

**CITY OF NEWTON AND IAFF, LOCAL 863**

**MEMORANDUM OF AGREEMENT**

**1. WAGE OFFER**

1-Year CBA

July 1, 2019 (FY20): **3% COLA**, see attached grid with correction, as shown on Addendum A.

**2. MISCELLANEOUS CBA CLEAN-UP**

**A. ARTICLE II (DUES AND AGENCY SERVICE FEE)**

Delete Section 2.03 pertaining to agency fees.

**B. ARTICLE IV (SPECIAL LEAVE)**

Amend Section 4.08 as follows: "except that a maximum of two employees on a ladder company or Rescue 1 ..."

**C. ARTICLE IVB (Injured Leave – Limited Duty/Limit on Annual Compensation)**

Amend Section 4B.04 to read as follows:

**"If the injury is not of a severity requiring such immediate emergency medical attention, the employee can elect to go to a CITY-appointed physician, or to the employee's health care provider. The CITY shall annually identify to the ASSOCIATION the name of the CITY-appointed physician no later than January 1 of each calendar year."**

**D. ARTICLE XX (HOLIDAYS)**

Amend Section 20.02 to delete "Board of Aldermen" and replace with "**City Council.**"

Amend Section 20.03 to delete "Board of Aldermen" and replace with "**City Council.**"

**E. ARTICLE XXV (APPROPRIATIONS)**

Amend Section 24.01 to delete "Board of Aldermen" and replace with "**City Council.**"

**F. ARTICLE XXX (COVERAGE)**

Amend Section 30.01 as follows: "No fewer than four (4) fire suppression employees on any ladder or Rescue 1 shall respond to an alarm."

**G. ARTICLE XXXVI (Labor – Management and Emergency Medical Services Committee)**

Amend Section 36.03 (E) and (F) to delete “Board of Aldermen” and replace with “City Council.”

**H.** Incorporate MOAs and any side-agreements between the City and IAFF into the CBA.

**3. ARTICLE IV (SPECIAL LEAVE)**

Amend Article IV to add new Section 4.08 as follows (and re-number accordingly):

**“4.08a When the Fire Chief has reasonable cause to suspect that an employee is unfit for duty, the employee shall be required to undergo a medical examination by a CITY-appointed physician to determine his/her fitness for duty. Reasonable cause shall be defined in this section as the Fire Chief having specific and articulable facts that an employee is unable to perform the essential functions of his/her position in the Fire Department. The CITY shall place the employee on paid administrative leave pending the results of his/her fitness for duty examination.**

**4.05b If the examination by the CITY-appointed physician reveals that the employee is fit for duty, he/she will immediately return to duty. If the examination by the CITY-appointed physician reveals that the employee is unfit for duty, the employee’s own special leave time will run from the time the employee is determined by the CITY-appointed physician to be unfit for duty, provided that the requirements for the use of special leave under this article are met. If it is determined that the employee is entitled to injury leave pursuant to Article IVB of this Agreement, he/she shall be granted leave without loss of pay under those provisions.**

**4.05c The employee, if found unfit for duty by the CITY-appointed physician and if he/she desires, may then request an examination by a physician of his/her own choice at the CITY’s expense. In the event that the employee’s physician and the CITY’s Physician disagree as to the employee’s fitness for duty, the employee’s physician and the CITY’s physician shall confer in an effort to resolve the disagreement. If the disagreement remains, the Director of Human Resources shall arrange for an examination of the employee by a physician selected from a pool of a minimum of five (5) physicians previously agreed upon by the ASSOCIATION and the CITY. Said physician shall be selected by either a representative of the ASSOCIATION or by a representative of said Director of Human Resources by lottery system. Such designated physician will examine the employee and render a written opinion as to whether or not the employee is fit for duty. The inquiry to the neutral physician will be in written submission sufficiently descriptive of such assignment and agreed upon by the ASSOCIATION and by the CITY. The determination of the neutral physician will be binding upon the employee involved, upon the ASSOCIATION and upon the CITY. If the neutral physician determines that the employee is fit for duty, the City shall credit back any special leave time used by the employee to cover his/or her absence from work during the examination process.**

**4.05d The CITY shall offer an employee who is found unfit for duty under this section the opportunity to participate in the CITY’s Employee Assistance Program at the CITY’s expense.”**

An SOP for the Department of Human Resources for the administration of Section 4.08 is attached to this MOA as Addendum B.

