1. City Council Meeting Agenda - Amended

   Documents:

   AGENDA 03 09 20.PDF

2. City Council Meeting Packet

   Documents:

   COUNCIL PACKET 03 09 20.PDF

AGENDA

CITY OF WESTMINSTER
Mayor and Common Council Meeting
Monday, March 9, 2020 at 7 pm
Council Chambers of City Hall, 1838 Emerald Hill Lane, Westminster, MD

1. CALL TO ORDER

2. APPROVAL OF MINUTES

A) Mayor and Common Council Meeting of February 24, 2020

B) Closed Meeting of February 24, 2020

3. REPORT FROM THE MAYOR

4. REPORTS FROM STANDING COMMITTEES

A) Arts Council

B) Economic and Community Development Committee

C) Finance Committee

D) Personnel Committee

E) Public Safety Committee

F) Public Works Committee

G) Recreation and Parks Committee

5. COUNCIL COMMENTS AND DISCUSSION

6. ORDINANCES & RESOLUTIONS

A) Approval of Resolution No. 20-02 – Approving and Adopting the Drug-Free Workplace Policy and the Controlled Substances and Alcohol Use and Testing Policy – Ms. Childs

7. UNFINISHED BUSINESS

A) Approval – Modification #7 to Contract with Gant Brunnett Architects – 45 West Main Renovation Project – Ms. Matthews

8. NEW BUSINESS

A) Adoption of Workplace Civility Policy – Councilmember Gilbert

B) Approval of Warner Construction Contract Change Order No. 1 – Ms. Matthews

C) Approval of Change Order No. 2 to the City's Contract with HRI, Inc. for Programming and Equipment Integration for the ENR Project – Mr. Glass

D) Vote to Go into a Closed Meeting

9. DEPARTMENTAL REPORTS

10. CITIZEN COMMENTS

11. ADJOURNMENT

12. CLOSED MEETING

AGENDA

CITY OF WESTMINSTER
Mayor and Common Council Meeting
Monday, March 9, 2020 at 7 pm
Council Chambers of City Hall, 1838 Emerald Hill Lane, Westminster, MD

1. CALL TO ORDER

2. APPROVAL OF MINUTES

A) Mayor and Common Council Meeting of February 24, 2020

B) Closed Meeting of February 24, 2020

3. REPORT FROM THE MAYOR

4. REPORTS FROM STANDING COMMITTEES

A) Arts Council

B) Economic and Community Development Committee

C) Finance Committee

D) Personnel Committee

E) Public Safety Committee

F) Public Works Committee

G) Recreation and Parks Committee

5. COUNCIL COMMENTS AND DISCUSSION

6. ORDINANCES & RESOLUTIONS

A) Approval of Resolution No. 20-02 – Approving and Adopting the Drug-Free Workplace Policy and the Controlled Substances and Alcohol Use and Testing Policy – Ms. Childs

7. UNFINISHED BUSINESS

A) Approval – Modification #7 to Contract with Gant Brunnett Architects – 45 West Main Renovation Project – Ms. Matthews

8. NEW BUSINESS

A) Adoption of Workplace Civility Policy – Councilmember Gilbert

B) Approval of Warner Construction Contract Change Order No. 1 – Ms. Matthews

C) Approval of Change Order No. 2 to the City's Contract with HRI, Inc. for Programming and Equipment Integration for the ENR Project – Mr. Glass

D) Vote to Go into a Closed Meeting

9. DEPARTMENTAL REPORTS

10. CITIZEN COMMENTS

11. ADJOURNMENT

12. CLOSED MEETING

MINUTES

CITY OF WESTMINSTER
Mayor and Common Council Meeting
Monday, February 24, 2020 at 7 pm

CALL TO ORDER

Elected Officials Present: Councilmember Chiavacci, Councilmember Dayhoff, Mayor Dominick, Councilmember Gilbert, President Pecoraro, and Councilmember Yingling.

Staff Present: Director of Human Resources Childs, Manager of Technology Services Davidson, Director of Community Planning and Development Depo, Director of Public Works Glass, Director of Recreation and Parks Gruber, Police Chief Ledwell, City Attorney Levan, City Administrator Matthews, Director of Housing Services Valenzisi, and City Clerk Visocsky.

APPROVAL OF MINUTES

President Pecoraro requested a motion to approve the minutes of the Mayor and Common Council Meeting of February 10, 2020.

Councilmember Chiavacci moved, seconded by Councilmember Dayhoff, to approve the minutes of February 10, 2020.

VOTE

AYES: President Pecoraro, Councilmember Chiavacci, Councilmember Dayhoff, Councilmember Gilbert, and Councilmember Yingling.
NAYS: None.

PUBLIC HEARING

Ordinance No. 920

Mayor Dominick conducted a public hearing regarding Ordinance No. 920, amending the Code of the City of Westminster, to Add Section 106-22, "Vaping Prohibited", to Chapter 106, "Peace and Good Order", Article V, "Miscellaneous Offenses", to Prohibit Smoking of Tobacco and Marijuana in Places of Public Accommodation, Except for Vape Shops, Licensed Cannabis Dispensaries and Other Similar Businesses Lawfully Established for the Primary Purpose of Allowing Individuals to Smoke or Vape or to Sample Smoking or Vaping Products.

Ms. Levan stated that staff drafted an ordinance prohibiting vaping in places of public accommodation as requested by the Mayor and Common Council. Ordinance No. 920 would permit vaping in vape shops and other shops where the use is lawful and vaping is the primary intended purpose of the use.

Ms. Levan stated that, since the Common Council introduced Ordinance No. 920 on January 13, 2020, staff made a minor adjustment to the ordinance, adding the word "smoking" in subsection (B)(1). She noted that Chief Ledwell pointed out that existing State smoking regulations banning smoking in certain places are not "self-executing" for local law enforcement purposes; this alteration is intended to address that omission.

Ms. Levan recommended that the Common Council amend proposed Ordinance No. 920 to add the word "smoking" in subsection (B)(1). Following amendment of the ordinance, she recommended that the Common Council vote to adopt Ordinance No. 920.

Mayor Dominick read an e-mail from community member Doug Weatherholtz, who was unable to attend the public hearing. Mr. Weatherholtz shared his concern that this ordinance would prevent his use of

medically-prescribed cannabidiol (CBD), which he believed would violate the Americans with Disabilities Act. Councilmember Chiavacci and Councilmember Gilbert asked Ms. Levan if the proposed ordinance would prevent Mr. Weatherholtz from vaping his prescribed CBD and if he was legally able to consume it in public. Ms. Levan replied that she believes that medically-prescribed CBD is to be consumed only in the individual's residence; even if that were not the case, the ordinance would not prevent Mr. Weatherholtz from finding a location other than a place of public accommodation to vape his prescribed CBD. Mayor Dominick pointed out that vaping of CBD is particularly concerning because its use impacts others, especially children.

Councilmember Gilbert then read an e-mail she received from community members Linda and Tim Hyland, who also were unable to attend the public hearing. Mr. and Mrs. Hyland shared their support for the proposed ordinance.

With no further discussion, Mayor Dominick closed the public hearing at 7:09 pm.

CONSENT CALENDAR

President Pecoraro requested a motion to approve the Consent Calendar that consisted of the approval of the January 2020 Departmental Operating Reports.

Councilmember Dayhoff moved, seconded by Councilmember Gilbert, to approve the Consent Calendar.

VOTE

AYES: President Pecoraro, Councilmember Chiavacci, Councilmember Dayhoff, Councilmember Gilbert, and Councilmember Yingling.
NAYS: None.

REPORT FROM THE MAYOR

Mayor Dominick reported that much of what he has been working on would likely be covered under Reports from Standing Committees. He noted that the Economic and Community Development Committee recently discussed the redevelopment of the former Stocksdale Property and downtown parking.

