialty disciplines will have the opportunity to review and consult on selection of candidates for training in those specialty disciplines.

XVIII. FALSE ARREST AND LIABILITY

SECTION 1. The Township agrees to cover all employees with False Arrest and Liability Insurance in the amount of two hundred-fifty thousand dollars (\$250,000) – five hundred thousand dollars (\$500,000). In addition, where an employee is made a defendant in any suit, or other legal proceeding arising out of the performance of police duty, or out of any incident arising in the line of duty, the Township shall provide all necessary legal aid necessary for the defense of such suit or other legal proceeding, pursuant to N.J.S.A. 40A:14-155. The Township provides employees covered by this agreement of indemnification as set forth in Ordinance #13-2005, Schedule C, and as amended in the future. This clause shall not apply to any disciplinary or criminal proceeding instituted against

such employees by the Township. However, if any such disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the employee, the employee shall be reimbursed for the expense of his/her defense at the "prevailing rate" (in the County of Essex for similar services).

SECTION 2. In determining whether to provide legal aid in a specific case, the Township will look first at the report of investigation of the Department of the Police to determine if there appears to be any substantial evidence of wanton or willful misconduct. The Township will also consider evidence supplied to it from other sources or resulting from the investigation of the Township Attorney.

The Township recognizes that a police officer must exercise his/her individual judgment as to the degree of force necessary to effect an arrest under all the circumstances existing at the time. Legal aid would be denied only when there is substantial evidence that excess force was used and that such use was wanton and willful. The employee will be given the benefit of any doubt in these cases.

SECTION 3. The affected employee shall select his/her own counsel to assume sole control of his/her defense and the Township agrees to pay the full cost of the employee's legal fees at the "prevailing rate" (in the County of Essex for similar services). However, in the event that an insurance carrier enters a defense on behalf of the affected employee and furnishes counsel as part of that defense, the Township's obligation under this provision shall be deemed to have been satisfied.

XIX. PROMOTIONAL PROCEDURES

SECTION 1. The Township agrees that promotions shall be made with due regard to the length of service for an employee and his merit in the Department. It further agrees not to discriminate on promotions because of religion, race, creed, politics or age

SECTION 2. The selection of the position of Captain, due to its executive nature, will be based upon an evaluation by the Township Manager and may include a competitive examination.

SECTION 3. All employees receiving promotions will receive compensation retroactive to effective date of promotion.

SECTION 4. Township Manager will meet with candidates for position of Captain prior to promotional procedure to discuss procedural format for selection to position of Captain.

XX. OUTSIDE EMPLOYMENT

SECTION 1. Employees may engage in outside employment under the regulations and conditions contained in the Township resolution dated March 21, 1960.

SECTION 2. The extra workbook shall be administered by the Township. The Township reserves its right to reopen this provision after one year, based upon experience and may decide in its discretion to have the administering of the workbook revert to the PBA's control.

1. The rates of pay are established by Ordinance No. 25-2004. The rates are also contained in a side letter of agreement between the Township and the PBA and shall be incorporated into this Agreement.
2. All members of the department working extra duty from the workbook will wear the uniform of a Livingston police officer, unless the job is specified as a plainclothes detail for all members of the department.

XXI. LEGAL REFERENCE

SECTION 1. Nothing contained in this Agreement shall alter the authority conferred by Law, Ordinance, Resolution or Administrative Code and Police Department Rules and Regulations upon any Township official or in any way abridge or reduce such authority. This Agreement shall be construed as requiring Township officials to follow the terms contained herein, to the extent that they are applicable in the exercise conferred upon them by Law.

SECTION 2. Nothing contained herein shall be construed to deny or restrict to any employee such rights as he may have under any other applicable Laws and

Regulations. The rights granted to employees hereunder shall be deemed to be in addition to those provided elsewhere.

XXII. SEPARABILITY

SECTION 1. If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect. In the event any provisions of this Agreement or any application of this Agreement to any employee or group of employees is determined invalid as set forth above, the parties agree to immediately meet to renegotiate provisions replacing said invalid provisions.

SECTION 2. The provisions of this Agreement shall be subject to and subordinate to and shall not annul or modify existing applicable provisions of state and local laws except as such particular provisions of this contract modify existing local laws.