**4. ARTICLE XXVII (LONGEVITY)**

Effective July 1, 2019, Section 27.01 shall be amended to add the following:

	<b>Annual</b>	<b>Weekly</b>
<b>5 - 9 years</b>	<b>\$750</b>	<b>\$14.42</b>

**5. ARTICLE XXXV (DRUG SCREENING)**

Amend Article XXXV (Drug Screening) as shown on Addendum C.

**6. ARTICLE XXXVIII (DURATION)**

Amend Section 38.01 to replace with effective dates: July 1, 2019 to June 30, 2020.

**7. APPENDIX A, SECTION 11 (Out of Grade Compensation)**

Amend Appendix A, Section 11, as follows:

~~“Notwithstanding the prior provisions of this Section, in the case of prolonged illness or injury absences of officers, after thirty (30) days of such absence, the CITY shall make a provisional temporary appointment from a certified civil service promotional list to fill the position until the permanent officer returns to active duty. The opportunity for such out of grade compensation shall be allocated on the basis of ranking of employees on the promotional list involved; provided, however, that once the highest ranking employee on such list has been given the opportunity for such out of grade compensation, the opportunity for such compensation on the next occasion of an officer absence in the rank involved shall be given to the next highest ranking employee on the list involved, and such allocation based on descending ranking of employees on such list shall continue for further occasions of officer absences. The term “occasion of absences” as used herein refers to any consecutive number of tours of absence of an officer, with any number of such consecutive tours constituting one (1) such occasion. When all employees on the list have been given the opportunity for out of grade compensation pursuant to descending ranking on the list, the allocation of out of grade compensation upon the next occasion of officer absence shall be given to the highest ranking employee on the list in order to maintain the allocation of opportunity rotation system. If no certified promotional list exists for a given rank, allocation among employees in the immediately lower rank of out of grade compensation opportunity to serve in the next higher rank shall be made pursuant to the Fire Chief’s discretion.”~~

“For purposes of implementation, this SECTION shall be implemented after January 1, 2020, upon the certification by the CITY for each newly-established individual civil service promotional list, i.e., Captain, Deputy, and Lieutenant, after said date. Any civil service temporary appointment, in effect at the time of the above implementation from a prior promotional list, shall remain in that position, until the permanent officer returns to active duty.”



IAFF, LOCAL 863

CITY OF NEWTON

By: [Signature] 16 DEC 2019

By: [Signature]

By: Mauc Bryn 12-16-19

By: [Signature] 12-16-19

By: \_\_\_\_\_

By: \_\_\_\_\_

Approved as to form and legality:

By: [Signature]

Date:

Date:

**ADDENDUM A**

**Newton Fire Department - Proposed Grid  
CITY OF NEWTON, MASSACHUSETTS**

**EFFECTIVE JULY 1, 2019**

09-Dec-19  
mill

Grade	102.00%		Grid Correction		103.00%		103.00%		103.00%		103.00%	
	FY19 RATE	July 1, 2019	FY20 RATE	FY21 RATE	FY22 RATE	FY23 RATE						
FF-Tr	\$ 51,759.23	\$ 51,759.23	\$ 53,312.01	\$ 54,911.37	\$ 56,558.71	\$ 58,255.47						
	\$ 995.37	\$ 995.37	\$ 1,025.23	\$ 1,055.99	\$ 1,087.67	\$ 1,120.30						
FF-01	\$ 51,759.23	\$ 51,759.23	\$ 53,312.01	\$ 54,911.37	\$ 56,558.71	\$ 58,255.47						
	\$ 995.37	\$ 995.37	\$ 1,025.23	\$ 1,055.99	\$ 1,087.67	\$ 1,120.30						
FF-02	\$ 53,815.89	\$ 53,815.89	\$ 55,430.37	\$ 57,093.28	\$ 58,806.08	\$ 60,570.26						
	\$ 1,034.92	\$ 1,034.92	\$ 1,065.97	\$ 1,097.95	\$ 1,130.89	\$ 1,164.81						
	3.97%	3.97%	3.97%	3.97%	3.97%	3.97%						
FF-03	\$ 55,986.81	\$ 55,986.81	\$ 57,666.41	\$ 59,396.41	\$ 61,178.30	\$ 63,013.65						
	\$ 1,076.67	\$ 1,076.67	\$ 1,108.97	\$ 1,142.24	\$ 1,176.51	\$ 1,211.80						
	4.03%	4.03%	4.03%	4.03%	4.03%	4.03%						
FF-04	\$ 58,214.86	\$ 58,214.86	\$ 59,961.30	\$ 61,760.14	\$ 63,612.94	\$ 65,521.33						
	\$ 1,119.52	\$ 1,119.52	\$ 1,153.10	\$ 1,187.69	\$ 1,223.33	\$ 1,260.03						
	3.98%	3.98%	3.98%	3.98%	3.98%	3.98%						
FF-05	\$ 60,557.16	\$ 60,557.16	\$ 62,373.88	\$ 64,245.09	\$ 66,172.44	\$ 68,157.62						
	\$ 1,164.56	\$ 1,164.56	\$ 1,199.50	\$ 1,235.48	\$ 1,272.55	\$ 1,310.72						
	4.02%	4.02%	4.02%	4.02%	4.02%	4.02%						
FF-06	\$ 62,956.60	\$ 62,956.60	\$ 64,845.29	\$ 66,790.65	\$ 68,794.37	\$ 70,858.20						
	\$ 1,210.70	\$ 1,210.70	\$ 1,247.02	\$ 1,284.44	\$ 1,322.97	\$ 1,362.66						
	3.96%	3.96%	3.96%	3.96%	3.96%	3.96%						
FF-07	\$ 64,841.87	\$ 65,474.86	\$ 67,439.10	\$ 69,462.28	\$ 71,546.15	\$ 73,692.53						
	\$ 1,246.96	\$ 1,259.13	\$ 1,296.91	\$ 1,335.81	\$ 1,375.89	\$ 1,417.16						
	2.99%	4.00%	4.00%	4.00%	4.00%	4.00%						
FF-08	\$ 66,498.62	\$ 68,058.85	\$ 70,136.67	\$ 72,240.77	\$ 74,407.99	\$ 76,640.23						
	\$ 1,278.82	\$ 1,309.50	\$ 1,348.78	\$ 1,389.25	\$ 1,430.92	\$ 1,473.85						
	2.56%	4.00%	4.00%	4.00%	4.00%	4.00%						
LT	\$ 80,795.82	\$ 82,724.03	\$ 85,216.05	\$ 87,772.53	\$ 90,405.71	\$ 93,117.88						
	\$ 1,553.77	\$ 1,591.04	\$ 1,638.77	\$ 1,687.93	\$ 1,738.57	\$ 1,790.73						
	21.50%	21.50%	21.50%	21.50%	21.50%	21.50%						
CAPT	\$ 94,531.11	\$ 96,798.82	\$ 99,702.78	\$ 102,693.86	\$ 105,774.68	\$ 108,947.92						
	\$ 1,817.91	\$ 1,861.52	\$ 1,917.36	\$ 1,974.88	\$ 2,034.13	\$ 2,095.15						
	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%						
DEP CH	\$ 110,601.40	\$ 113,254.62	\$ 116,652.25	\$ 120,151.82	\$ 123,756.38	\$ 127,469.07						
	\$ 2,126.95	\$ 2,177.97	\$ 2,243.31	\$ 2,310.61	\$ 2,379.93	\$ 2,451.33						
	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%						