Mayor Dominick then reported that he recently met with a professor from McDaniel College, who organized an exhibit at the College called Icons of Animation. Due to the size of the exhibit, it would be split between the College and the Carroll Arts Center; the exhibit would take place in January and February of 2021. Icons of Animation will feature a collection of the original sketches used in animated films, including Bambi. Mayor Dominick stated that the City has been asked to help promote the event, which would likely attract a significant number of visitors. Councilmember Chiavacci commented that the exhibition would be a great draw for families to come to Westminster during the winter months, at a time when there were very few events held downtown.

REPORTS FROM STANDING COMMITTEES

There were no reports from the following Standing Committees: Public Safety, Public Works, and Recreation and Parks.

Councilmember Dayhoff, on behalf of the Arts Council, echoed Mayor Dominick's comments about the benefits of the Icons of Animation exhibition. He then reported that the 17th Annual Foreign Film Festival was continuing at the Carroll County Arts Center through the end of February.

Councilmember Dayhoff reminded everyone that the PEEPshow would be held April 4 –13, 2020. He encouraged everyone to check out Carroll Arts Center's website for information on upcoming events.

Councilmember Yingling, on behalf of the Economic and Community Development Committee, reported that the Committee held a kickoff meeting with Partners for Economic Solutions (PES), the consulting firm retained by the City to assist it with the redevelopment of the former Stocksdale Property, on February 21, 2020. The focus of the kick off meeting was to define the City's vision for the property. Councilmember Yingling advised PES of the City's desire to be open to all redevelopment possibilities. He advised his colleagues that one of the options discussed at the meeting was building a hotel on the site, so that visitors could stay in Westminster rather than in Owings Mills or Baltimore.

President Pecoraro stated that he felt that the Economic and Community Development Committee had a productive discussion with PES. He added that the City had picked the right firm in selecting PES.

President Pecoraro, on behalf of Finance Committee, reported that development of the FY 2021 budget was underway. The proposed budget would be before the Mayor and Common Council in the near future.

Councilmember Gilbert, on behalf of the Personnel Committee, reported that the Committee met on January 13, 2020. At the meeting, the Committee discussed the current holidays observed by the City. Ms. Matthews provided the Committee with information on the practices of other local governments, most of which observed some portion or all of Christmas Eve. Ms. Matthews recommended to the Committee that the Mayor and Common Council consider closing City offices at 12:30 pm Christmas Eve, which would increase the number of observed City holidays by one-half of a day.

Councilmember Gilbert stated that, after review of the survey information, the Committee noted that no other jurisdictions observe Easter Monday as a holiday. The Committee recommended that, beginning in Fiscal Year 2021, eligible employees receive a floating holiday in lieu of Easter Monday, which is currently an observed City holiday. She noted that Easter Monday would continue to be observed during Fiscal Year 2020.

On behalf of the Committee, Councilmember Gilbert requested approval from the Common Council to increase the number of City-observed holidays by adding a half day on Christmas Eve, as well as provide a floating holiday in lieu of Easter Monday.

Councilmember Yingling moved, seconded by Councilmember Chiavacci, to approve a half day holiday on Christmas Eve and provide a floating holiday in lieu of Easter Monday, for eligible employees.

VOTE
AYES: President Pecoraro, Councilmember Chiavacci, Councilmember Dayhoff, Councilmember Gilbert, and Councilmember Yingling.
NAYS: None.

COUNCIL COMMENTS AND DISCUSSION
Councilmember Chiavacci expressed his appreciation to Councilmember Yingling for his work on acquiring the former Stocksdale Property for redevelopment. He added that a boutique hotel would be a wonderful addition to downtown Westminster.

Councilmember Dayhoff stated that Mr. Glass had informed him that the current parking meters were replaced in the early 2000s, and can no longer be supported due to their age. He shared with his colleagues that, during his recent travels, he visited cities who had sophisticated parking meter technology in place. Councilmember Dayhoff recommended to his colleagues that this matter be addressed by the Economic and Community Development Committee.

Mayor Dominick informed his colleagues that he had the opportunity to view different parking meter technologies at the Maryland Municipal League Conference. As a local government that embraced technology, Westminster should use technologically-advanced parking meters. Mayor Dominick added

that some jurisdictions use License Plate Readers for parking enforcement, which the City should explore.

President Pecoraro shared that the Economic and Community Development Committee agreed to look into new parking meters. He thanked Councilmember Dayhoff for bringing forward the discussion and asked Ms. Matthews to begin gathering information for new, up to date meters.

Councilmember Dayhoff informed his colleagues that during his trip, he met police officers who shared that having the parking meters provided many benefits in public safety.

Councilmember Yingling asked if this item would fall under the purview of the Public Works Committee or Public Safety Committee. President Pecoraro suggested that this be determined after Ms. Matthews gathered more information.

Mayor Dominick asked for clarification on how the current parking meters were maintained. Staff confirmed that the Public Works Department emptied each meter and collected the change, while the Police Department enforced the expired meters.

Councilmember Dayhoff then inquired about replacement of street lights with LED lighting. Mayor Dominick replied that he had discussed this matter with BGE, and the changeover was taking place incrementally. Mr. Glass clarified that the City was responsible for the pedestrian lights, while BGE was responsible for overhead lighting. He noted that the pedestrian lighting was already LED.

Councilmember Dayhoff thanked Street, Housing Services, and Police staff for their work to resolve some difficult customer service issues. He commented that staff went above and beyond to address the matters, and that he was very appreciative of their efforts.

BIDS

Spatial Systems Associates, Inc.

Mr. Davidson, on behalf of Director of Finance and Administrative Services Palmer, informed the Mayor and Common Council that Spatial Systems Associates, Inc. completed a Phase I report as part of the Fiscal Year 2020 effort to acquire completely attributed GIS layers for the Water Fund and the Sewer Fund.

Mr. Davidson informed the Mayor and Common Council that, as a result of the Phase I report, the following Phase II implementation strategy is considered the most effective and efficient method of completing the Water and Sewer Fund layers. As part of Phase II, Spatial Systems Associates, Inc. would perform the following tasks:

1. Geocode meter inventory;
2. Vectorize water, sewer, stormwater, and easements;
3. Identify additional source materials;
4. Integrate sewer video inspection data;
5. Web deployment; and,
6. Investigate other deployments.

Mr. Davidson shared that completion of Phase II would include establishing a base station for accuracy, completely attributed layers for water and sewer, and a web-based application where all drawings and source materials would be available by simply clicking on a map.

Future Phase III work would include field testing for minute accuracy; the addition of plant buildings, well houses, and pump stations; integration with existing software like Eden, Paver, Mobile 311, and the sewer camera system; and, additional layers for general government use.

Mr. Davidson stated that the Water and Sewer Fund budgets have the appropriations necessary for this contract. Spatial Systems Associates, Inc. had completed work for the State of Maryland, multiple Maryland counties, and multiple Maryland municipalities. These prices were acquired through a competitive bid process completed by State of Maryland.

Mr. Davidson recommended that the Common Council approve a contract with Spatial Systems Associates, Inc. for the Phase II work as outlined above, and authorize the Mayor's execution of the same. He noted the cost of Phase II would be in the amount of $444,200.

Councilmember Dayhoff stated that he was pleased that this work was proceeding. He asked Mr. Davidson the amount of drawings from the basement of City Hall that had been scanned into the City's system. Mr. Davidson replied that approximately 729 drawings were located and scanned. Councilmember Dayhoff questioned the procedure in shredding the drawings that were scanned. Ms. Visocsky informed the Mayor and Common Council that the City complies with the State retention schedule. She stated that she would pull the schedule and provide this information to Mr. Davidson and his staff.

Councilmember Chiavacci moved, seconded by Councilmember Yingling, to approve the contract with Spatial Systems Associates, Inc. for Phase II work and authorize the Mayor to execute the same.

VOTE
AYES: President Pecoraro, Councilmember Chiavacci, Councilmember Dayhoff, Councilmember Gilbert, and Councilmember Yingling.
NAYS: None.

