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**Collective Bargaining Agreement  
Between the  
Town of Needham  
and  
Police Superior Officers Association**

**July 1, 2016 – June 30, 2019**

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THIS AGREEMENT made and entered into this 1st day of July, 2016 by and between the Town of Needham (hereinafter called the "Town") and the Needham Police Superior Officers Association (hereinafter called the "Association").

**ARTICLE 1  
RECOGNITION AND BARGAINING UNIT**

**Section 1.** The Town recognizes the Needham Police Superior Officers Association in accordance with the provisions of Mass. General Laws Chapter 150E, as the sole and exclusive bargaining agent and representative, for the purpose of collective bargaining with respect to wages, hours, and other conditions of employment for all permanent Lieutenants of the Town's Police Department, excluding however, the Chief of Police, Deputy Chief of Police, Sergeants, Patrolmen, all office and clerical employees, and all other employees of the Police Department and the Town.

**Section 2.** The Town agrees not to discharge, transfer or discriminate against employees covered by this Agreement because of legal authorized "Association" activities. Members of the bargaining committee shall be allowed to attend negotiations and shall be allowed a reasonable amount of time off from duty without loss of pay, or without having to make up such time, in order to conduct negotiations, process grievances or to attempt to resolve department problems and all negotiations shall be conducted at reasonable times.

**ARTICLE 2  
DURATION OF AGREEMENT**

This Agreement shall become effective July 1, 2015 and shall continue in effect until June 30, 2016, and the first day of July, 2016 and shall continue in effect until June 30, 2019 and shall be renewed automatically from year to year thereafter unless either party, at least six months prior to the expiration date, gives written notice that it desires to modify, terminate, amend or negotiate a new Agreement. The party to whom notice has been given will reply with a proposed date for a meeting within fifteen (15) days therefrom. In the event that negotiations for a new contract are not completed prior to the expiration date, all terms, provisions and conditions herein contained shall remain in full force and effect until a new agreement has in fact been executed.

**ARTICLE 3  
NO STRIKE CLAUSE**

It is agreed that nothing in this Agreement shall constitute a grant of the right to strike to the employees of the Needham Police Superior Officers Association and further acknowledging that Chapter 150E of the General Laws specifically provides that it is unlawful for any employee of the Association to engage in, induce, or encourage any strike, work stoppage, slowdown or withholding of services. The Association agrees that neither it nor its officers or representatives will call, incite, authorize, sanction or ratify any strike, slowdown, or stoppage of work by the employees of the Association.

## ARTICLE 4 MANAGEMENT RESPONSIBILITY

**Section 1.** The listing of the following specific rights of management is not intended to be in limitation of the rights of the Town, the Board of Selectmen, the Town Manager and the Chief of Police. Responsibilities which are inherently those of management shall remain such whether or not specifically listed hereafter.

**Section 2.** Among such management responsibilities as are vested exclusively in the Town, the Board of Selectmen, the Town Manager and the Chief of Police are the following: The right to hire, promote, transfer, assign and retain employees in positions and to suspend, demote, discharge or take other disciplinary action against employees for just cause, to relieve employees from duty because of lack of work or other reasons, to determine the method, means and personnel by which such operations are to be conducted and to take whatever action may be necessary to carry out the work of the Police Department.

**Section 3.** The Town, the Board of Selectmen, the Town Manager and the Chief of Police shall have the freedom of action to discharge their responsibility for the operation of the Police Department including the scheduling of operations, the methods and materials used in carrying out the function of the Police Department and the extent to which its own or other facilities and or personnel shall be used.

## ARTICLE 5 HOURS OF WORK AND HOLIDAYS

**Section 1. Hours of Work** Tours of duty shall be scheduled on a basis of five (5) consecutive days of duty (Monday through Friday) followed by two (2) consecutive days off.

**Section 2. Holidays**

- (a) The Town of Needham recognizes the following legally observed holidays: New Year's Day, Martin Luther King Day, Presidents' Day, Patriots' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, one-half day the last working day before Christmas, and Christmas Day.
- (b) Sunday holidays shall be celebrated on the following Monday. Saturday holidays shall be celebrated on the preceding Friday.
- (c) At the discretion of the Chief of Police, members of the bargaining unit may be required to report to work on a holiday for which no additional compensation will be paid.

**Section 3. Shift Coverage** Any employee who is ordered to report to work to perform shift supervision responsibilities will be entitled to a payment of \$600 for that shift. The Shift Coverage pay will not apply to any shift coverage that is scheduled in advance.

## **ARTICLE 6 LEAVE OF ABSENCE**

**Section 1.** At the discretion of the Chief of Police, members of the bargaining unit may be permitted an unpaid leave of absence of up to two weeks' duration, upon submission of a written request therefore stating the reasons and length of the requested leave.

**Section 2.** Requests for leaves of absence of longer than two weeks' duration must be submitted in writing and approved in advance by the Town Manager, as well as the Chief of Police.

### **Section 3. Leaves and Benefits**

- (a) **Sick Leave** Employees granted leaves of absence in excess of five (5) days in a calendar month shall not accrue non-occupational sick leave for that month.
- (b) **Vacation** Employees who are on unpaid leave status for more than five (5) days in a calendar month shall have their current vacation bank (if any) or their next year's vacation allotment reduced by one-twelfth of the annual allotment. Partial vacation days shall be rounded up to the closest whole number.
- (c) **Step Raises** Employees who are on unpaid leave of absence for more than ten (10) days in a calendar year shall have their next step dates (if applicable) adjusted by the number of calendar days spent on unpaid leave.

**Section 4. Personal Day** One (1) day's leave of absence from work at regular straight-time pay for normally scheduled hours shall be granted every calendar year to members of the bargaining unit, provided that such leave be requested in writing to the Chief of Police/designee at least 48 hours prior to the date selected. Personal leave is not cumulative and must be used in the fiscal year in which it is granted.

**Section 5.** The Association President or his/her designee shall be allowed three (3) days per year without loss of pay in order to attend "Association" business, provided that staffing on the particular day in question is such that the Chief/designee does not feel the necessity to cover.

**Section 6. Administrative Leave** The Chief of Police shall have the sole discretion to place a member of the bargaining unit on paid administrative leave for a period not to exceed 45 consecutive calendar days per occurrence in situations including, but not limited to, the investigation of a Lieutenant's conduct, or the Lieutenant's involvement in a traumatic event, such as a shooting or fatal accident. The period of paid administrative leave may be extended by mutual agreement of the parties. The placement of a Lieutenant on paid administrative leave shall not be grievable.

## ARTICLE 7 CIVIC DUTY LEAVE

**Section 1.** All employees shall be granted leave when called for jury duty or under summons to appear as witnesses. Members of the bargaining unit will be paid by the Town during the period required for court service for the difference between the amount paid them by the court, excluding travel allowance, and the amount of regular straight-time pay which would normally be received from the Town for scheduled work time spent on approved civic duty leave. If the jury or witness fees, exclusive of travel allowance, are more than the amount of regular straight-time pay which the employee would receive for scheduled work time spent on civic duty leave, no compensation shall be paid by the Town for the period of court service.

**Section 2.** Official Summons to jury duty or witness appearance must be presented in advance to the Chief of Police/designee in order to be eligible for civic duty leave.

**Section 3.** To qualify for payment hereunder, the employee must furnish the Town Accountant with complete and satisfactory evidence of the jury or witness fees received. As a condition for receiving payment from the Town hereunder, an employee on authorized civic duty leave who is discharged from court service for the day or a major portion thereof during regular work hours must report to work.

**Section 4.** Absence due to civic duty leave shall not affect an employee's eligibility for longevity, satisfactory performance step increases or benefit eligibility.

**Section 5.** Civic duty leave shall not be used for personal litigation.

## ARTICLE 8 MILITARY LEAVE

**Section 1. Reserve Service** A member of the bargaining unit who is a member of a state or federal military reserve unit shall be entitled to leave of absence from a permanent position for compulsory military service under orders for a period not to exceed seventeen (17) days per calendar year, seventeen calendar days of such leave to be with full regular straight-time pay for normally scheduled work hours.