**ADDENDUM B**

**CITY OF NEWTON  
DEPARTMENT OF HUMAN RESOURCES  
FITNESS FOR DUTY STANDARD OPERATING PROCEDURE**

- A. HR receives a report from the Fire Chief or Assistant Chief of Operations requesting a fitness for duty examination, setting forth with specificity the reason(s) for the exam and attaching supporting documentation, if any, with a copy to the IAFF.
- B. HR transmits the report from the Fire Chief or Assistant Chief of Operations, in addition to a job description (See, Section K below) for the position held by the employee in the Fire Department, to the City Physician with a written request to conduct a fitness for duty examination, with a copy to the IAFF.
- C. HR coordinates the placement of the employee on paid administrative leave during the pendency of the fitness for duty examination, and communicates with the employee to set an appointment date and time with the City Physician.
- D. The City Physician shall conduct a fitness for duty examination, and he/she shall determine whether the employee is either: fit for duty or not fit for duty. The City Physician may refer the employee to a specialist if it is medically necessary prior to making his/her determination.
- E. In all cases, the City Physician shall act in the best interest of the employee's health and welfare.
- F. The City Physician shall communicate his/her fitness for duty findings in writing to HR.
- G. HR shall communicate the City Physician's fitness for duty findings to the Fire Chief or Assistant Chief of Operations, with a copy to the IAFF.
- H. HR and the Fire Department shall at all times keep employees' medical information confidential, as required by federal and state law.
- I. HR shall coordinate the City's payment for the fitness for duty examinations.
- J. This process shall not conflict with an employee's rights under the CBA or the FMLA, or any other applicable federal or state law.
- K. Examples of Essential Duties: Firefighters often perform risky and physically demanding duties under emergency conditions. Firefighters work under supervision, often as a member of a team, to respond to fires and other emergencies. Firefighter duties may include, for example: connecting, pulling, and operating hose lines; operating a pump; positioning and climbing ladders; emergency rescue and lifesaving; ventilating smoke-filled areas; using and maintaining tools and equipment; training; fire station activities; and driving.
- L. Changes to this SOP during the term of this CBA shall only be made by proposal in writing by one party and with the assent of the other party.

**ADDENDUM C**

**ARTICLE XXXV**

Drug and Alcohol Screening

35.01 The Fire Chief, or his/her designee in the Chief's absence, for reasonable cause may require that a firefighter submit a test sample forthwith for drug screening and alcohol screening to be administered by the City Physician, the Nurse Practitioner, or the City Physician's designee. Failure to provide the test sample as directed will result in disciplinary action. The testing procedures will be prescribed by the City Physician's office. Alcohol screening shall be by breathalyzer only, and a calibration document from the contractor shall be provided to the ASSOCIATION with each screening.

35.02 (a) The firefighter may initiate a review of the Chief's directive. Immediately upon receipt of the Chief's directive, the firefighter will sign a form, either accepting the directive or requesting a review of it. Failure to sign the form immediately shall be deemed waiver of the firefighter's right to review the directive.

(b) The Chief's directive shall be reviewed by a committee of three comprised of two bargaining unit appointees by the Chief and one unit appointee by the ASSOCIATION. The Chief and the ASSOCIATION shall appoint people who, in each instance, are able to comply with the 24 hour time constraints for concluding the appeal as referenced in Paragraph 2(g), below.

(c) The review shall be an informal process. The committee will determine its own procedures; provided, however, that the committee will meet for the conduct of all of its business. The purpose is to determine only whether or not the Chief has information which establishes reasonable cause to request screening. The firefighter is not a participant in this portion of the process.

(d) The Chief or his designee will present his information to the committee. The committee may, if it feels that it is necessary, request corroboration of information, if it is available. The Chief or his designee will determine whether or not and to what extent to provide the additional information.



(e) The committee will make a decision, by majority vote, based upon the information presented.

(f) During the pendency of this review process, the Chief reserves the right to determine the firefighter's working status and assignment. This does not restrict the Chief from imposing discipline for violations of department rules, regulations, and/or policies.

(g) The review is to be conducted and concluded within twenty-four (24) hours of the time the Chief requested the test, or as soon thereafter as is practicable.

(h) If the review committee determines that the drug and alcohol screening is warranted, such testing shall be conducted immediately.

(i) If the review committee finds that the test is not warranted, the sample shall not be tested and shall be destroyed.

(j) The firefighter may, at the time the sample is provided, request that he/she be provided with a non-tested sample, and the City Physician's office shall so provide it.

(k) The decision of the review committee shall be final and binding and not subject to the grievance and arbitration provisions of this Agreement.

(l) The results of the screening test shall be given to the Chief and the firefighter.

#### 35.03 Procedure following a positive test result:

The presence of greater than 0.04 alcohol content in the blood, or a verified positive drug test for illegally-used drugs, non-prescribed drugs or non-prescribed controlled substances shall be considered a violation of this Article. An "illegally-used drug" is defined as the ingestion of prescribed or over-the-counter medication in amounts beyond the prescribed or recommended dosage, or taken after the prescribed period of time.