ORDINANCES & RESOLUTIONS
Ordinance No. 920
President Pecoraro requested a motion to adopt Ordinance No. 920, amending the Code of the City of Westminster, to Add Section 106-22, "Vaping Prohibited", to Chapter 106, "Peace and Good Order", Article V, "Miscellaneous Offenses", to Prohibit Smoking of Tobacco and Marijuana in Places of Public Accommodation, Except for Vape Shops, Licensed Cannabis Dispensaries and Other Similar Businesses Lawfully Established for the Primary Purpose of Allowing Individuals to Smoke or Vape or to Sample Smoking or Vaping Products as discussed during the public hearing.

Ms. Levan reminded the Mayor and Common Council that, prior to adoption, the ordinance needed to be amended to add the word "smoking" in subsection (B)(1). Following amendment of the ordinance, she recommended that the Common Council vote to adopt Ordinance No. 920.

Councilmember Gilbert moved, seconded by Councilmember Dayhoff, to amend Ordinance No. 920, to add the word "smoking" in subsection (B)(1).

VOTE
AYES: President Pecoraro, Councilmember Chiavacci, Councilmember Dayhoff, Councilmember Gilbert, and Councilmember Yingling.
NAYS: None.

Councilmember Chiavacci moved, seconded by Councilmember Gilbert, to adopt Ordinance No. 920 as amended.

VOTE
AYES: President Pecoraro, Councilmember Chiavacci, Councilmember Dayhoff, Councilmember Gilbert, and Councilmember Yingling.
NAYS: None.

President Pecoraro noted that Westminster was the first city in Maryland to take such an action, and he was proud that the City had taken this step.

Emergency Ordinance No. 921
Mr. Glass stated that the City's Wastewater Treatment Plant is currently under a $77 million renovation for an Enhanced Nutrient Removal (ENR) process to meet stricter environmental "limit of technology" standards in accordance with Maryland regulations. He informed the Mayor and Common Council that part of the renovation necessitates improvements to the existing electrical service, as the demand will increase along with additional service locations; this is a change from the current single feed system.

Mr. Glass explained that Baltimore Gas and Electric Company (BGE), the City's electrical power supplier, was willing to install, reconstruct, operate, and maintain the required electrical infrastructure to service the renovated treatment plant. BGE requires a right-of-way across the property, as described in Exhibit A, of the meeting agenda packet.

Mr. Glass noted that the right-of-way agreement and alignment of the layout is currently in draft form, awaiting final approval by BGE's design team, which was expected soon. This process is inherently slow, as it required many moving parts between the City, BGE, and the contractor to come together. This ordinance was structured to minimize the inherent delays by authorizing approval signatures at such time as the final documents are available.

Mr. Glass explained that proposed Ordinance No. 921 was drafted as an emergency ordinance, which would take effect immediately upon its passage and approval to facilitate the expeditious performance of the work contemplated by the easement and the prompt performance of the City's renovations to the Wastewater Treatment Plant.

Mr. Glass recommended that the Mayor and Common Council adopt Emergency Ordinance No. 921, authorizing the Conveyance of a Right-of-Way to Baltimore Gas and Electric Company for the Purpose of Installing, Reconstructing, Operating, and Maintaining Certain Electricity Transmission Facilities to Provide Power to the City's Wastewater Treatment Plant, Across City Property Situated on the North Side of New Windsor Road (Route 31), West Side of New Windsor Pike. He further recommended that the Common Council authorize the Mayor's execution of the associated Right-of-Way Agreement to allow BGE to install, reconstruct, operate, and maintain certain electrical infrastructure.

Councilmember Chiavacci questioned Mr. Glass about the $77 million cost for the ENR project. Mr. Glass stated that this figure included pre-construction costs, and that he would provide an update on the ENR project during his departmental report later in the meeting.

Councilmember Dayhoff moved, seconded by Councilmember Gilbert, to adopt Emergency Ordinance No. 921 and to authorize the Mayor to execute the associated Right-of-Way Agreement as presented.

VOTE
AYES: President Pecoraro, Councilmember Chiavacci, Councilmember Dayhoff, Councilmember Gilbert, and Councilmember Yingling.
NAYS: None.

Resolution No. 20-01
Ms. Childs informed the Mayor and Common Council that Resolution No. 20-01 would change the minimum hours worked per week for Flexible Spending Account (FSA) plan eligibility requirements from 20 hours to 25 hours for part-time employees and to 35 hours for full-time employees. She stated that the updated Cafeteria Benefit Plan document, Benefit Plan Description and Adoption Agreement, and Summary of the City of Westminster Cafeteria Benefit Plan reflected the change in the minimum hours for eligibility.

Ms. Childs noted that the documents were included in the meeting agenda packet.

Ms. Childs explained that this modification to the FSA Plan follows the Mayor and Common Council's January 27, 2020 approval of the change to the part-time employee classification from a minimum of 20 hours worked per week to a minimum of 25 hours worked per week. She recommended that the Common Council adopt Resolution No. 20-01, approving and adopting Plan documents for the City's Cafeteria Benefits Plan, including its FSA Plan.

Councilmember Gilbert thanked Ms. Childs for her work on this matter, and for following up so quickly following the Personnel Committee meeting where this matter was first discussed and later approved by the Mayor and Common Council on January 27, 2020.

Councilmember Gilbert moved, seconded by Councilmember Chiavacci, to approve Resolution No. 20-01 – Approving and Adopting Plan Documents for the City's Cafeteria Benefits Plan, Including Its Flexible Spending Account.

VOTE
AYES: President Pecoraro, Councilmember Chiavacci, Councilmember Dayhoff, Councilmember Gilbert, and Councilmember Yingling.
NAYS: None.

UNFINISHED BUSINESS
None.

NEW BUSINESS
President Pecoraro requested a motion to go into a Closed Meeting, following the Regular Meeting to discuss the following:

- To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom the public body has jurisdiction; or, any other personnel matter affects one or more specific individuals; and,

- To discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including: (i) the deployment of fire and police services and staff; and, (ii) the development and implementation of emergency plans.

Councilmember Chiavacci moved, seconded by Councilmember Yingling, to go into a Closed Meeting, following the Regular Meeting.

VOTE
AYES: President Pecoraro, Councilmember Chiavacci, Councilmember Dayhoff, Councilmember Gilbert, and Councilmember Yingling.
NAYS: None.

DEPARTMENTAL REPORTS
City Administrator
Ms. Matthews followed up on Councilmember Yingling's report regarding the Economic and Community Development Committee's meeting with Partners for Economic Solutions (PES). She informed the Mayor and Common Council that Maser Consulting, a sub-consultant to PES, had established a FTP site for staff to upload relevant documents, including the property survey, environmental reports, and zoning-related information.

Ms. Matthews then reported that Katz and Associates, the communications firm assisting the City with the public information/education component of the water re-use initiative, would provide the City with a summary report of the stakeholder interviews conducted by the firm in January and February 2020; that report should be received in the next 30 days.

Westminster Police Department
Chief Ledwell reported that Westminster Police Department officers participated in a relay challenge with the Boys and Girls Club. He then reported that the new 12-hour patrol schedule would go into effect on March 3, 2020. In conjunction with implementation of the new schedule, Sergeant Blackwell would assume his new position of Lieutenant; prior to his promotion, Sgt. Blackwell was the downtown outreach sergeant. Pfc. Eckard would be transferred to the Downtown Outreach Unit.

Chief Ledwell reminded the Mayor and Common Council that Cheryl Pickett, Communication Specialist II, would retire as of March 1, 2020, after serving the Westminster Police Department for 30 years. He then reported that the department hired a new lateral police officer, who had ten years of experience with the City of Baltimore; the new officer was scheduled to begin his employment with the City on March 10, 2020.

Chief Ledwell stated that the department's effective partnership with the Carroll County Sheriff's Department continues to yield positive results relative to crimes related to drug distribution.

Chief Ledwell informed the Mayor and Common Council that he is on the planning committee for the Annual Chamber of Commerce Public Safety Awards event, which will be held on May 11, 2020. In addition, the Health Department's First Responder Appreciation Dinner was scheduled for May 18, 2020.

Mayor Dominick shared that Officer DeAngelis and his K-9 partner Uri continue to be a big hit in Downtown Westminster. He shared that his son recently attended a field trip at the Lowe's in Westminster at which Officer DeAngelis and Uri greeted his son's class.