**Section 2. Draft Board Appearances and Physicals** Military leave of absence with full regular straight time pay for normally scheduled work hours shall be granted to members of the bargaining unit on occasion of their required appearance under orders before armed forces draft boards of for physical examination required by such boards.

**Section 3. Active Duty** Military leave of absence without pay shall be granted for members of the bargaining unit called under orders for active duty with the state or federal armed forces for compulsory service other than the annual reserve routine tour of duty.

**Section 4. Notification and Approval Requirements** Every employee desiring military leave as provided hereunder shall request it in writing in advance from the Chief of Police, and such request shall provide written proof from military or selective service officials indicating the date of departure and length of service required.

## **ARTICLE 9 NON-OCCUPATIONAL SICK LEAVE**

**Section 1. Eligibility** Members of the bargaining unit shall be eligible for non-occupational sick leave as provided hereunder.

**Section 2. Accrual** Members of the bargaining unit shall accrue one and one-quarter (1 1/4) days non-occupational sick leave for each full calendar month of continuous employment per fiscal year. The aforementioned accruals shall be added to the employee's permanent record of available non-occupational sick leave and shall be referred to as the "non-occupational sick leave credit" or the "non-occupational sick leave balance."

**Section 3. Usage**

- (a) Use of non-occupational sick leave shall be granted to an employee only when the employee is incapacitated from the performance of duties by personal sickness, injury or quarantine by public health authorities, except that an employee shall be allowed to use up to ten (10) days of non-occupational sick leave when available per fiscal year for illness or injury of a parent, spouse or child of the employee.
- (b) During each fiscal year, there shall be charged regularly to the employee's total non-occupational sick leave credit the total number of days absent from work because of non-occupational illness for which the employee was paid the regular straight-time pay for normally scheduled hours absent due to non-occupational sick leave.

**Section 4. Notification** Non-occupational sick leave shall commence on the date that notification of the employee's sickness, injury or quarantining is given to the Chief of Police by the employee or the employee's family or physician.

**Section 5. Certification of Illness, Injury or Quarantine** The Chief of Police shall investigate and ascertain the validity of any request for non-occupational sick leave made by an employee, and shall approve the same if satisfied as to the validity of the request. A physician's certificate may be required by the Chief of Police or Town Manager in any case of non-occupational sick leave. If the cause of sick leave is not substantiated to the satisfaction of the Chief of Police, the absence will not be paid as non-occupational sick leave.

**Section 6. Extended Sick Leave**

- (a) When a member of the bargaining unit has exhausted available non-occupational sick leave credits, extended sick leave with pay in excess of earned sick leave may be granted on an individual basis by the Town Manager for up to sixty (60) days per fiscal year, upon receipt of a written request for extended sick leave submitted by the Chief of Police, and upon receipt of written confirmation from a practicing physician that the employee is unable to report to work.
- (b) Requests for extended sick leave as provided herein shall not be submitted until the employee has used all available paid leave credit, including vacation leave and personal leave.
- (c) In determining whether to grant extended sick leave, the Town Manager shall take into account the employee's length of continuous employment, absence record, and performance appraisals. The granting of extended sick leave is subject to availability of appropriation.
- (d) Any employee granted extended sick leave as provided herein will not receive credit for such leave for the purpose of determining vacation or other leave eligibility, and the amount of time spent on extended sick leave shall not be included in the computation of continuous service.

**Section 7. Non-occupational Sick Leave Buy-back** An employee who terminates employment with the Town by retirement or disability shall be entitled to a cash payment upon termination at the employee's current rate of pay for twenty-five percent (25%) of the non-occupational sick leave credit outstanding after proper adjustments are made for the current fiscal year. The spouse, duly-designated beneficiary or legal representative of the estate of the employee whose employment with the Town is terminated by death, shall be entitled to cash payment at the employee's rate at the time of termination for twenty-five percent (25%) of the non-occupational sick leave credit outstanding at the time of termination after proper adjustments are made for the current fiscal year. Members of the bargaining unit who have not attained ten years of service with the Town of Needham as of June 30, 2011 shall be subject to a 960 hour (120 day) cap on the number of sick days to be used in calculating the 25% sick leave buy-back at retirement. The 960 hour cap shall not be construed as limiting the accumulation of non-occupational sick leave.

**Section 8. Fitness for Duty** Members of the bargaining unit may be required to submit medical verification of their current ability to perform their essential job functions upon return to work following use of sick leave in excess of five (5) consecutive shifts, or after hospitalization or major surgery.

**Section 9. Personal Leave Incentive Plan**

- (a) Each member of the bargaining unit shall be eligible to convert 16 hours of unused, non-occupational sick leave to personal leave for every calendar quarter (January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31) in which no sick leave is used. Eligible employees may elect to “buy back” a maximum of 8 hours converted to personal leave per quarter. Eligible employees must elect such conversion by January 15<sup>th</sup> of each year for the accumulation calculations based upon calendar quarters occurring during the prior calendar year.
- (b) Eligible members of the bargaining unit electing to convert non-occupational sick leave hours to personal leave must use such leave hours (a maximum of 64 hours) by December 31 of the year in which they are converted. Use of converted time will only be granted if the Chief of Police determines that no unreasonable overtime obligation or staffing deficiency, which is known as of the date of request, will occur.
- (c) Eligible members of the bargaining unit electing to buy back non-occupational sick leave hours converted to personal leave at their regular rate of pay (a maximum of 32 hours) must do so by January 15<sup>th</sup> of each year.
- (d) Eligible members of the bargaining unit may elect a combination of the options set forth in (b) and (c) to the extent that hours converted or bought back do not exceed the maximum number of hours. However, once an employee elects to convert non-occupational sick leave to personal leave, those hours will expire if not used by December 31<sup>st</sup>.
- (e) Hours converted or bought back in accordance with this program will be deducted from an employee’s non-occupational sick leave bank.
- (f) The provisions of this section shall not apply to Personal Leave described in Article 6 Section 7.
- (g) Members of the bargaining unit on approved injury on duty status for more than five (5) days in a calendar quarter will be ineligible to participate in this program for that quarter.

**ARTICLE 10  
INJURY ON DUTY**

When a Lieutenant is incapacitated for duty because of injury or illness sustained in the performance of duty (including paid detail duty) without fault of his/her own, he/she shall be granted leave without loss of pay in accordance with M.G.L. Chapter 41 Section 111E and will be indemnified for

reasonable and customary expenses in accordance with M.G.L. Chapter 41 Section 100, subject to the provisions outlined below and pursuant to the Injury on Duty Policy.

**Section 1. Determination of IOD Status** The determination of eligibility for IOD status in accordance with M.G.L. Chapter 41 Section 111F shall be made by the Town Manager or his/her designee. Prior to the approval of eligibility for benefits under this section, the Lieutenant may be placed on non-occupational sick leave. If during the period in which the Town is determining eligibility for injured on duty status the employee exhausts his/her banked non-occupational sick leave, the Town will provide the employee with additional sick leave up to the date of determination. If the request for benefits under this section is approved, the period of the non-occupational sick leave shall be converted retroactively to Injured on Duty status.

**Section 2. Physical/Psychological Examinations** The Town may require a Lieutenant who requests benefits under this section to submit to physical or psychological examinations, at the expense of the Town, prior to being placed on IOD Status. Such examination will be conducted by a physician who is Board-certified or is a specialist in the field which is directly related to the illness/injury for which benefits are sought.

**Section 3. Appeals** An employee whose claim for benefits under this section is denied by the Town shall have the right to file for arbitration under Article 19 of this Agreement or to file an appeal under the applicable provision of Massachusetts General Law.

**Section 4. Accruals** Employees receiving benefits in accordance with this section who are on approved IOD status for an entire calendar month shall not be entitled to sick leave accrual for that month.

**Section 5. Medical Case Management** The Town or its designated occupational health consultant will review all requests for indemnification of medical expenses and will make payment for indemnification of medical expenses and will make payment for reasonable and customary charges. Injured employees will be required to provide medical information release forms from all relevant medical providers for injuries/illnesses for which benefits are sought. It is understood that all employee medical information will be kept strictly confidential as provided by state law.