(a) A first offender is someone who has never previously tested positive for the presence of alcohol, or non-prescribed drugs or controlled substances.

(b) The CITY recognizes that clinical treatment and/or rehabilitative treatment for drug and/or alcohol use may be the appropriate course of action in some circumstances. The Chief may, at his discretion, request a first offender who tested positive for any class of illegal controlled substances, in addition to being subject to disciplinary action, to participate in an approved rehabilitation program in the CITY's Employee Assistance Program. The Chief, however, reserves the right immediately to impose discipline in the following circumstances:

(1) The firefighter purchased, sold, possessed, or used drugs, or engaged in any other illegal drug offenses while on duty.

(2) The firefighter's job performance or ability to perform his/her work was impaired by the use of drugs.

(c) (1) In circumstances other than those described in paragraph (b) above, as follows:

a. A positive test for alcohol and/or any illegal drug;

b. If the offense occurred during non-working hours; and,

c. If the firefighter's performance or ability to perform his/her work was not impaired; the Chief may also impose discipline. However, the firefighter will be offered the opportunity to participate in the CITY's Employee Assistance Program. If he/she accepts the offer he/she must fully cooperate with the City Physician's office in providing information and in complying completely with whatever rehabilitation program is designed for him/her.

(2) During the period of rehabilitation, the discipline will be stayed provided the firefighter does not, in any manner, violate the terms and conditions of his/her rehabilitation program.

(3) Upon the successful completion of the rehabilitation, the employee's records will so note, and the disciplinary action will be withdrawn and the case terminated.

(d) Any second or subsequent offenses will result in immediate discipline, including termination.

(e) Civil Service Rights - Grievance - Arbitration Rights

An employee or the ASSOCIATION can obtain neutral review of the application of the provisions of Article XXXVI by the CITY/Chief upon only the following basis:

- (1) The Chief's directive (Paragraph 1) requiring a firefighter to submit a sample for testing may only be reviewed by the committee process established in Paragraph 2 and may not be reviewed by grievance-arbitration or through Civil Service.
- (2) The review committee's decisions as to whether or not a sample is to be tested are final and binding and not subject to any review process whatsoever.
- (3) The remaining provisions of this article may be reviewed as follows. a. the ASSOCIATION can appeal all grievance issues, including the discipline, to Grievance Arbitration. As a condition precedent to grieving discipline, the employee must waive his Massachusetts Civil Service rights OR b. (1) The employee may appeal his/her discipline to Civil Service AND/OR (2) Subject to the foregoing exclusions, the ASSOCIATION can process to Grievance Arbitration allegations that the CITY/Chief has violated the provisions of this Article; however, if an employee utilizes the provisions of Paragraph 36.03 (e) 3b.(1) regarding appeal of discipline to Civil Service, the ASSOCIATION cannot arbitrate the discipline made the subject of such Civil Service appeal.

35.04 Notwithstanding any other provisions of this Article, any firefighter who is to be offered a promotional position, i.e., Lieutenant, Captain, and/or Deputy Chief, shall, as a prepromotional condition, submit to drug and alcohol screening tests as directed by the Chief or his/her designee.

35.05 Notwithstanding any other provisions of this Article, firefighters who have volunteered for and who are to be offered certain specialist assignments shall, as a preassignment condition, submit to drug and alcohol screening tests as directed by the Chief or the Assistant Chief.

The specialist assignment subject to pre-appointment drug and alcohol screening is: staff or day position.

35.06 Notwithstanding the provisions of this Article, the CITY and the Chief, or the Assistant Chief, reserve the right to require urinalysis screening testing and alcohol screening in accordance with law. Further, the CITY reserves its legal rights to administer tests to firefighters who are suspects in criminal and/or departmental investigations.

35.07 The provisions contained in this Article are as and between the CITY and the ASSOCIATION relative to their rights and responsibilities under the provision of M.G.L. c. 150E. In agreeing to these

provisions, the ASSOCIATION is not intending to waive any constitutional rights of individual bargaining unit employees.

**END OF DOCUMENT**