Human Resources Department
Ms. Childs reported that she and Safety and Risk Coordinator Brian DeMay received an e-mail from Chesapeake Employers, the City's worker's compensation insurance carrier. The City attained the highest rating of 100% for reporting claims within one to three days for the period that began July 1, 2019. She thanked all of the departments for being timely and efficient in submitting their claims.

Housing Services Department
Ms. Valenzisi reported that the Section 8 Housing Baltimore Field office had a new representative. Her department continues to work on revisions to the administrative plan for the Housing Choice Voucher program. Ms. Valenzisi then informed the Mayor and Common Council that she was working with CitizenServe to resolve minor issues with the rental housing license program.

Public Works Department
Mr. Glass informed the Mayor and Common Council that Emergency Ordinance No. 921, adopted earlier in the meeting, was due to a change by BGE regarding the electrical service for the ENR Project. As a result of BGE's change, HRI (the contractor for the ENR Project) proposed a change order in the amount of $160,000 to perform work associated with the BGE change. Mr. Glass stated that he and Deputy Public Works Director Dick were able to engineer an alternative construction method, which reduced the cost to approximately $80,000 to $90,000. The current contract has an allowance of $50,000 for the contractor to absorb the cost from BGE; due to the new alignment identified by staff, the actual cost would be $64,000 or less. HRI asked the City for the difference between the contractual allowance and the cost of the work. Mr. Glass informed the Mayor and Common Council that the State is willing to participate according to the 53% cost share arrangement; this unanticipated cost would increase the City's overall cost for the ENR Project.

Furthermore, Mr. Glass informed the Mayor and Common Council that the Maryland Department of Environment would only allow the contractor to work in the stream at certain times. To meet schedule requirements and avoid contractor delays, Mr. Glass asked the Mayor and Common Council for their consent to have the contractor move forward with this work, until a formal change order could be submitted to them for their approval. Mr. Glass advised the Mayor and Common Council that he would bring the change order forward at their next regularly scheduled meeting on March 9, 2020. The Mayor and Common Council unanimously authorized Mr. Glass to direct the contractor to move forward.

Mr. Glass then updated the Mayor and Common Council on programming and equipment integration for the ENR Project. He informed the Mayor and Common Council that GHD had submitted Amendment No. 12 in the amount of $475,000 to perform this work, which entailed programming and integration of all new and existing equipment at the Wastewater Treatment Plant. The Maryland Department of the Environment (MDE) requested that the City receive an alternative price proposal for this work. The City subsequently requested pricing from HRI, and received a quote in the amount of $674,000. Mr. Glass informed the Mayor and Common Council that MDE would not participate financially in the programming and integration work if GHD performed the work, due to a prescribed cap on architectural and engineering services. MDE would participate financially if HRI performed this work. Mr. Glass stated that HRI had given the City a deadline of March 20, 2020 to make a decision regarding the change order to avoid a delay in the schedule. He planned to bring the change order before the Mayor and Common Council prior to this date.

Recreation & Parks Department
Ms. Gruber reported that the flash sale of both general and VIP tickets for the Wine Stroll and BBQ Stroll was a success. She reminded everyone that the Wine Stroll would be held on Saturday, April 25, 2020.

Ms. Gruber also reported that approximately 700 runners had pre-registered for the Celtic Canter.

Community Planning and Development Department
Mr. Depo reported that the Planning and Zoning Commission approved the site plan for the Conifer Westminster Way Apartments. The Board of Zoning Appeals was scheduled to meet on March 3, 2020, but was cancelled as there were no agenda items. The Historic District Commission would review applications for Historic Rehabilitation Property Tax Credits at its next meeting on March 4, 2020.

Mr. Depo then updated the Mayor and Common Council on the proposed annexation of the Ellsworth Cemetery, located on Leidy Road. He noted that Westminster resident Tom Gordon made this request during Citizen Comments at the Mayor and Common Council meeting on February 10, 2020. Mr. Depo informed the Mayor and Common Council that the Cemetery was located in the County, and the property was zoned R-10,000. The property is contiguous to the City limits, and could therefore is eligible for annexation. Mr. Depo informed the Mayor and Common Council that an annexation petition could be initiated by the City, or the City could initiate annexation with the consent of the property owner. If the property is annexed into the City, staff recommends that the property be zoned C Conservation.

The Mayor and Common Council expressed their support for annexation of the Ellsworth Cemetery property. Councilmember Chiavacci noted that there are groups in the community who are always looking for projects to benefit the community, and could likely provide assistance in maintaining the Cemetery property.

Mr. Depo concluded his report by informing the Mayor and Common Council that the Clark Farm Property developer scheduled a public outreach meeting on February 26, 2020 to address the concerns of community members. He and his staff will be in attendance.

CITIZEN COMMENTS

Chris Nallo, 382 Buckingham Way, thanked the Mayor and Common Council for their approval of Ordinance No. 920 that would prohibit vaping in places of public accommodation.

Kevin Wagman, 153 East Green Street, suggested the City consider free parking in Downtown Westminster, limiting the time a vehicle could be parked in a single spot rather than replacing the existing parking meters. Mayor Dominick shared that they had tried this approach in the small town in Baltimore County where he grew up, but they ultimately re-installed parking meters. He stated that parking meters ensure that businesses have available parking.

Sherry Lyles, owner of Allure Hair Salon at 163 West Main Street, shared her frustration and concerns as a business owner regarding parking. She stated that her salon is located in a residential area near McDaniel College where there are no parking meters. Residents rarely move their cars, making it difficult for her customers to find parking near her salon. Ms. Lyles encouraged the City to find a parking solution that would benefit businesses and City residents.

Donna Robinson, 33 Cypress Point Court, shared her concerns regarding the possibility of a hotel being built in Downtown Westminster, citing the parking impact. Councilmember Yingling assured her that parking requirements would be taken into account in the consideration of any such development.

Ms. Robinson then inquired who her son could contact regarding speeding on his street, Sunshine Way. The Mayor and Common Council advised that this street was not within the City limits, recommending that he contact the Sheriff's Department. Ms. Robinson shared that she lived near Mulligan Lane where speeding was an issue as well. Chief Ledwell replied that the Police Department was conducting traffic enforcement in the area due to concerns raised at a prior Mayor and Common Council meeting.

ADJOURNMENT

President Pecoraro adjourned the meeting at 8:22 pm.

Respectfully Submitted,

Shannon Visocsky, City Clerk

Full audio version is available on www.westminstermd.gov

To: Mayor and Common Council

From: Darlene Childs, Director of Human Resources

Date: March 2, 2020

Re: Resolution No. 20-02, Approving and Adopting the Drug-Free Workplace Policy and the Controlled Substances and Alcohol Use and Testing Policy

Background

Attached for your information and review is Resolution No. 20-02, re-stating both the City's current Drug and Alcohol Policy and the CDL Alcohol and Drug Testing Policy. Copies of both of these policies are attached.

The new Drug-Free Workplace Policy covers all City employees and is compliant with applicable State law. The new Controlled Substances and Alcohol Use and Testing Policy covers only those employees whose position requires them to hold a Commercial Driver's License (CDL); this policy brings the City into compliance with new United States Department of Transportation regulations.

The Drug-Free Workplace Policy identifies certain positions as Safety-Sensitive. A list of Safety-Sensitive positions is included in the policy as Exhibit A. Safety-sensitive positions are those held by employees who discharge duties (either in their normal job classification or in times of emergency re-assignment) that are so fraught with risks of personal injury to the employee or to others, or property damage, that even a momentary lapse of concentration or attention could have serious adverse consequences. Safety-sensitive positions also include those that require an employee to maintain a high level of cognitive function, sound judgment, and fiscal responsibility.

Under the Drug-Free Workplace Policy, the City will test all employees performing safety-sensitive functions, all final applicants for positions that require safety-sensitive functions to be performed, and all employees where reasonable suspicion of drug or alcohol intoxication by the employee at work exists. A random testing program for employees holding a safety-sensitive position will take effect on July 1, 2020. Employees who hold a position that requires a Commercial Driver's License will continue to be random tested under the new Controlled Substances and Alcohol Use and Testing Policy in the same manner as he/she was tested under the current CDL Alcohol and Drug Testing Policy.