**Section 6.** Members of the bargaining unit who accept benefits under this Article and in accordance with M.G.L. c. 41 Sections 100 and 111F thereby and forever waive a suit for damages for the same injury against the Town of Needham with the following exceptions: (1) an action to enforce the member's rights under Section 100 or 111F if such right is denied by the Town; (2) any claim for disability retirement benefits; (3) an action brought after the Town has terminated benefits because of an assertion that the injury was not sustained in the performance of duty. There is no waiver of any claim that a member may have against any third party causing the injury other than a claim against the Town.

**ARTICLE 11  
HEART AND HYPERTENSION**

**Section 1.** Employees absent from duty on account of a heart injury except for hypertension and heart bypass surgery shall receive their full weekly compensation during the period of such absence without charging such absence to NOSL until a physician appointed by the Town finds the employee fit to return to duty, the employee retires, or the employee ceases employment with the Town.

**Section 2.** Employees absent from duty on account of hypertension or for heart bypass surgery will be compensated as follows for up to ninety (90) calendar days of absence.

**Section 3.** The Town will match on a one-for-one basis each day of absence. The employee's days will be charged to the employee's accrued NOSL. The Town's will be in addition to any NOSL the employee has accrued. The Town will only match those days for which the employee has contributed one NOSL day. Not later than 90 calendar days after onset of the absence, the employee will either submit his application for retirement or return to work. Provided, however, that if a physician appointed by the Town is unable to determine that the employee is either fit for duty or is permanently disabled, the Town will continue to match on a one-for-one basis any additional period of absence until the Town's physician has made his determination, the employee will either return to work or submit his application for retirement. If the Town's physician recommended retirement, then, upon submission of the application, the Town will pay full weekly compensation to the employee for a period up to 120 days or until retirement, whichever comes first.

**Section 4.** If the employee exhausts his accrued NOSL, the Town Manager may, at his/her sole discretion, grant a further period of paid leave.

**Section 5.** Medical, hospital, surgical, medicinal or similar bills incurred in the treatment of heart injury, hypertension or heart bypass operation shall not be deemed to arise out of a work-related injury and will not be paid by the Town except to the extent that the Town contributes to the employees' health insurance premiums. They may be submitted to the applicable group health insurance provider for appropriate coverage.

**Section 6.** Employees, while being compensated hereunder, shall not accrue additional NOSL or vacation time.

**ARTICLE 12  
TEMPORARY MODIFIED WORK PROGRAM**

**Section 1. Work-related Illness or Injury**

- (a) If a physician designated by the Town of Needham determines that a Lieutenant is eligible for temporary modified work, the Chief of Police may assign that Lieutenant to a Temporary Modified Work Program. Failure of the Lieutenant to comply with the Temporary Modified Work Program may result in suspension of IOD benefits.

The physician designated by the Town shall be Board-certified or otherwise be a specialist or have expertise in the relevant area of injury or illness. Any determination that a Lieutenant can do temporary modified work shall be made only after a review of the specific duties that the Lieutenant will be asked to perform. The Town-designated physician shall give his or her opinion as to whether the Lieutenant can perform the specific tasks enumerated.

- (b) If the physician designated by the Town determines that the Lieutenant is eligible for temporary modified work, and the Lieutenant's physician (who shall be Board-certified or otherwise be a specialist or have expertise in the relevant area of injury or illness), disagrees, the Lieutenant, or, if the Lieutenant so designates, the Lieutenant's physician, shall contact the Town's physician within fourteen (14) calendar days of receiving the Town physician's report. If the Lieutenant, or the Lieutenant's physician, fails to contact the Town's physician within fourteen (14) calendar days, the decision of the Town's physician shall be final and binding.
- (c) The Town's designated physician shall confer with the Lieutenant or the Lieutenant's physician on the question of the Lieutenant's ability to perform temporary modified work and they shall attempt to reach agreement. If they agree that the Lieutenant can perform temporary modified work, the Lieutenant shall be placed on a TMWP. If, after discussion, they fail to reach agreement, they shall jointly select a third physician, who shall be Board-certified or otherwise be a specialist or have expertise in the relevant area of injury or illness. Such selection will be made within 21 days of the original decision of the Town's physician. Failure or refusal on the part of the Lieutenant or the Lieutenant's physician to cooperate in this selection may void any obligation by the Town to appoint a third physician and the decision of the Town's physician shall be final and binding.
- (d) The Town or its physician shall make an appointment for the Lieutenant with the third physician and shall advise the Lieutenant of the time, date and place. Except for emergency, the Lieutenant shall report to and fully cooperate with the third physician. The report of the third physician must be completed and results received by the Town and the Lieutenant within fourteen (14) calendar days of the appointment.
- (e) An election by a Lieutenant to utilize the third physician option permitted hereunder shall be a binding election of remedies. Such election shall preclude any right to bring an action or challenge the decision of the third physician either pursuant to M.G.L. c. 41, Section 111F or pursuant to the grievance/arbitration procedures under this contract. The decision of the third physician shall be final and binding without right of appeal by either party. The cost of the third physician shall be borne by the Town and the Union jointly.
- (f) The provisions of this section shall apply only to questions relating to the determination of eligibility for temporary modified work.

**Section 2. Non-Occupational Illness or Injury**

Upon release to the Town of the medical reports necessary to make a determination of ability to perform temporary modified work, a Lieutenant on NOSL may request a temporary modified work assignment. If the Lieutenant's physician determines that the Lieutenant is eligible for TMWP, the Police Chief of Police may assign that Lieutenant to a temporary modified work program. The Town shall have the right to require that the Lieutenant be examined by a Town-designated physician in order to confirm the Lieutenant's ability to return to temporary modified work.

**Section 3. General Provisions**

- (a) Temporary modified work duties shall be related to law enforcement and shall include, but not be limited to, the following: data entry, report writing, community education, research, and training.
- (b) The Chief of Police, at his or her sole discretion, may limit the number of Lieutenants on temporary modified work plans at any given time. TMWP shall be reviewed on a periodic basis and notice shall be provided to the Lieutenant whether or not the TMWP is to continue. In no event will a Lieutenant be authorized for TMWP in excess of six (6) consecutive months without the advance written approval of the Town Manager or his or her designee.
- (c) The Chief of Police may change the work schedule of the Lieutenant if the work assignment clearly requires an alternative shift schedule. Such work shift shall remain only for the period of the TMWP. Schedules will be developed in order to accommodate the Lieutenant's need for on-going treatment. No Lieutenant regularly assigned to a shift shall be involuntarily reassigned in order to accommodate a Lieutenant on a Temporary Modified Work Program.

**ARTICLE 13  
BEREAVEMENT LEAVE**

**Section 1.** Bereavement leave without loss of regular straight time pay for normally scheduled working hours, not to exceed five (5) consecutive calendar days per occurrence, shall be granted to any employee on account of a death in the immediate family of the employee. Such leave to be granted beginning with the date of death or concluding two days after the funeral or other service.

**Section 2.** For the purposes of this Article, the term "immediate family" is defined as parents of the employee, spouse, parents of spouse, children, brothers, sisters, and grandparents of the employee.

**Section 3.** Bereavement leave of one (1) day may be allowed because of the death of a brother-in-law, sister-in-law, aunt or uncle of the employee.

**ARTICLE 14**  
**VACATION**

(a) Employees will be credited with vacation leave on the first day of the calendar year for use during that calendar year. Employees who are on unpaid leave status shall have their vacation adjusted in accordance with Article 6, Leaves of Absence.

(b) Vacation Leave will be granted as follows:

<u>Length of Continuous Service</u>	<u>Vacation Leave Allowance As of January 1</u>
Less Than 5 Years:	14 Days
5 to 9 Years	21 Days
10+ Years:	28 Days

(c) **Transition Year Rate** Vacation leave allowance rates will be adjusted on the first day of the calendar year in which an employee will be eligible for additional vacation leave.

(d) **Vacation Carry Over** Employees shall not be allowed to carry unused vacation from one calendar year to the next, except that employees whose December vacation is canceled by the Chief of Police may carry one week of vacation from one calendar year to the next.