XXIII. EMBODIMENT OF AGREEMENT

This document constitutes the sole and complete agreement between the parties, and embodies all the terms and conditions governing the employment of employees in the unit. The parties acknowledge that they have had the opportunity to present and discuss proposals on any subject which is (or may be) subject to collective bargaining.

XXIV. RETENTION OF BENEFITS

SECTION 1. The Township agrees that all benefits, terms and conditions of employment and past practices relating to the status of the employees covered by this Agreement shall be maintained at not less than the highest standards in effect at the time

of the commencement of collective bargaining leading to the execution of this Agreement.

SECTION 2. The Township shall perform no act which will conflict with the terms of this Agreement.

XXV. RULES AND REGULATIONS

SECTION 1. The Township Manager may establish and enforce binding rules and regulations in connection with the operation of the Police Department and maintenance of discipline provided such rules and regulations and updated rules and regulations are not in conflict with the provisions of this Agreement. The rules and regulations shall be updated periodically to comply with current law. Copies of current rules and regulations shall be furnished to all police officers. It is understood that application of this Agreement shall not in any way hamper enforcement of the Departmental rules and regulations.

SECTION 2. It is understood that employees shall comply with all rules and regulations of the Department, and order of directives issued by the Chief or his/her designee. Employees shall promptly and efficiently execute the instruction and orders of superior officers. If an employee or employees believe a rule, regulation, instruction or order of an officer or other superior is unreasonable, or unjust, the employee or employees shall comply with the rule, regulation, order or instruction, but with the further provision that such employee or employees may regard the rule, regulation, order or instruction, as a grievance which shall be handled in accordance with the grievance procedure set forth in Article VI of this Agreement.

SECTION 3. In the event that an employee or employees shall refuse to comply with a rule, or regulation, or shall refuse to execute promptly and efficiently an instruction or order of a superior officer, appropriate action shall be within the province of the superior officer with the framework of Department rules and regulations, subject only to the right of employees to file a grievance.

XXVI. FLEXIBILITY OF ASSIGNMENT

SECTION 1. Employees, regardless of regular assignment, may be reassigned to perform any duty related to his/her profession as police officers, including any duties connected with: (a) prevention and detection of crime; (b) enforcement of laws and ordinances; (c) protection of life and property; (d) arrest of violators of the law; (e) direction of traffic; (f) regulation of non-criminal behavior of the citizenry; and (g) preservation of the peace.

SECTION 2. An exception to specific duties can be made where employees are on the medical "limited duty" list and cannot perform said duties.

SECTION 3. The Township and the SOA acknowledge that an employee's primary responsibility is to perform police duties and his/her energies shall be utilized fully to this end except in cases of emergencies or special circumstances.

XXVII. BAN ON STRIKES

SECTION 1. It is recognized that the prevention of crime, the preservation of law and order, and protection of life and property is the responsibility of employees of Police Department, and it is further recognized that the need for continued and uninterrupted operation of the Police Department is of paramount importance to the citizens of the community; therefore, there shall be no interference with such operation.

SECTION 2. Adequate procedures having been provided for the equitable settlement of grievances arising out of this Agreement parties hereto agree that there shall not be and that the Association, its officers, members, agents or principals will not engage in, encourage, sanction or suggest strikes, slowdowns, mass resignations, mass absenteeism, or other suspension of or interference with normal work performance.

XXVIII. JOINT SOA-MANAGEMENT COMMITTEE

SECTION 1. A committee consisting of representatives of the Township and the SOA shall be established for the purpose of reviewing the administration of this Agreement and to resolve problems that may arise. The Township Manager will

coordinate meetings of the Joint SOA-Management Committee as needed and at the request of the SOA. These meetings are not intended to bypass the grievance procedure or to be considered contract negotiation meetings.

SECTION 2. The purpose and intent of such meetings is to foster good employment relations through communications between the Township and the SOA on such matter as:

- (a) discussing questions arising over the interpretation and application of this Agreement;
- (b) disseminating general information of interest to the parties;
- (c) giving SOA representatives the opportunity to express his/her views or to make suggestions on subjects of interest to employees of the bargaining unit;
- (d) to notify the SOA of changes in non-bargainable conditions of employment contemplated by management which may affect employees in the bargaining unit;
- (e) the promotion of education and training;
- (f) improvement of working conditions, the safeguarding of health and prevention of hazards to life and property and the strengthening of the morale of the employees.