Recommendation

Staff recommends that the Common Council adopt Resolution No. 20-02, approving and adopting the Drug-Free Workplace Policy and the Controlled Substances and Alcohol Use and Testing Policy.

Attachments

- Resolution No. 20-02
- Drug-Free Workplace Policy
- Controlled Substances and Alcohol Use and Testing Policy

cc: Barbara B. Matthews, City Administrator

Sponsored by: Joe Dominick, Mayor
Gregory Pecoraro, Council President

RESOLUTION 20-02

OF THE MAYOR AND COMMON COUNCIL OF WESTMINSTER, APPROVING AND ADOPTING THE DRUG-FREE WORKPLACE POLICY

WHEREAS, the Mayor and Common Council is committed to maintaining a safe, and productive working environment, and a drug and alcohol free workplace for its employees; and

WHEREAS, by Resolution No. 89-8 (as amended) adopted a drug and alcohol policy which was approved on August 28, 1989 and incorporated as Section XI of the City of Westminster Employee Handbook; and

WHEREAS, by Resolution No. 95-8 adopted the CDL Alcohol and Drug Testing Policy which was effective January 1, 1996; and

WHEREAS the City wishes to restate the drug and alcohol policy as the Drug-Free Workplace Policy which will replace the current drug and alcohol policy in the Employee Handbook; and

WHEREAS the City wishes to restate the CDL Alcohol and Drug Testing Policy as the U.S. Department of Transportation (DOT) Federal Motor Carrier Safety Administration (FMCSA), 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing Policy which will replace the current CDL Alcohol and Drug Testing Policy and bring the policy into compliance with DOT regulations.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF WESTMINSTER that the policies attached hereto as, collectively, Exhibit A, specifically, the Drug-Free Workplace Policy and the U.S. Department of Transportation (DOT) Federal Motor Carrier Safety Administration (FMCSA), 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing Policy are approved and adopted.

AND BE IT FURTHER RESOLVED by The Mayor and Common Council of Westminster that the Human Resources Department is directed to distribute the Drug-Free Workplace Policy to employees and the U.S. Department of Transportation (DOT) Federal Motor Carrier Safety Administration (FMCSA), 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing Policy to covered employees, and to implement and manage the policies according to the parameters set forth in Exhibit A.

AND BE IT FURTHER RESOLVED by The Mayor and Common Council of Westminster that the effective date of the Drug-Free Workplace Policy and the U.S. Department of Transportation (DOT) Federal Motor Carrier Safety Administration (FMCSA), 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing Policy shall be April 1, 2020, and that this Resolution shall take effect upon its passage and approval.

INTRODUCED this _____ day of March, 2020

_____
Shannon Visocsky, City Clerk

ADOPTED this _____ day of March, 2020

_____
Shannon Visocsky, City Clerk

APPROVED this _____ day of March, 2020

_____
Joe Dominick, Mayor

APPROVED AS TO FORM AND SUFFICIENCY
this _____ day of March, 2020

_____
Elissa D. Levan, City Attorney

CITY OF WESTMINSTER
DRUG-FREE WORKPLACE POLICY

The City of Westminster (City) is committed to maintaining a safe and productive working environment. This Policy highlights the City's Maryland Drug-Free Workplace Policy. The City's Designated Employer Representative (DER) is the Director of Human Resources. The Alternative DER is the Safety/Risk Coordinator. The City does not tolerate the abuse of drugs or alcohol in the workplace. This Policy prohibits illegal drug use on or off the job. We encourage any employee suffering from a substance abuse problem to seek help. If you need help, we can direct you to the City's Employee Assistance Program (EAP) for a confidential evaluation and referral for substance abuse treatment if necessary.

While we do not wish to intrude into your private life, a personal problem like drug or alcohol abuse will affect work performance, workplace safety, and public safety. In Maryland, all information related to the testing is confidential and may be released only pursuant to a subpoena, court order, or release signed by the individual tested. The release of information to the employer regarding: (1) the use of a nonprescription drug, other than alcohol that is not prohibited under Maryland law; or (2) the use of a prescription drug that was prescribed in accordance with Maryland law, is prohibited. However, this information may be disclosed if necessary to comply with the Federal Commercial Motor Vehicle Safety Act and other federal motor carriers.

Notice of the City's Maryland Drug-Free Workplace testing will be provided on recruitment advertisements and is posted in conspicuous locations on City employee bulletin boards.

The City's program can help improve your health, help you avoid trouble with the law, and make our workplace safer. Compliance with this policy is a condition of your hire or continued employment. The City has developed its drug-free workplace policy in compliance with Maryland Law: Md. Health-Gen. Code Ann. §§ 17-214 to 17-217; Md. Regs. Code tit. 10, §§ 10.10.01- 10.10.09; Md. Lab. & Emp. Code Ann. § 9-506 and the Fourth Amendment to the United States Constitution as it covers employees of governmental entities. This policy is effective on April 1, 2020. Applicant testing will be implemented under this policy as of the effective date. All employees are subject to the testing outlined in this policy as of the effective date, except for random testing which will be effective on July 1, 2020. The City's existing drug and alcohol testing program will remain in place until the effective date of this program. The Drug-Free Workplace Policy replaces the City's prior Drug and Alcohol policy. Police Department General Order 15-06, Substance Use / Abuse Policy will supplement this policy regarding sworn police officers.

WHO WILL BE TESTED?

The City tests all employees performing safety-sensitive functions, all final applicants for positions where safety-sensitive functions are performed, and all employees where reasonable suspicion of drug or alcohol intoxication by the employee at work exists. Safety-sensitive positions are those held by employees who discharge duties (either in their normal job classification or in times of emergency re-assignment) that are so fraught with risks of personal injury to the employee or to others or property damage that even a momentary lapse of concentration or attention can have serious adverse consequences. Safety-sensitive positions also include those that require an employee to maintain a high level of cognitive function, sound judgment, and fiscal responsibility. It is an essential job function for every employee to be able to work in a constant state of alertness and in a safe manner. Elected officials are not subject to testing under this policy.

SAFETY-SENSITIVE POSITIONS

Safety-sensitive positions are those that meet any of the following criteria:

- Duties that require:
  - the employee to possess a Commercial Driver's License (CDL);
  - the employee to drive a City vehicle in the course of duty at least once each week;
  - the operation of machinery, power tools, drones or other equipment;
  - wearing hardhats, safety glasses, hearing protection, tie offs, or any other personal protection equipment
  - work under a confined space permit.
- Positions that involve:
  - high levels of cognitive function and judgment;
  - the care of children;
  - responsibility for the safety of the public including, but not limited to, law enforcement, 911 dispatch, traffic control and lifeguarding;
  - safeguarding confidential information, securing data and preventing unauthorized access and data breaches.
  - safeguarding public monies

A Safety Sensitive Position list, as determined by the City of Westminster, is included as *Exhibit A* of the Policy. The Human Resources Director may revise the list as positions are added/removed from the City's grade structure or when the essential functions of a position change.

HOW ARE EMPLOYEES TESTED?

Drug and alcohol testing is done through chemical analysis, which determines without question whether a person has drugs or alcohol in his or her system. Specimens subject to testing include urine, hair, oral fluids, or blood for pre-employment and urine for all other drug tests and blood for alcohol testing. The testing facility will offer an employee the opportunity to have a preliminary breath alcohol test rather than a preliminary blood alcohol test. A decision to have a preliminary breath alcohol test is voluntary; if the breath alcohol test is negative a blood alcohol test will not be performed.