(e) **Employee Termination** When employment is terminated for any reason, the employee shall be entitled to receive payment for that portion of his/her vacation accumulation not yet taken for the current calendar year, subject to adjustment in accordance with Article 6, Leaves of Absence.

(f) **New Employees** New employees shall be granted a proportionate amount of vacation as the number of full calendar months to be worked in the current year bears to the full calendar year.

(g) **Vacation Use** At the discretion of the Chief of Police, members of the bargaining unit may use vacation leave in four (4) hour increments not to exceed ten (10) times per calendar year.

**ARTICLE 15**  
**CLOTHING ALLOWANCE**

(a) Each member of the bargaining unit shall be provided with an appropriate uniform as determined by the Chief of Police at the inception of his/her initial employment. It is understood that payment of the clothing allowance and cleaning allowance in

the form of salary will not relieve members of the bargaining unit from their responsibility of being presentable and properly equipped at all times as determined by the Chief of Police or a designee.

- (b) Uniform items will be replaced by the Town upon a determination by the Chief of Police that said items have been rendered unfit by exposure to contaminants or hazardous materials, or have been otherwise damaged in the line of duty. Such replacements will be provided within 30 days to the extent feasible.

**ARTICLE 16  
SALARY**

**Section 1.** The following salary rates shall be in effect:

FY2017 Effective July 1, 2016

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	MAX
Lieutenant	\$108,000	\$110,970	\$114,022	\$117,157	\$120,379

FY2018 Effective July 1, 2017

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	MAX
Lieutenant	\$110,700	\$113,744	\$116,872	\$120,086	\$123,389

FY2019 Effective July 1, 2018

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	MAX
Lieutenant	\$113,468	\$116,588	\$119,794	\$123,088	\$126,473

**Section 2. Night Differential** Members of the bargaining unit regularly assigned to all evening or midnight shifts, as designated by the Chief of Police, shall receive night differential in the amount of \$23.50 per shift.

**ARTICLE 17  
PAID DETAILS**

**Section 1. Private Detail Rates**

Basic Rate	\$48
Strike Rate	1.5 times the Basic Rate

The final determination regarding the classification of a detail assignment will be made by the Town. The word “strike” shall include any private detail hired because of actual or potential labor unrest or dispute, including strikes, lock-outs, or labor-related picketing.

**Section 2.** The Town may, at its sole discretion, change the detail rates outlined in Section 1; provided, however, that such detail rates shall in no event be lower than those paid to other employees of the Police Department authorized to work details.

**Section 3. Town Detail Rates**

Basic Rate	\$41
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For the purposes of this Section, Town details shall be defined as work performed at the request of a Town department, excluding work performed by outside contractors, Section 4 shall not be interpreted as a waiver of the Town's or Association's respective positions as to who may work Town details.

**Section 4.** The Town of Needham reserves the right to assign an administrative fee to the extent authorized by state law on non-Town details, excluding details worked pursuant to Town contracts.

**Section 5.** To ensure expeditious payment of outside detail monies earned, the Town shall establish and maintain a special fund of ten thousand (\$10,000) for payment of outside detail monies for details worked by employees of the Police Department as authorized by Massachusetts General Law, Chapter 44, Section 53C. Payment of such monies owed will thereafter be made within three (3) weeks from the date on which such detail was performed.

**Section 6.** Lieutenants working paid details shall be guaranteed a minimum of four (4) hours pay. Lieutenants working details beyond four (4) hours shall be guaranteed four (4) hours additional pay for hours worked between four (4) and eight (8) hours. Hours worked beyond eight (8) hours shall be paid on an hour for hour basis. Those details which last for more than eight (8) hours of continuous duty by the Lieutenant shall be paid at an additional half time for all hours or a portion thereof, worked in excess of eight (8) hours.

**ARTICLE 18  
STABILITY OF AGREEMENT**

**Section 1.** No agreement, understanding, alteration or variation of the agreements, terms or provisions herein contained shall bind the parties hereto unless made and executed in writing by the parties hereto.

**Section 2.** The failure of the Town or the Association to insist, in any one or more incidents upon performance of any of the terms or conditions of this Agreement shall not be considered as a waiver or relinquishment of the right of the Town or of the Association to future performance of any such term or condition, and the obligations of the Association or of the Town to such future performance shall continue in full force and effect.

**ARTICLE 19**  
**SETTLEMENT OF GRIEVANCES**

**Section 1.** A grievance is an employee's expressed feeling of dissatisfaction, presented in writing, concerning aspects of his/her employment or working conditions, which has not been resolved to the employee's satisfaction through informal discussion. Such grievance may relate to the interpretation or application of, or compliance with, any of the provisions of said Agreement. Grievances of the employees shall be advanced to the Town by the Association, but nothing in this Article shall prevent individual employees from presenting their own grievances, provided that any settlement of such individual grievances shall not be inconsistent with the terms of the Agreement.

**Section 2.** It is anticipated that the Town and the Association will make a sincere effort to reconcile their differences. The following procedures are established for settlement of grievances:

**A.** The employee's grievance must contain the following information:

- (1) a statement of the grievance which cites that part of the Agreement which has been violated, or the circumstances which gave rise to the grievance;
- (2) a statement of remedial action or relief sought;
- (3) evidence (documentary, if available) to support the grievance; and
- (4) a statement of reasons why the aggrieved believes that the remedy should be granted.

**B. Step One (1)**

Any grievance must be presented for discussion with the Chief of Police within five (5) business days of the occurrence of the event(s) giving rise to the grievance, or, within five (5) business days of the Association's gaining knowledge of such event(s), whichever is later. The Chief of Police must make his or her decision within five (5) working days after receipt of the grievance, unless it is mutually agreed by the participants that additional time to answer is allowed.

**C. Step Two (2)**

Should the grievance remain unsettled, the employee or the Association must present it to, the Director of Human Resources within ten (10) business days after the decision of the Chief of Police is rendered, otherwise the matter will be considered resolved. The Director of Human Resources shall make his/her decision within fifteen (15) business days after receipt of the grievance unless it is mutually agreed by the participants that additional time to answer is allowed.

**D. Step Three (3)**

- (1) Should the Association wish to appeal the decision of the Director of Human Resources, it shall present the grievance to the Personnel Board/Town Manager within ten (10) business days after the decision of the Director of Human Resources is rendered, otherwise the matter will be considered resolved. If, after its own investigation, the Personnel Board/Town Manager agrees with the decision of the Director of Human Resources, the Personnel Board/Town Manager will issue a decision.
- (2) If the Personnel Board determines that it will require additional information before issuing a decision, it will convene a meeting of the Joint Resolution Committee (JRC). The JRC will be comprised of two (2) members of the Personnel Board and two (2) members of the Board of Selectmen and the Town Manager.
- (3) The JRC shall present its findings to the Personnel Board/Town Manager. Three (3) affirmative votes of the JRC will be required to overturn the decision of the Director of Human Resources (Step 2). If the JRC is deadlocked, voting two (2) for and two (2) against the previous ruling, the Personnel Board/Town Manager shall then issue a decision based upon the majority vote of the Personnel Board/Town Manager.
- (4) The Personnel Board will issue a decision within 30 business days of receipt of the grievance by the Director of Human Resources. The timeframes in this section may be extended at the agreement of the parties.

**E. ARBITRATION**

Should the grievance remain unsettled after the decision of the Personnel Board, the Association may, by giving written notice to the Town Manager, submit the grievance to arbitration. Such notice shall be given within fifteen (15) business days from the date of the decision of the Personnel Board. If such written notice is not given, the grievance shall be deemed to be settled.

- (1) In the event that the Association elects to submit a grievance to arbitration, the arbitrator shall be selected according to, and be governed by, the following procedure: The arbitrator is to be mutually selected by the Town and the Association. If the Town and the Association cannot agree within fifteen (15) business days after the written notice specified above of the intention to arbitrate, then the party demanding arbitration shall, within five (5) business days thereafter, request the American Arbitration Association to provide a panel of arbitrators. Said arbitrators are then to be selected under the provisions of a Voluntary Labor Arbitration Rules.
- (2) ~~The fees of the American Arbitration Association and of the arbitrator and the expenses of any required hearings shall be shared equally by the Association and the~~

Town, but each party shall bear the expenses of its representatives, participants, witnesses and for the preparation and presentation of its own case. The obligation of the Town and its agents under the terms of this section shall be limited to those obligations which the Town and its agents may legally undertake, and in no event shall any present or future member of the Personnel Board or Board of Selectmen have any personal obligation for payment under the provisions of this contract.