XXIX. FUNERAL EXPENSES

The employer shall pay a sum of \$5,000 towards funeral expenses to the surviving spouse or designated beneficiary, for any employee who is killed in the line of duty or dies from traumatic injuries sustained in the line of duty, regardless of amount paid from any other sources.

XXX. DURATION OF AGREEMENT

SECTION 1. This Agreement shall continue in full force and effect for five (5) years from the effective date of January 1, 2009 notwithstanding the date of execution hereof.

SECTION 2. In the event subsequent negotiations do not result in a newly-executed Agreement by December 31, 2013 the parties agree to continue the negotiations and all terms and conditions of the prior Agreement shall continue in full force and effect until the new Agreement is agreed upon and executed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by his/her duly authorized officers.

TOWNSHIP OF LIVINGSTON

LIVINGSTON SOA LOCAL NO. 263

Michele Cheate 7/7/2009
Township Manager Date

R. E. Rust 7/1/09
President Date

ATTEST:

Glen Kullback 7/8/09
TOWNSHIP CLERK Date

ATTEST:

[Signature] 7/08/09
MAYOR Date

DATED: July 7, 2009

SCHEDULE A

FAMILY AND MEDICAL LEAVES OF ABSENCE

THE FAMILY AND MEDICAL LEAVE ACT (FMLA) & THE NEW JERSEY FAMILY LEAVE ACT (NJFLA)

The following policy is effective January 1, 2008.

Effective January 16, 2009 - The National Defense Authorization Act regarding Military Family Leave Entitlements

Effective January 1, 2009 – The New Jersey Paid Family Leave (NJPFL)

The Township recognizes that from time to time employees may require a leave of absence to attend to certain family or medical situations. Therefore, and in compliance with applicable federal and New Jersey state law, the Township will provide family/medical leave to eligible employees requiring time off from work for the birth, adoption or foster placement of a child (beginning within twelve months of the birth, adoption or placement); the serious illness of a spouse, parent or minor or disabled child; or the employee's own serious illness or injury which makes him or her unable to perform the functions of his/her or her job.

Employees are eligible for up to twelve (12) weeks of family/medical leave in a twelve (12) month period if they have been employed at the Township for at least twelve (12) months (need not be consecutive), and have worked at least 1,250 hours during the twelve (12) month period immediately preceding the commencement of the leave. Under certain circumstances, eligible employees may be entitled to additional family/medical or other leave beyond 12 weeks, due to the overlapping of state and federal law. Employees with over 1,000 regular hours worked but less than 1,250 hours may also be eligible for leave under NJ state statute. NJFLA is taken over a 24 month period. FMLA and NJFLA run concurrently. Employees should contact the Human Resources Department when a question regarding leave arises.

Leave may be taken:

- Consecutively.
- Intermittently (*in separate blocks of time*), or on a reduced leave schedule (*fewer hours in a day or days in a week*), when medically necessary, in the event of the employee's own serious health condition.
- Intermittently, when medically necessary, or on a reduced leave schedule in the event of the serious health condition of the employee's family member.

Employees may be temporarily transferred to an equivalent or part-time position, with no loss in pay or benefits, which better accommodates their intermittent or reduced leave schedule.

Notice Requirements

When planning a family or medical leave, employees should make all reasonable efforts to minimize the disruption to Township operations. Employees seeking leave, to the extent that such leave is foreseeable, must provide at least fifteen (15) days prior notice for leave to care for a family member, and at least thirty (30) days prior notice for leave for any other reason.

In emergent circumstances, employees must provide such notice as soon as practicable. Requests should be in writing and submitted to the employee's Department Head. The Department Head will prepare a PERSONNEL CHANGE OF STATUS FORM, attaching the employee's written request and submit it to the Human Resources Manager for review.