Observed urine collections will only be conducted with the consent of the donor, and the observer will be a person whose gender matches the donor's gender as identified by the donor at the beginning of the observed collection or by a medical professional, regardless of gender. Observed collections will be conducted in a professional manner that minimizes discomfort to the donor. The Medical Review Officer may recommend the collection of an alternate specimen (e.g., oral fluid) when a donor is unable to provide a sufficient amount of urine specimen at the collection site. Specimen collections, chain of custody and drug and alcohol tests will be in substantial compliance with the U.S. Department of Transportation (DOT) procedures and employees will be paid for their time during the collection process. To ensure accuracy, lab test procedures shall be done by a laboratory certified by the Maryland Department of Health and Mental Hygiene, SAMHSA, CAP, or HCFA, and include a preliminary drug screening, two highly sophisticated scientific tests including adulterant detection, and a review of non-negative results by an independent Medical Review Officer. All positive initial tests are confirmed by GC/MS at established cut off levels or by the DOT under SAMHSA. An Alcohol Content of .002 or higher is classified as a positive test.

The drugs for which a sworn police officer applicant/employee or a police officer recruit applicant/employee are tested may include, at a minimum, the presence of the following controlled dangerous substances, narcotic drugs, or marijuana, or classes of controlled dangerous substances, or their metabolites, at the minimum levels measured in nanograms per milliliter specified for each controlled dangerous substance, narcotic drug, or marijuana: (1) Amphetamines; (2) Barbiturates: (3) Cannabis or cannabinoids; (4) Opiates; (5) Cocaine or cocaine metabolite; (6) Phencyclidine; and (7) Benzodiazepines.

The drugs for which all other applicants/employees are tested may include all or some of the following: (1) Amphetamines (including Ecstasy); (2) Cannabinoids; (3) Cocaine; (4) Phencyclidine (PCP); (5) Opioids, or a metabolite of any of the above substances and mind altering synthetic narcotics or designer drugs. The term "illegal use of drugs" includes any controlled or scheduled drug not used in accordance with a health care provider's lawful prescription for the user, or any substances banned by Federal or applicable State laws.

An employee who holds a Commercial Driver's License (CDL) as a requirement of his or her position, is also subject to the City's U. S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA) 49 CFR PART 382, Controlled Substances and Alcohol Use and Testing Policy.

WHAT IF I TEST POSITIVE?

The Medical Review Officer, following DOT procedures, will contact you to give you an opportunity to discuss your results before reporting them to the City as a verified positive. Any applicant or employee may request that his or her split specimen be tested at a second laboratory, and if positive, the employee will be responsible for the expense of that testing and must reimburse the City or pay the testing clinic directly. An employee or applicant who receives a positive confirmed test result may contest or explain in confidence the result with the MRO within five (5) days after written notification of a positive result and ask questions of the MRO about prescription and non- prescription medications.

If there is a positive result for a <u>breath</u> alcohol test for which an employee has voluntarily consented, a confirmatory <u>blood</u> alcohol test will be required.

Any employee who tests positive, or refuses to be tested, may be subject to appropriate disciplinary action, up to and including immediate termination, as well as disqualification from receiving unemployment compensation benefits for willful misconduct connected with their job and just cause for discharge, and if positive post-accident, possible disqualification from worker's compensation benefits. (MD. Lab. & Emp. Code Ann. § 90-506). Any applicant who tests positive, or refuses to be tested, will be denied employment or have his or her offer withdrawn.

The City shall require a re-collection of a urine specimen on any pre-employment, return-to-duty and follow-up drug test if the result is negative-dilute. The MRO has authority to direct that the re-collection be observed. If the second test result is also negative-dilute, the City shall accept the result as a negative test.

WHAT ABOUT IMPAIRING EFFECT MEDICATIONS OR SUBSTANCES?

Any employee working in a safety-sensitive position as defined by the City's Policy is required, as a safety rule, to disclose before beginning his or her shift that he or she is taking or using ANY prescription drug, and any over-the-counter medication or other substance that may have an impairing effect on the performance of safety-sensitive duties. This category includes marijuana, the use of which the City, for safety reasons, will not

be able to accommodate for employees working in safety sensitive positions. The claimed use of products containing cannabidiol (CBD) will not be accepted by the City as a medical excuse for a positive THC (marijuana) test.

If the fact that the employee is taking or using a medication or substance that has impairing effects is not disclosed pre-duty by an employee in a safety-sensitive position and the employee tests positive, that employee will be subject to discipline, up to and including termination, for violation of this safety rule.

If disclosure is made, the City reserves the right to send the employee for a Fitness-for-Duty evaluation to evaluate the medication or substance and its effects on the performance of safety-sensitive duties.

In advance of testing, an employee is encouraged to have their own doctors make an individualized assessment of any safety related risks of the medications or substances that they are taking or using by providing the doctor a copy of his/her job description, and having the doctor to render an opinion on the safety related risks.

WHAT IF AN ADULTERANT IS FOUND OR DRUG TEST FALSIFIED?

The use of an adulterant (something added to a specimen to attempt to hide drug use) or an attempt to substitute a specimen is considered a refusal to test and a violation of the Policy. Any employee who is found to have violated this Policy by engaging in fraud or attempting to do so with respect to a drug or alcohol test may be subject to appropriate disciplinary action, up to and including termination, or withdrawal of a conditional job offer. Additionally, it is a crime under Maryland law to alter or substitute a bodily fluid sample, to possess or use an adulterant (including synthetic urine), or to sell, distribute, or transport bodily fluid or adulterants. A first violation is subject to imprisonment up to 1 year and a minimum fine of $1000 or both. (Md. Crim. Law Code Ann. §§ 10-111). The City will report to authorities any such criminal violation. The MRO may declare a urine specimen to be adulterated or substituted based on the laboratory report.

WHAT IF I REFUSE?

A refusal to provide a specimen for testing, unless the MRO agrees a medically valid reason exists for your inability, will be considered gross misconduct. Such conduct will cause an applicant's offer to be withdrawn and will subject an employee to immediate termination for cause. Under Maryland law, no unemployment compensation benefits are available in such a circumstance. Failure to report for specimen collection within a reasonable time, two (2) hours of being directed to do so, is also classified as a refusal. Refusal to provide a specimen following an on the job accident may also subject you to worker's compensation disqualification as gross misconduct.

ALCOHOL AND DRUG EDUCATIONAL INFORMATION

An Alcohol and Drug Educational Information section is included in this policy as *Exhibit B* to assist you in recognizing the impairing effects of drug use. The City will provide employee education on substance abuse and awareness. Supervisor training will be provided on how to recognize signs of abuse, how to document and collaborate signs of employee substance abuse, and how to refer substance abusing employees to the EAP.

WHAT IF I HAVE A SUBSTANCE ABUSE PROBLEM?

An employee with a drug or alcohol problem is encouraged seek help voluntarily and confidentially through the

City's EAP. Coming forward after you have been notified to report for testing is not considered a voluntary report. For confidential help with a substance abuse problem, contact the DER or the EAP.

Counseling and rehabilitation for alcohol or substance abuse is available through the health and welfare benefit program for employees, *only to the extent of the current benefits package*. The EAP is provided to employees at no cost. The City will assume no direct financial responsibility for counseling or rehabilitation costs of an employee, not covered by the EAP. Any costs in addition to or in excess of any available health benefits are the employee's responsibility.

A **Substance Abuse Resources** list of national, State of Maryland and local resources, and the City's EAP contact information is included as *Exhibit C* of this Policy.

WHAT ABOUT A LAST CHANCE OPPORTUNITY?

No last chance opportunity is available to a probationary, part time or temporary employee, or to a regular employee in the case of refusal, attempted adulteration, substitution, switching, tampering with, or diluting of a specimen or attempt to defraud a drug test. Other employees who receive an EAP/SAP evaluation favorable for rehabilitation may be offered a last chance agreement that will subject the employee to unannounced follow-up testing for up to 12 months, together with other educational and counseling requirements as recommend by the EAP/SAP. A negative return to duty test is required to be placed back on active duty. A positive test, refusal or failure to comply with any term of the last chance agreement during this follow-up period will subject the employee to immediate termination.

WHY AND WHEN DO YOU TEST?