- (3) The arbitrator's award shall be in writing and shall set forth the arbitrator's findings of fact with reasoning and conclusions. The arbitrator shall arrive at his/her decision solely upon the facts, evidence and contentions presented by the parties through the arbitration proceeding. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, and in reaching his/her decision shall interpret the Agreement in accordance with the commonly accepted meaning of words used herein and the principle that there are no restrictions intended on the rights or authority of the Town or Chief of Police other than those expressly set forth herein. The award of the arbitrator shall be final and binding upon the Town, its officers and agents and upon the Association and the employees whom it represents.
- (4) Notwithstanding anything to the contrary, no dispute or controversy shall be the subject of arbitration unless it involves the interpretation or application of provisions of this Agreement. The parties may, by mutual agreement, submit more than one pending grievance to the same arbitrator.

## **ARTICLE 20 STABILITY AND SUBORDINATION**

**Section 1.** Should any of the provisions of this Agreement become invalid or should their efficacy become doubtful or questionable because of existing federal or state legislation, a Town Charter, a Civil Service rule or regulation, a decision by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby.

**Section 2.** In the event that this Agreement or any part or provision thereof conflicts with any State or Federal law, or Town Charter, this Agreement or any such part or provision thereof shall be subordinate to any such State or Federal law, ordinance, or Town Charter as long as such conflict remains. Nothing in this Agreement shall diminish the authority and power of the Civil Service Commission, any Retirement Board or Board of Selectmen established by law.

## **ARTICLE 21 EDUCATIONAL INCENTIVE COMPENSATION**

**Section 1. Educational Committee** There shall be established an Educational Committee (hereinafter referred to as the Committee) comprised of the Chief of Police, the Director of Human Resources, and a member of the Needham Police Superior Officers Association designated by the

Association President. It shall be their responsibility to supervise and implement the programs listed below. They shall have the following responsibilities:

- (a) Certification of credit after submission of proof by a Lieutenant and authorization for payment of incentive pay.
- (b) Establishing of in-service training courses.
- (c) Approval of payment of Career pay upon completion of courses.

**Section 2. Educational Incentive**

- (a) Effective July 1, 1998, Lieutenants must qualify under M.G.L. c. 41, Section 108L in order to receive educational incentive pay.
- (b) Members of the bargaining unit appointed after July 1, 2009 and who are not eligible to receive educational incentive pay in accordance with M.G.L. c. 41 Section 108L shall be eligible for the following:

For a qualifying Associate's Degree	7.5% per year, paid weekly
For a qualifying Bachelor's Degree	15% per year, paid weekly
For a qualifying Master's or Law Degree	15% per year, paid weekly

For the purposes of this Sub-section, "qualifying degree" shall be defined as that which would be qualifying under M.G.L. c. 41 Section 108L.

**ARTICLE 22**

**DISCIPLINE, DISCHARGE, AND EMPLOYEES PERSONNEL FILES**

**Section 1.** No bargaining unit employee shall be disciplined or discharged without just cause.

**Section 2.** Bargaining unit employees shall be informed in writing of any and all pending charges. Employees shall have the right, upon request, to have an attorney and/or a Association representative to represent him/her and to be present during the disciplinary proceeding.

**Section 3.** Any formal civilian complaint filed against a Lieutenant shall not be processed by the Town unless presented in the form of a written affidavit, signed under penalties of perjury. No disciplinary action will be taken by the Chief of Police against any Lieutenant on a civilian complaint until the Lieutenant has been charged in writing and given the opportunity to respond to the complaint.

**Section 4.** Any letter of reprimand placed in an employee's file shall be subject to review after a period of two years and if at that time the employee has received no further letter of reprimand or

has not been found guilty of any violation of the Needham Police rules and regulations and policy procedures, the letter of reprimand shall be removed from the employee's personnel file.

**Section 5.** An employee may inspect his/her own personnel file during normal business hours upon reasonable notice to the human resources office and in the presence of a member of the human resources office. An employee shall at any time have the right to respond to any reprimand or other unfavorable material contained in his/her personnel file, and such response shall be inserted in the personnel file, where it shall remain as long as does the unfavorable material.

## **ARTICLE 23 INDEMNIFICATION**

The Town shall indemnify and hold bargaining unit employees harmless from any liability arising from their acting within the scope of their employment. In the event that an application for a criminal complaint is made against a Lieutenant for action taken in the performance of his/her duty and the Lieutenant is found not guilty or the application for the criminal complaint against said Lieutenant is denied, the Town will reimburse the Lieutenant for legal fees incurred up to \$3,000.00 for the hearing on the application for complaint, up to \$10,000.00 for a district court trial and up to \$25,000.00 for a superior court trial or federal district court trial. In the event that the legal fees exceed the above-stated limits, the Board of Selectmen may in its sole discretion recommend approval of payment of additional fees.

## **ARTICLE 24 LAY-OFFS & RECALL**

**Section 1.** Lay-offs shall be made in accordance with the provisions of the Civil Service Law, as amended, or successor law or act. In the event that, for any reason, the Civil Service Law, or successor law or act shall not apply, then lay-offs shall be made by seniority. For purposes of this paragraph seniority shall be determined by date of permanent appointment to the Department.

**Section 2. Recall/Reinstatement Benefits** In the event that a Lieutenant is laid off and reinstated in accordance with the provisions of Civil Service Law, he/she shall be entitled to the following benefits upon return:

- (a) **Seniority** Seniority shall be determined by Civil Service Law.
- (b) **Sick Leave** The recalled Lieutenant shall be credited with his/her non-occupational sick leave bank as of the time of the lay-off. The Lieutenant shall not accrue sick leave during the period that he/she was separated from his/her permanent position.
- (c) **Vacation** The recalled Lieutenant shall be granted credit for prior service for the purposes of vacation. The Lieutenant shall not be entitled to vacation for the period that he/she was separated from his/her permanent position. Upon re-hire, the

Lieutenant shall be granted a proportionate amount of vacation as the number of full calendar months to be worked in the current year bears to the number of calendar months in a year. Partial vacation days shall be rounded up to the closest whole number.

- (d) **Step Raises** The recalled employee shall be reinstated at the step rate in which he/she was paid at the time of the lay-off. The Lieutenant's next step date shall be adjusted by the number of calendar days that he/she was separated from his/her permanent position.

## **ARTICLE 25 EFFECT OF AGREEMENT**

**Section 1.** This Agreement contains and constitutes the entire Agreement between the Town and the Association arrived at as a result of collective bargaining. No amendment, extension, or alteration of this Agreement and no other Agreement between the parties hereto which is inconsistent with the terms hereof shall be effective or enforceable unless it is in writing and signed by the parties hereto.

**Section 2.** The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in the Agreement. Therefore, the Town and the Association for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered by this Agreement.

**Section 3.** The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent with respect to future enforcement of all the terms and conditions of this Agreement.

**Section 4.** No provision of this Agreement shall be retroactive prior to the effective date unless otherwise specifically stated herein.

**Section 5.** Where this Agreement requires the appropriation of funds or other vote on the part of the Town to effect the carrying out of any provision hereof, to that extent this Agreement is subject to such action as may be taken by the Town Meeting pertaining to the required appropriation or other vote.

## **ARTICLE 26 BEFORE-TAX PREMIUM PAYMENT PLAN**

**Cafeteria Plan** The Town shall institute a so called "cafeteria plan" in compliance with state

law and the Internal Revenue Code. The parties agree that any reasonably incurred administrative expenses will be paid by those employees participating in said plan. The Town, at its sole option, may terminate non-health insurance cafeteria plans on a Town-wide basis, with 60 days' notice.