A package of FMLA information will be sent to the employee's home address advising them of the requirements of and responsibilities under FMLA. This package will include information on the anticipated dates of the leave, paid time off information, the Certification of Health Care Provider form and, if applicable, a NJ State Disability Form. The Township Manager or designee will be responsible for granting or denying a request for family or medical leave.

Use of Paid Time Off

Employees taking leave are required to use their paid time off concurrent with FMLA.

Employees taking leave for the care of a newborn child or a seriously ill family member, or for the adoption or placement of a child, must exhaust all available paid vacation and personal time. Employees taking leave for their own serious health condition must also exhaust all available paid sick time.

Paid time off shall be used in the following order: sick days (when the leave is for the employee's own serious health condition), personal days, vacation days and sick days (if not for your own serious health condition). The remainder of the leave will be unpaid. Non Exempt employees may use accrued compensating time off, but are not required to do so.

Employees on a NJFLA leave only may use their paid time off, but unlike a FMLA leave, they are not required to.

NJ State Disability and FMLA

If the leave is for an employee's own serious health condition and lasts longer than seven (7) days and exhausts paid time off for sick, personal or vacation time accrued, they may be eligible for payment under the NJ State Disability guidelines. Disability forms may be obtained from the Human Resources Manager or Comptroller. When your paid time off has been exhausted payment from NJ State Disability is the only payment that you will receive.

Health Care Provider Certification Form

Employees requesting medical leave to care for a seriously ill family member, or for the employee's own serious health condition, must provide the Human Resources Manager

with written certification from the health care provider certifying the need for leave. Failure to provide the certification required by the Township may result in denial or postponement of leave. HEALTH CARE PROVIDER CERTIFICATION forms are available in the Human Resource Manager's Office.

Continuation of Health Insurance

The Township will continue to maintain coverage under its group health plan for eligible employees during an approved family or medical leave for up to twelve (12) weeks.

Return from Leave

An employee returning from a medical leave taken for his/her or her own serious health condition must provide a certification from his/her health care provider that he or she is able to return to work and to perform the essential functions of his/her or her job with or without accommodation. Failure to provide the required certification may result in the denial or postponement of reinstatement.

Upon expiration of an employee's 12-week FMLA leave, the Township will reinstate the employee, except those who would have been affected by a reduction in force or layoff had they not taken leave, to the same position, or to an equivalent position, with no loss in salary, benefits, or other terms and conditions of employment which the employee enjoyed prior to his/her or her leave.

To the extent possible, employees should make every effort to notify the Human Resources Manager at least two (2) business days in advance if the employee intends to return to work before the expiration of the scheduled leave or to take more leave than originally requested.

Employees should contact the Human Resources Manager for further information about entitlement to leave and the required procedures.

THE FAMILY AND MEDICAL LEAVE ACT -- MILITARY FAMILY LEAVE ENTITLEMENTS

January 16, 2009

The National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, amended the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any "Qualifying exigency" arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered servicemember with a serious injury or illness. These two new types of FMLA leave are known as the military family leave entitlements.

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period. Spouses employed by the same employer are limited to a combined total of 26 workweeks in a single 12-month period if the leave is to care for a covered servicemember with a serious injury or illness

and for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.

Qualifying Exigency Leave

An eligible employee is eligible for a total of 12 workweeks of unpaid leave in a 12-month period for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Per the statute, qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; it does not extend to family members of military members in the Regular Armed Forces.

Military Caregiver Leave

An eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness is eligible for up to a total of 26 workweeks of unpaid leave during a single 12-month period to care for the servicemember.

A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

A serious injury or illness is one that was incurred by a servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.

Notice Requirements

Employees seeking to use military caregiver leave must provide 30 days advance notice of the need to take FMLA leave for planned medical treatment for a serious injury or illness of a covered servicemember. If leave is foreseeable but 30 days advance notice is not practicable, the employee must provide notice as soon as practicable – generally, either the same or next business day.

An employee must provide notice of the need for foreseeable leave due to a qualifying exigency as soon as practicable. When the need for military family leave is not foreseeable, the employee must provide notice to the employer within 30-days, which is the Township's usual and customary notice requirement.

The employee must provide sufficient information regarding the need for FMLA and the anticipated timing and duration of the leave.

All other provisions of the Family and Medical Leave Act policy apply.