- Follow-up: An employee who has voluntarily entered rehabilitation and has entered into a "last chance" agreement may be subject to unannounced drug and/or alcohol testing to determine whether he or she is under the influence of alcohol or drugs after successful completion of the rehabilitation program. The testing will be without notice at least once a year and may continue for at least twenty-four (24) months from the return-to-work date. Last chance opportunity following a positive drug/alcohol test when an employee is called for testing is within the sole discretion of the City and based upon a number of factors.

- Post-Accident/Incident Testing: Testing of safety-sensitive employees following an accident or safety-related incident may be conducted when:

    1) the employee has been involved in the incident/accident and was actively engaged in the activity which objectively could have caused or contributed to the injury or damage; or
    2) the employee was operating, controlling, or repairing any machinery, tool, device, equipment or vehicle that was involved in the incident/accident; or
    3) the employee's action or inaction was likely a contributing factor to the incident/accident or cannot be completely discounted as a contributing factor based on current information; or
    4) testing is being conducted as part of the City's Post Incident/Accident Investigation related to possible Workers' Compensation disqualification; or
    5) testing is being conducted of non-injured employees whose actions, or inaction, could have contributed to the incident/accident as part of a root cause investigation; or

- Pre-employment: Drug testing will be performed on all final applicants in safety-sensitive positions, and

employees who are to be transferred into a safety-sensitive position. A confirmed positive or refusal will result in denial of employment or the withdrawal of a job offer.

- Random: For employees in safety-sensitive positions, drug and/or alcohol testing is done without prior notice with equal probability of selection.

- Reasonable Suspicion: All employees will be required to submit to a drug and/or alcohol test if reasonable suspicion exists that the employee is under the influence of illegal drugs or alcohol, or exhibits behavior reflecting abuse. Reasonable suspicion means a basis for forming a belief based on specific, objective and articulable facts and rational inferences drawn from those facts. Supervisors will promptly detail in writing the basis for their suspicion.

- Routine Fitness for Duty: Safety-sensitive employees in safety-sensitive positions will be required to submit to a drug test as part of a Routine Fitness for Duty examination. Safety-sensitive employees may be tested upon transfer, return to duty, reassignment or promotion.

POLICY PROHIBITIONS

1. With respect to illegal drugs, employees and applicants violate this Policy by engaging in the following conduct, whether or not during work time or on City premises or property, and are subject to discipline up to and including discharge, or rejection of the application for employment:

    a. Testing positive in a confirmed drug or alcohol test, or refusing to be tested.

    b. Bringing and/or storing (including in a desk, locker, automobile, or other repository) illegal drugs or drug paraphernalia on City premises or property, including City-owned or leased vehicles, or vehicles used for City purposes.

    c. Having possession of, being under the influence of, testing positive for, being in close proximity to persons using illegal drugs, or otherwise having in one's system, illegal drugs.

    d. Using, consuming, transporting, distributing or attempting to distribute, manufacturing, selling, or dispensing illegal drugs.

    e. Taking illegal drugs in any vehicle during the work day, including the employee's personal vehicle.

    f. A conviction or plea of guilty relative to any criminal drug offense occurring in the workplace. All employees must notify the City in writing of any criminal drug conviction no later than five calendar days after such conviction.

    g. Abuse of prescription drugs, which includes exceeding the recommended prescribed dosage or using others' prescribed medications. Such prescriptions brought to work should remain in the original labeled container and show both the prescribing doctor's name and the prescription's expiration date.

    h. Switching, tampering with, diluting, or adulterating any specimen or sample collected under this Policy, or attempting to do so.

i. Refusing to cooperate with the terms of this Policy, including a refusal to submit to questioning, drug testing, medical or physical tests or examinations when requested or conducted by the City is a violation of City Policy and may result in disciplinary action up to and including termination. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork or failing to report to the collection site at the appointed time.

j. Failure to advise a supervisor or manager of the use of a prescription or over-the-counter drug which may alter the employee's ability to perform the essential functions of his or her job.

k. Failure of an employee to notify his or her supervisor before reporting to work if he or she believes that he or she is under the influence of drugs.

l. The use of hemp products that cause a positive marijuana test result. The City will not generally consider use of hemp products a valid medical explanation for a positive marijuana test result.

2. With respect to alcohol, employees violate this Policy by engaging in the following conduct during work time or on City premises or property:

   a. Bringing and/or storing (including in a desk, locker, or other repository) alcohol on City premises or property, including City-owned or leased vehicles, or vehicles used for City purposes.

   b. Having possession of, being under the influence of, testing positive for or having in one's system, alcohol.

   c. Using, consuming, transporting, distributing or attempting to distribute, manufacturing, selling, or dispensing alcohol.

   d. Drinking alcohol in any vehicle during the work day, including the employee's personal vehicle.

   e. A conviction or plea of guilty relative to any criminal alcohol offense occurring in the workplace. All employees must notify City in writing of any criminal alcohol conviction not later than five calendar days after such conviction.

   f. Switching, tampering with, or adulterating any specimen or sample collected under this Policy, or attempting to do so.

   g. Refusing to cooperate with the terms of this Policy, including submitting to questioning, alcohol testing, medical or physical tests or examinations, when requested or conducted by the City or obstructing testing, such as failing to sign necessary paperwork or to report to the collection site at the appointed time.

   h. Failure of employee to notify his or her supervisor before reporting to work if he or she believes that he or she is under the influence of alcohol.

Exhibit A

SAFETY SENSITIVE POSITIONS LIST

DEPARTMENT	TITLE
FINANCE	ACCOUNTING SPECIALIST I
FINANCE	ACCOUNTING SPECIALIST II (Inactive)
FINANCE	ACCOUNTING CLERK (Inactive)
POLICE (OTHER)	ADMINISTRATIVE ASSISTANT
STREETS	ARBORIST
RECREATION (SEASONAL)	ASSISTANT CAMP DIRECTOR
RECREATION (SEASONAL)	ASSISTANT POOL MANAGER
RECREATION	ASST. DIRECTOR, REC & PARKS
POLICE (OTHER)	BACKGROUND INVESTIGATION
RECREATION (SEASONAL)	CAMP COUNSELOR
RECREATION (SEASONAL)	CAMP DIRECTOR
POLICE (SWORN)	CAPTAIN
WASTEWATER	CHEMIST
WASTEWATER	CHIEF WASTEWATER OPERATOR
RECREATION (TEMPORARY)	CHILD CARE ATTENDANT
RECREATION (TEMPORARY)	CHILD CARE/FITNESS CTR ATTENDANT
ADMINISTRATION	CITY ADMINISTRATOR
POLICE (OTHER)	COMMUNICATIONS SPECIALIST I
POLICE (OTHER)	COMMUNICATIONS SPECIALIST II
POLICE (OTHER)	COMMUNICATIONS SUPERVISOR
PUBLIC WORKS	CONSTRUCTION INSPECTOR
POLICE (SWORN)	CORPORAL
PUBLIC WORKS	DEPUTY DIRECTOR, PUBLIC WORKS
POLICE (SWORN)	DEPUTY POLICE CHIEF
PLANNING	DIRECTOR, COMM. PLANNING & DEV.
RECREATION	DIRECTOR, RECREATION & PARKS
FINANCE	DIRECTOR, FINANCE & ADMINISTRATIVE SERVICES
HOUSING SERVICES	DIRECTOR, HOUSING SERVICES
HUMAN RESOURCES	DIRECTOR, HUMAN RESOURCES
PUBLIC WORKS	DIRECTOR, PUBLIC WORKS
PUBLIC WORKS	ENGINEER
STREETS	EQUIPMENT OPERATOR (SEASONAL)
STREETS	EQUIPMENT OPERATOR I
UTILITIES	EQUIPMENT OPERATOR I
UTILITIES	EQUIPMENT OPERATOR I - FIBER
STREETS	EQUIPMENT OPERATOR II
UTILITIES	EQUIPMENT OPERATOR II
RECREATION (TEMPORARY)	FAMILY CENTER ATTENDANT
RECREATION	FAMILY CENTER MANAGER
STREETS	FLEET MAINTENANCE MECHANIC
HOUSING	HOUSING SPECIALIST
HUMAN RESOURCES	HUMAN RESOURCES ANALYST
HUMAN RESOURCES	HUMAN RESOURCES ASSOCIATE
HUMAN RESOURCES	HUMAN RESOURCES SPECIALIST (Inactive)
TECHNOLOGY	IT MANAGER
POLICE (SWORN)	LIEUTENANT
RECREATION (SEASONAL)	LIFEGUARD