## **ARTICLE 27 ANNUAL PERFORMANCE EVALUATION PLAN**

The Chief of Police, in consultation with the Lieutenants covered by this Agreement, shall develop and implement a Performance Evaluation Plan for each Lieutenant. The purpose of each Plan shall be for identifying performance objectives for training and career development purposes and shall be developed as to be consistent with the accreditation process as outlined by the Commission on Accreditation for Law Enforcement Agencies. The agreed upon Plan shall be in written form and signed by the Chief and each Lieutenant. Annually, the Chief of Police shall provide a written evaluation as to the Lieutenant's progress in obtaining the objectives set forth in the Plan. In addition, the Plan shall be updated annually for the coming year.

## **ARTICLE 28 MISCELLANEOUS PROVISIONS**

**Section 1.** In case of death of a member of the bargaining unit while employed, all wages due to that employee, including but not limited to sick leave buy back, vacation and compensatory time, shall be paid to the pension beneficiary of the employee on file with the Needham Retirement Board, unless the employee explicitly states otherwise in writing.

**Section 2.** The Town will pay an amount not to exceed \$5,000 for the funeral expenses of a Lieutenant killed in the line of duty. This section shall apply to a Lieutenant who, while in the performance of his/her duty and as a result of incident, accident or violence is killed or sustains injuries which are the direct and proximate cause of death. The presumptions created by M.G.L. Chapter 32 Section 94, 94A, and 94B shall not apply for the purposes of this section.

**Section 3. Non-Discrimination** Neither party will discriminate against any employee or applicant for employment by reason of his or her race, sex, age, color, religion, national origin, sexual orientation, or disability.

**Section 4. Vehicle Use** Incorporated herein by reference and considered an integral part thereof is the Town of Needham Vehicle Use Policy dated March 10, 1997, amended as follows:

- (a) Section V (B) is amended by striking the words "Appointing Authorities" and "appointing authority/department manager" and inserting in place thereof the words "The Chief of Police."
- (b) Section V (D)(10) is amended by striking the words "Town Administrator" and inserting in place thereof the words "Chief of Police."

- (c) Section V (D) (2) is amended by inserting the words "except as otherwise permitted hereunder or in extenuating circumstances." at the end of the last sentence.

**Section 5. Promotion** To the extent that the title of Chief of Police and Deputy Chief of Police remain subject to the provisions of M.G.L. c. 31 (Civil Service), the Association agrees that the Town may change its method of selecting candidates for promotion to the rank of Chief of Police and Deputy Chief of Police. The determination of the appropriate method of selection shall be the exclusive prerogative of the Town Manager, consistent with State law and the Town Charter. The Town agrees that the same method of selection for promotion to the rank of Chief of Police and Deputy Chief of Police will apply to all applicants, of any rank, for the position.

**Section 6. Drug and Alcohol Testing Policy** The Association agrees to implement and incorporate into this agreement by reference the Needham Police Department Drug and Alcohol Testing Policy, dated July 1, 2003.

**Section 7 401A Retirement Plan** The Town will contribute up to \$1,500 annually to a retirement plan in a two for one match. For every \$2 contributed by the employee to a 457 deferred compensation plan, the Town will contribute \$1 to a 401A retirement plan.

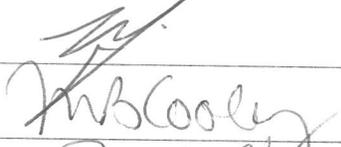
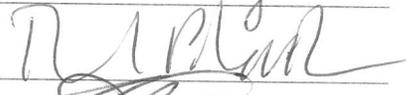
**Section 8. Residency** Members of the bargaining unit may establish residency in a city or town whose perimeter is within 20 miles of the perimeter of the Town of Needham.

**Section 9. Direct Deposit** The Town is authorized to require that all members of the bargaining unit participate in the direct deposit program.

**Section 10 Bi-Weekly Payroll** The Town is authorized to implement bi-weekly payroll when and if the members of the Needham Police Union are subject to bi-weekly payroll as well.

IN WITNESS THEREOF, the Town has caused this instrument to be duly executed by its authorized designees and has caused this instrument to be signed by its proper officers hereunto duly authorized this 22 day of November, 2016.

**BOARD OF SELECTMEN**

  
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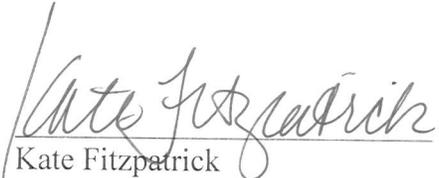
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**POLICE SUPERIOR OFFICERS ASSOCIATION**

  
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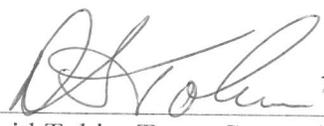
Date: 11-14-16

**Town Manager**

  
\_\_\_\_\_  
Kate Fitzpatrick

Date: 11-14-2016

**Approved as to form**

  
\_\_\_\_\_  
David Tobin, Town Counsel

Date: 11/25/16

**Needham Police Department**

**Drug and Alcohol Testing Policy**

**July 1, 2003**

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## 1. INTRODUCTION

- 1.1 To ensure a safe, healthful and productive work environment, to protect the health and welfare of the citizens of the Town of Needham, and to assure compliance with the Federal Drug-Free Workplace Act of 1988, the department has adopted this policy to address drug and alcohol abuse by sworn personnel. These procedures provide the department with reasonable measures to ensure that drug and/or alcohol use do not jeopardize the public or the department's ability to serve its citizens.
- 1.2 It is the general intent of the policy to create a humanitarian program. Treatment and discipline are both important aspects of the plan. Drug and alcohol testing, which will be part of the program, are intended in part as a means of identifying those who need help.
- 1.3 The department will not tolerate any drug or alcohol use which could affect an officer's job performance. The public has a right to expect that sworn personnel will carry out their duties in a safe and reliable manner, free from the effects of drug or alcohol use. This policy replaces any and all earlier policies or procedures on drug testing and applies to all sworn personnel.

These procedures apply to all sworn personnel. The department reserves the right to modify these procedures, in whole or in part, only in accordance with law and contractual procedures.

## 2. DEFINITIONS

- 2.1 Illegal Drugs – for the purposes of this policy, illegal drugs will include: Amphetamines, Cocaine, Marijuana, Opiates, and Phencyclidine.
- 2.2 Alcohol - colorless, volatile and flammable liquid that is the intoxicating agent in fermented and distilled liquors. It includes, but is not limited to, beer, wine and liquor. It does not include alcohol used in chemical processing, cleaning or testing.
- 2.3 Department - the Needham Police Department.

- 2.4 Department Property - includes buildings, offices, facilities, equipment, vehicles, land, and parking lots owned, loaned, utilized or leased by the department. It also includes any other site at which business of the department is transacted, whether on or away from department owned, loaned, or leased property.
- 2.5 Accident - an unplanned, unexpected and unintended event which occurs on department property, on department business, or during working hours; and initially appears to have been caused wholly or partially by a sworn police officer, and results in either a fatality, bodily injury requiring medical treatment away from the scene of the event, or damage to property in excess of \$2,500. An unplanned, unexpected and unintended discharge of a firearm, rifle, and/or shotgun, is also an “accident.”
- 2.6 Drug Paraphernalia - any item which is clearly intended for use in administering, transferring, manufacturing, testing, or storing of a controlled substance, and which is not authorized or intended for use in the course of legitimate law enforcement activities.
- 2.7 Reasonable Suspicion of Drug and/or Alcohol Use - the reasonable suspicion standard for drug testing of sworn personnel is based upon specific objective facts and reasonable inference drawn from those facts, in light of experience and training, that the suspected individual may be involved in the use of any illegal drug or alcohol, as documented in accordance with Appendix A of this policy. Examples would include one or more of the following:
- 2.7.1 Observable phenomena, such as direct observation of on-duty alcohol use or possession and/or direct observation of on-duty or off-duty use or possession of illegal drugs, and/or the on-duty display of behaviors which appear to be indicative of the use of any illegal drug or alcohol, and are not attributable to other factors;
  - 2.7.2 A pattern of abnormal conduct, erratic behavior or deteriorating work performance, including but not limited to, frequent absenteeism, excessive tardiness, or frequent accidents, not attributable to other factors and which appear to be related to drug and/or alcohol abuse;
  - 2.7.3 Arrest, indictment, or conviction for a drug-related offense;
  - 2.7.4 Newly discovered evidence that the officer has tampered with a prior drug/alcohol test;
  - 2.7.5 Repeated or flagrant violations of the department’s rules and procedures which are determined by a supervisor to pose a substantial risk of injury or property damage, which are not attributed to other factors, and which appear to be related to drug and/or alcohol abuse;

- 2.8 Under the influence of Illegal Drugs and/or Alcohol - The presence of a .04 alcohol content in the blood, or a verified positive drug test, at levels specified by the National Institute of Drug Abuse (NIDA), for an illegal drug.
- 2.9 Medical Review Officer (MRO) - A licensed physician responsible for receiving laboratory drug testing results who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate a positive test relative to the officer's medical history, and other relevant biomedical information.
- 2.10 Investigating Officer (IO) - The Chief of Police or his/her designee. The IO will perform many of the administrative duties associated with this policy.
- 2.11 Substance Abuse Professional (SAP) – an individual who is qualified by virtue of training and education in the treatment of substance abuse, who is retained by the Town to recommend and/or review an officer's drug and/or alcohol treatment program.