THE NEW JERSEY PAID FAMILY LEAVE (NJPFL)

Effective January 1, 2009

New Jersey has become only the second state in the nation to mandate a broad paid family leave insurance program for employees. The mandate was signed into law on May 2, 2008. The law applies to nearly all private and public employers and may be used by an employee for two specific reasons:

1. Bond with a newborn or adopted child
2. Care for the serious health condition of a family member

The NJ Paid Family Leave (NJPFL) provides for six (6) weeks of "family temporary disability leave" and is similar to Temporary Disability (short term disability) in that it is an insurance program that provides some income protection as opposed to the NJ Family Leave Act (NJFLA) and the federal Family and Medical Leave Act (FMLA), which are unpaid leaves that provide the employee with job protection for specific reasons and time periods.

The FMLA, NJFLA and NJPFL often overlap and run concurrently. Each situation must be looked at to determine what the employee is eligible for.

Please note that the State of New Jersey, not the Township, determines if the employee is eligible to collect the NJ Paid Family Leave, similar to Temporary Disability Insurance.

The NJ Paid Family Leave (NJPFL) is funded by employee contributions. Beginning January 1, 2009 employers are required to deduct the contributions and submit them to the state. The taxable wage base for Family Leave Insurance benefits is the same as the taxable wage base for Unemployment and Temporary Disability Insurance. The tax rate is specified as .09% in 2009 and .12% in 2010 and beyond. The following chart shows the payroll deductions for 2009 & 2010:

	<u>2009</u>	<u>2010</u>
Wage Base	\$27,700.00	\$28,900.00
Percentage	.09	.12
<u>Total Tax for Year</u>	<u>\$ 24.93</u>	<u>\$34.68</u>

Commencement of benefits are set to begin on July 1, 2009. Benefits are payable to eligible employees after a seven (7) day waiting period. If the leave continues for three (3) or more weeks, benefits are payable for the first seven (7) days. The new NJ Paid Family Leave insurance program provides for 2/3 of the employee's weekly wages capped at \$546.00 per week in 2009.

Employees are eligible for benefits under the new law if they

- Worked at least 20 weeks in covered employment; or
- Earned at least 1,000 times the applicable minimum wage in covered employment during the preceding year.

Employees requesting a NJ Paid Family Leave are required to submit the necessary form to the State of NJ for review and approval. The forms can be obtained from the Human Resources Department.

SCHEDULE B

FLEXIBLE SPENDING ACCOUNT POLICY

To be provided.

SCHEDULE C

ORDINANCE NO. 13 - 2005

ORDINANCE AMENDING CHAPTER 1 OF THE ARTICLE XXI GENERAL CODE OF THE TOWNSHIP OF LIVINGSTON BY ADDING A NEW "INDEMNIFICATION" INDEMNIFYING AND HOLDING HARMLESS OFFICIALS FROM CLAIMS OCCURRING WITHIN THE SCOPE OF AN OFFICIAL'S RESPONSIBILITIES TO THE TOWNSHIP OF LIVINGSTON

WHEREAS, N.J.S.A. 59:10-4 allows local public entities to indemnify its officers and employees; and

WHEREAS, the State of New Jersey provides indemnification for its employees pursuant to N.J.S.A. 59:10-5; and

WHEREAS, the State Legislature has taken the position that indemnification of all public employees should be encouraged; and

WHEREAS, certain liability policies have specific exclusions which do not provide coverage or defense by the carrier; and

WHEREAS, liability policies provide certain deductible limits leaving a portion of the costs of litigation uncovered; and

WHEREAS, it has been the policy of the Township of Livingston to encourage participation in Township government, and the lack of an indemnification policy could be a deterrent to such participation.

NOW, THEREFORE, BE IT ORDAINED by the Township of Council of the Township of Livingston that the following policy/procedure is hereby adopted:

Section 1: Statutory Authorization - The Township shall hereby indemnify its officials, employees, and appointees pursuant to N.J.S.A. 59:10-4.

Section 2: Definitions - As used herein, the terms "officials" and Township officials" shall mean present or former elected members of the Township Council present and former constitutional officers; and present or former appointees, employees, or members of various boards, agencies, and commissions of the Township of Livingston.