### 3. **PROHIBITED CONDUCT**

The following conduct by sworn personnel is prohibited

- 3.1 Unauthorized use, possession, manufacture, distribution, dispensation or sale of illegal drugs, drug paraphernalia, or alcohol on department property, on department business, in department supplied vehicles, in vehicles being used for department purposes, or during working hours.
- 3.2 Unauthorized storage in a department desk, locker, automobile or other repository on department property of illegal drugs, drug paraphernalia, or alcohol.
- 3.3 Being under the influence of illegal drugs or alcohol on department property, on department business, in department supplied vehicles or vehicles being used for department business, on duty, or during working hours.
- 3.4 Possession, use, manufacture, distribution, dispensation or sale of illegal drugs while off duty.
- 3.5 Switching or adulterating any urine sample.
- 3.6 Refusing to consent to testing, or refusing to submit a breath or urine, sample for testing.
- 3.7 Failing to adhere to the terms of any Rehabilitation Agreement, which the officer has signed.
- 3.8 Conviction under any drug or alcohol statute in Massachusetts or any other state.
- 3.9 Failure to immediately notify the department of any arrest, conviction, or complaint being issued under any drug or alcohol statute.

- 3.10 Refusing to sign: a receipt for the department' s Drug and Alcohol Testing Policy; a form to consent to testing pursuant to this policy; a form to release results to the Town pursuant to this policy; and any Chain of Custody Form.
- 3.11 Failure to submit to a breathalyzer and/or urine test, when ordered by a supervisor, in accordance with Section 4 of this policy.
- 3.12 Drinking alcoholic beverages while on duty or in uniform, or being in possession of alcoholic beverages on duty, except as ordered or in the performance of official duties.
- 3.13 Public drunkenness to the extent that it constitutes conduct unbecoming a police officer.
- 3.14 Use of illegal drugs, or possession of illegal drugs, except as required in the performance of official duties. Officers suspected of using illegal drugs shall, when ordered by a supervisor, submit to urine test, in accordance with Section 4 of this policy.
- 3.15 Consumption of alcoholic beverages to the extent that the officer is unfit for his or her next regular tour of duty.

#### 4. TESTING

Sworn personnel of the Needham Police Department will be tested for drugs and/or alcohol under the following circumstances:

##### 4.1 Reasonable Suspicion of Drug and/or Alcohol Use

- 4.1.1 Sworn personnel will be tested for drugs and/or alcohol when a supervisor determines that there is reasonable suspicion (as defined in Section 2.7 of this policy) to believe that the officer is under the influence of drugs and/or alcohol, but only after compliance with the procedures set forth in Appendix A.
- 4.1.2 Any test result based upon reasonable suspicion will be discarded if it is later determined that reasonable suspicion did not exist. The results of the test cannot be used to establish reasonable suspicion. If the officer tests negative for drugs or alcohol, the officer will be compensated for any regularly scheduled hours he/she would have worked during this period.
- 4.1.3 An officer will be placed on administrative leave while waiting for a test result based on reasonable suspicion, in accordance with the provisions of the collective bargaining agreement. Said leave shall not exceed seven (7) days.
- 4.1.4 In the event the initial reasonable suspicion drug test is positive, time restraints for administrative leave will be waived to allow for additional procedural testing, as authorized and allowed under the DOT Regulations, to occur. The officer shall remain on paid administrative leave until the conclusion of the additional procedural testing.

- 4.2 Post-Accident - An officer will be subject to a post-accident drug and alcohol test if he or she is involved in an accident as defined in Section 2.5 of this policy.
- 4.3 Annual Testing - In a joint desire to achieve and maintain a work force that is 100% drug free, all sworn personnel shall be subject to annual drug testing. The Department shall schedule such examination within 30 days of the officer's birthday, and will so notify each officer as far in advance as practicable.
- 4.4 Random Testing - Fifty percent (50%) of the bargaining unit will be subject to random, unannounced testing for illegal drugs and twenty-five percent (25%) of the bargaining unit will be subject to random, unannounced testing for alcohol on an annual basis. The Town will disclose to the Union the random testing mechanism used by its contracted vendor. Any test which it is determined not to have been conducted on a random basis will be deemed to be a negative result.
- 4.5 Return to Duty - When an officer tests positive for drugs or alcohol, he or she will be required to submit to a return to duty drug and/or alcohol test after assessment by a substance abuse professional (SAP), completion of treatment, if any is required, and clearance to return to full-duty is provided by the SAP. In order to return to duty, the officer must have a BAC of less than .02 and/or a verified negative drug test. Without a successful test result, the Officer is considered to be unqualified to continue to perform work-related-functions. The cost of the return to duty test will be borne by the Town.
- 4.6 Follow-up Testing - Sworn personnel referred by the department to treatment, and who undergo any form of treatment for substance abuse, will be subject to unannounced testing for a period of two years following a return to full duty (which shall be subject to a medical certification that the officer is qualified to safely carry a weapon). Follow-up testing will be limited to three (3) tests per year, and the cost of the follow-up testing will be borne by the Town.
- 4.7 Testing Procedures
- 4.7.1 Alcohol Testing Alcohol testing will be conducted in accordance with the Department of Transportation Regulations (49 CFR part 40).
- 4.7.2 Drug Screening Drug tests will consist of screening for five drugs, classes of drugs, or their metabolites: marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine (PCP), and amphetamines. Drug screening using urinalysis will be conducted in accordance with the Department of Transportation Regulations (49 CFR part 40).
- 4.8 Re-tests
- 4.8.1 The Urine drug screen process will include provisions for split sample collection in accordance with DOT regulations.

- 4.8.2 Alcohol testing will include provisions for re-testing in accordance with DOT regulations.
- 4.8.3 The department shall immediately place any officers who have requested a re-test on administrative leave pending the outcome of the re-test.
- 4.8.4 The cost of the re-test will be borne by the officer. If the result of the re-test result is negative, the officer shall be reimbursed for the costs of the test.
- 4.9 Any test in which proper procedures are not followed, in which chain of custody is breached, in which a split sample test results in a negative test, when the MRO deems the test to be negative, or which is invalidated for any reason, through no fault of the officer, will be deemed a negative result. The sample and the results will be destroyed.
- 4.10 If the result of any test is negative, or deemed negative, for drugs or alcohol, the officer will be compensated for any regularly scheduled hours he/she would have worked during any period he or she was placed on administrative leave.
- 4.11 No test result or sample will be used for criminal prosecution or any purpose other than treatment or discipline under this policy. No officer will be compelled to submit to testing in accordance with Section 2.7.3 unless the department can provide written assurance that the results will not be provided to any law enforcement agency in connection with the arrest or indictment, or in connection with any sentencing.
- 4.12 All negative samples will be destroyed, and all positive samples will be destroyed after any appeal period has been exhausted. Samples will not be tested for any purpose other than the drugs specified.

## **5. CONSEQUENCES OF VIOLATION OF THE POLICY**

- 5.1 Officers who test positive for alcohol or drugs will be placed on administrative leave during the period of any retest.
- 5.2 Officers who are confirmed to have tested positive for drugs or alcohol will be subject to disciplinary action up to and including termination. Officers who do not agree to enter into a Rehabilitation Agreement will only be allowed to return to work, if appropriate, in accordance with the Return to Duty and Follow-up testing provisions set forth in sections 4.5 and 4.6.
- 5.3 Officers who agree to enter into a Rehabilitation Agreement in accordance with this policy and Appendix B will have any imposed disciplinary action suspended pending the completion of the rehabilitation, provided that the officer has not tested positive for drugs within the preceding five (5) years or tested positive for alcohol within the preceding three (3) years. In the event that the officer successfully completes the rehabilitation and returns to work in accordance with the provisions outlined below, the imposed

disciplinary action will be expunged. Rehabilitation provisions will apply only to the positive test result; an officer may be subject to additional disciplinary action for any related offense or violation of the rules and regulations of the Needham Police Department.

- 5.4 Officers who enter into a Rehabilitation Agreement must be evaluated by a Substance Abuse Professional (SAP) and comply with any treatment recommendations to assist them with an alcohol or drug problem. The payment of the recommended treatment will be at the expense of the officer (or his or her health insurance program, if applicable). Officers will be placed on non-occupational sick leave, accrued leave, or leave without pay status, whichever is appropriate, during the treatment period. Officers who fail to comply with the treatment required by the SAP will be subject to disciplinary action up to and including termination.
- 5.5 Officers who have been evaluated by a Substance Abuse Professional, who are cleared by the SAP to perform all of their essential functions, who comply with any recommended treatment, who have taken and passed a return to duty test, and who are subject to unannounced follow-up tests, may return to work. As a condition of employment, the officer must comply with prescribed follow-up care, if any.
- 5.6 Officers who have returned to work under these conditions and who subsequently test positive for drugs or alcohol in accordance with this policy within five (5) or three (3) years, respectively, will be terminated immediately. An officer who tests positive for drugs or alcohol after the five (5) or three (3) year period will be subject to disciplinary action or offered rehabilitation provisions as if it were a first positive **test**.
- 5.7 Refusing to submit to a drug or alcohol test will result in disciplinary action up to and including termination.
- 5.8 Switching or adulterating any or urine sample will result in a recommendation of termination.
- 5.9 Failure to adhere to the terms of a rehabilitation agreement shall result in disciplinary action up to and including termination.
- 5.10 Officers may challenge a finding of reasonable suspicion through the grievance and arbitration provisions of the collective bargaining agreement. In the event that the officer prevails and reasonable suspicion is not upheld, the result will be deemed to be negative.
- 5.11 If the Town suspends disciplinary action in accordance with section 5.3, time limits for challenging the disciplinary action will begin when and if the disciplinary action is actually imposed.

## **6. TRAINING**

- 6.1** The Town will provide a minimum of two (2) hours of training annually for supervisors regarding misuse of alcohol and use of illegal drugs, including the circumstances which constitute reasonable suspicion.
- 6.2** The Town will provide training to officers about this Policy, testing procedures, and the integrity of the testing process which safeguards the validity of test results, prior to this policy going into effect.

## **7. ACCESS AND STORAGE OF TEST RESULTS**

Any officer who is the subject of a test conducted under this procedure shall, upon written request to the Chief of Police, have access to any and all record(s) relating to his/her test result that is/are in the possession of the department or the Town. Such results and records are confidential medical information and shall not be disclosed without the officer's consent except to the extent necessary to effectuate the purposes of the department's Drug and Alcohol Policy. Positive test results shall be retained and processed in the same manner as any violations of department rules and procedures.

## Appendix A

### REFERRAL PROCEDURES FOR SUPERVISORS

The department's supervisors (Sergeants, Lieutenants, Chief) are responsible for being alert to declining job performance, erratic behavior or other symptoms of possible substance abuse. Whenever a supervisor who has been trained in making determinations of reasonable suspicion of drug and/or alcohol use (as defined in Section 2.7 of these procedures) makes such a determination, the following steps will be taken:

1. The supervisor will document in writing all circumstances, information and facts leading to and supporting his/her suspicion. At a minimum, the report will include appropriate dates and times of suspect behavior, reliable/credible sources of information, rationale leading to referral for testing, and the action(s) taken.
2. Prior to referring an officer for testing, the supervisor will discuss the problem with the officer in a private location with one witness, preferably another supervisor, present. Caution will be taken not to accuse the officer of substance abuse, but the officer will be presented with instances of questionable behavior. If the officer does not have an acceptable explanation for his questioned behavior, the supervisor will continue with the procedures set forth in this section. Nothing in this procedure is intended to prevent the officer from invoking any Weingarten rights the officer may have. The officer shall have the opportunity to consult with a representative of the Union or his or her attorney, and to have either present, as long as such consultation and representation does not serve to delay the testing process.
3. The supervisor shall consult with the Chief of Police or his or her designee and they shall jointly decide whether to refer an officer for testing. All persons involved in the decision-making process will have received training in the identification of actions, appearance, and conduct that are indicative of the use of alcohol and/or drugs.
4. In those cases where the supervisor determines that the person's behavior causes a potential threat of harm to himself or others, the officer will be immediately removed from the work site and where there is no other misconduct resulting in suspension the officer shall be placed on administrative leave and shall be subject to customary restrictions of such leave.
5. Once a determination has been made to refer an officer for testing, it will be the responsibility of the supervisor to advise the officer of such decision and to escort the officer to a collection facility. The supervisor should remain with the officer at the collection site facility until testing is concluded. In the event that leaving the scene and/or remaining with the officer is not feasible, the supervisor will:
  - 5.1 Arrange transportation to the collection facility (the officer will be instructed not to drive a vehicle);

- 5.2 Notify the collection facility that the officer is being sent for testing;
- 5.3 Request that the collection facility notify the supervisor when collection procedures are completed;
- 5.4 Arrange transportation for the officer following the collection process; and
- 5.5 Notify the officer that he or she is not to return to work pending receipt of the test results by the Investigating officer.
- 5.6 Upon conclusion of the examination, the supervisor will ensure that the officer is escorted to his destination. The supervisor will direct the officer not to drive himself/herself to his/her destination. The officer will be placed on administrative leave in accordance with Section 5.1.3 of this policy pending receipt by the Investigating officer of the test results and the officer will be notified of this change in status.
- 5.7 If the officer tests negative for drugs or alcohol, the officer will be compensated for any regularly scheduled hours he or she would have worked during the suspension period.
- 5.8 In those cases where a supervisor discovers an officer who possesses what appears to be illegal drugs or alcohol, he or she will proceed as described above for instances where reasonable suspicion exists, and, if the substance in question appears to be an illegal drug, will—immediately confiscate the substance and all equipment or paraphernalia directly employed with the substance consistent with the department's procedures for handling and collecting evidence.

Appendix B

**SAMPLE REHABILITATION AGREEMENT**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

On \_\_\_\_\_ the Town of Needham agreed to your request to seek counseling and referral to a rehabilitation program for alcohol and/or drug abuse. The following conditions apply to your rehabilitation program:

1. You must authorize your treatment provider to provide proof to the Investigating Officer of enrollment in a rehabilitation program and proof of attendance at all required sessions or proof of completion of any required in-patient stay. Your attendance will be monitored closely and the Investigating Officer will initiate appropriate disciplinary action up to and including termination if you do not regularly attend all sessions or complete any required in-patient stay.
2. You must adhere to all of the requirements of the drug or alcohol treatment or counseling program in which you are enrolled.
3. If you are absent from work during the rehabilitation period without prior authorization, you must promptly submit a written doctor's certificate explaining the reason for such absence. The department will take disciplinary action if you are absent as a result of alcohol or drug use.
4. You will pay for all costs of rehabilitation that are not covered under your health plan.
5. During the two years following the completion of your rehabilitation program, the department will test you for alcohol and/or drug use on a random basis a maximum of three times per year. The Town will take prompt disciplinary action if you refuse to submit to testing or if you test positive during this period.

\_\_\_\_\_  
Town of Needham

\_\_\_\_\_  
Officer