Section 3: Indemnification Intent - The Township of Livingston shall provide for the defense of actions or proceedings brought against its officials, employees, and appointees and shall indemnify such officials to the extent hereinafter set forth; the intent of this Section being to save harmless and protect such persons from financial losses resulting from litigation.

Section 4: Scope - The indemnification provided by this Section shall apply to any act or omission of said official, employee, or appointee, whether intentional or not, occurring

within the scope of his or her employment by the County, or if said official, employee, or appointee were or is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit, or proceeding, whether criminal, civil, administrative, or investigative, by reason of the fact that he or she was an official, employee, or appointee of the Township. The Township shall indemnify said official, employee, or appointee, and shall save him or her harmless from any claim, loss, expense, attorney fees, judgment, fine, and amount paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding to the full extent permitted by the laws of the State of New Jersey, except as specifically modified herein.

Section 5: Prohibitions - Notwithstanding the prior provisions of this Section, this Policy shall not provide any indemnification in the following circumstances:

- A. For any act or omission not within the scope of employment as a Township official.
- B. For any act or failure to act, constituting actual fraud, willful misconduct, actual malice, or constitutes a crime.
- C. For any situation in which the defense of an action or proceeding is provided by an insurance policy or policies, whether obtained by the Township or by any other person.
- D. Where the Township official fails to deliver to the Township Clerk, within fifteen (15) days after he or she is served with any summons, complaint, process, notice, demand, or pleading, the original or an accurate copy of the same.
- E. Where the Township official fails to cooperate with the defense.
- F. Where the Township official fails to request the indemnity provided by this Section.
- G. Where the action or proceeding is instituted by the Township against the official.

Section 6: Cost of Defense Defrayed - The Township shall defray the cost of defending any criminal action or proceeding brought against the Township official, providing:

- A. The defraying of such cost is not prohibited by statute, ordinance, or resolution where the criminal action has been dismissed or results in a final disposition inconsistent with the guilt of the official.
- B. When providing for the defense of any official, the Township may make such necessary demands as it deems reasonable, in its sole discretion, to determine that the official is innocent of the charges brought or to be brought against him or her. In this regard, the Township Council may approve of such actions as it deems appropriate in

written form, the contents of which may be withheld from public dissemination until the conclusion of the action or proceeding in the discretion of the Council.

Section 7: Exceptions - Nothing herein shall be deemed to authorize the Township to pay or agree to pay punitive damages resulting from actual fraud, willful misconduct, or actual malice.

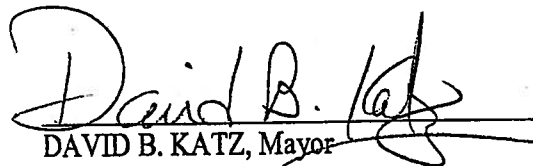
Section 8: Legal Representation. Exclusive Control - Whenever the Township determines, pursuant to the authority provided in this Ordinance, to provide any defense required of it hereunder, the Township, through counsel, shall assume exclusive control of the representation of the official and may designate defense counsel for such official.

Section 9: Defense Attorney. Sole Discretion of Township - Whenever the Township provides a defense pursuant to the authority provided hereunder, the Township may elect to, in its sole discretion:

- A. Hire an attorney (who may be Township Counsel) and pay that attorney directly, or
- B. Approve an attorney selected by the official involved and reimburse the official for reasonable attorney fees expended or obligated to be expended in defense of such official, but not at a rate higher than that paid to Township Counsel.

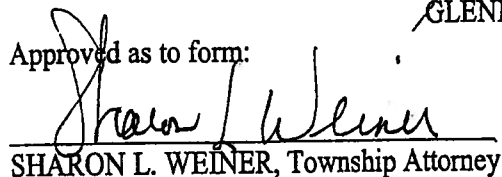
Section 10. Except as hereby amended, the Code of The Township of Livingston shall remain in full force and effect.

Section 11. This Ordinance shall take effect upon final passage and publication in accordance with the law.


DAVID B. KATZ, Mayor


GLENN R. TURTLETAUB, Township Clerk

Approved as to form:


SHARON L. WEINER, Township Attorney

Adopted: 5/16/05