DEPARTMENT	TITLE
STREETS	MAINTENANCE CREW LEADER
UTILITIES	METER READER
POLICE (OTHER)	PARKING ENFORCEMENT OFFICER
WASTEWATER	PLANT SHIFT SUPERVISOR
POLICE (SWORN)	POLICE CHIEF
POLICE (SWORN)	POLICE OFFICER RECRUIT
RECREATION (SEASONAL)	POOL MANAGER
POLICE (SWORN)	PRIVATE FIRST CLASS
POLICE (SWORN)	PROBATIONARY POLICE OFFICER
POLICE (OTHER)	PROPERTY & EVIDENCE SPECIALIST
HOUSING	PROPERTY MAINTENANCE INSPECTOR
RECREATION	RECREATION ASSISTANT I
RECREATION	RECREATION ASSISTANT II
RECREATUIB	RECREATION ASSISTANT III
RECREATION	RECREATION PROGRAM ASSISTANT
RECREATION	RECREATION PROGRAM COORDINATOR
HUMAN RESOURCES	SAFETY/RISK COORDINATOR
POLICE (SWORN)	SERGEANT
WASTEWATER	SHIFT SUPERVISOR
STREETS	SOLID WASTE CREW LEADER
STREETS	STREETS ASSISTANT SUPERINTENDENT
STREETS	STREETS CREW LEADER
STREETS	STREETS SUPERINTENDENT
TECHNOLOGY	TECHNICAL SUPPORT ANALYST
TECHNOLOGY	TECHNICAL SUPPORT SPECIALIST
UTILITIES	UTILITIES ASSISTANT SUPERINTENDENT
UTILITIES	UTILITIES CREW LEADER
UTILITIES	UTILITIES CREW LEADER - FIBER
UTILITIES	UTILITIES MAINTENANCE MECHANIC
UTILITIES	UTILITIES SUPERINTENDENT
WASTEWATER	WASTEWATER ASSISTANT SUPERINTENDENT
WASTEWATER	WASTEWATER OPERATOR I
WASTEWATER	WASTEWATER OPERATOR II
WASTEWATER	WASTEWATER SUPERINTENDENT
WATER	WATER ASSISTANT SUPERINTENDENT
WATER	WATER MAINTENANCE MECHANIC
WATER	WATER PLANT OPERATOR I
WATER	WATER PLANT OPERATOR II
WATER	WATER SUPERINTENDENT

Exhibit B

Alcohol and Drug Educational Information

Alcohol (Depressant)

Common Forms:	Beer, wine, hard liquor
How Used:	Oral ingestion, patterns of use vary.
Desired Effect:	People drink to relax, to socialize, as a part of a religious ceremony, for the control of physical and emotional pain, or for a variety of other reasons. Its depression of the central nervous system is progressive and continuous. It is a mood-modifying drug that usually provides a temporary feeling of mild euphoria and stimulation. This is a result of the initial depression of the higher centers of the brain which control inhibition. The more you drink, the more sedated you then become.
Time in Body:	Depends on many factors, such as body size, amount of alcohol consumed within an hour, and other individual factors. Performance is effected in relation to the amount consumed. Generally, a medium-sized person eliminates the equivalent of one drink per hour. However, "hangover" effects of alcohol have been documented for as long as 14 hours after consuming an intoxicating dose, well after the blood alcohol levels have returned to zero.
Observable Effects:	Staggering gait Slurred speech Odor of alcoholic beverage Shaky hands Poor eye-hand coordination Slowed reaction time Eyes react slowly to light - wears sun glasses
Work Behavior:	Arrive late, leave early, mis-outs Neglect of physical appearance Restlessness Tremors (hands, face, fingers, lips tongue) Slurred speech Uninhibited - makes inappropriate remarks
Material Indicators:	Empty liquor bottles, cans, often in paper bags Flasks, sometimes disguised as other things
Slang Terms:	Booze, juice, hooch, grape, eye-opener, hair-of-the-dog, brew, suds, etc.

Amphetamines (Amphetamine and Methamphetamine – Stimulant)

Common Forms:	Amphetamine - usually capsules or white, flat, double-scored pills. Methamphetamine - white or granular powder, often packaged in aluminum foil or plastic bags.
How Used:	Orally, sniffed up the nose, or injected.
Desired Effect:	Most commonly sought after effects include euphoria, postponement of fatigue, increased energy, alertness and feelings of personal power. Repeated or chronic use often causes a strong dependence reaction and a schizophrenic loss contact with reality. Users coming off the drug experience extreme fatigue-induced sleep ("crash"), often followed by continued fatigue and depression.
Time in Body:	Injection or sniffed up the nose; "rush" felt within 1 minute. Orally, effects felt within about ½ hour. Single doses detectable for about 48 hours.
Observable Effects:	Dilated pupils. Flushed face, rapid respiration, profuse sweating. Hyper-excitability, talkativeness, restlessness. "Stereotypic" behavior often seen: person engages in repetitive tasks or mannerisms for extended periods of time. In large doses, inability to concentrate, confusion, panic.
Work Behavior:	Try to do job beyond competence level. Impaired ability to operate equipment. Takes chances, risks.
Material Indicators:	Pills, capsules, white powder, granular crystals Foil wrapped tubes, baggies. Hypodermics and paraphernalia for injections
Slang Terms:	Defies, bennies, speed, crank, ice, crystal, white crosses, black beauties

Alcohol and Drug Educational Information (Continued)

Cocaine (Stimulant)

Common Forms:	Cocaine - White crystalline powder. Free-base cocaine (crack) - white granular "rocks"
How Used:	Cocaine--usually snorted up the nose through a straw or from a "coke spoon" after being chopped to a fine powder with a razor blade. "Crack" -- freebase cocaine--is a processed version which is vaporized in a pipe and inhaled. Either form may also be injected.
Desired Effect:	Most commonly sought after effects are euphoria, stimulation, postponement of fatigue and feelings of personal power. The "high" lasts approximately one hour, with a "down" follow-on period. Psychological and physical dependence to "crack" after one to two uses; dependency to snorted coke takes longer to develop.
Time in Body:	Single doses detectable for 12-24 hours
Observable Effects:	Dilated pupils. Talkativeness, restlessness. Sniffing, runny nose, irritated or bloody nose. Dramatic mood swings, from "down" to "up" in minutes. Sense of power sometimes manifested in aggressiveness
Work Behavior:	Frequent trips "to the restroom"—secluded place. Frequent sick-outs and unexplained absences. Hyper-excitability and over-reaction to stimulus. Isolation/withdrawal from friends and activities. Financial problems--borrows, steals and/or sells to support habit. Insomnia, restlessness, lack of sleep
Material Indicators:	Small folded paper envelopes (bindles), plastic bags, small vials used to store drug. Razor blades, mirrors, cut off straws, coke spoons. Small glass pipes, and heat sources used to volatilize crack.
Slang Terms:	Coke, snow, toot, crack, blow, happy dust, "C"

Marijuana

Common Forms:	Dried green-brown flowers and leaves of the hemp (cannabis) plant--also as compressed tar like lumps (hashish) and sometimes as an oil to be spread on cigarettes (hash oil).
How Used:	Generally smoked in hand-rolled cigarettes (joints) or a small pipe, sometimes eaten in baked goods or steeped to make a tea.
Desired Effect:	Effects are somewhat dependent on the user and potency of the plant. Low doses tend to produce a dreamy state of relaxation and euphoria with changes in sensory perceptions (usually intensified) and alteration in thought formation and expression. Higher doses intensify these reactions with fragmentation of thought, memory impairment, shortened attention span, and illusions of insight. Marijuana currently sold on the street is 10 times more potent today than in past years.
Time in Body:	Marijuana dissolves in body fat cells and is detectable for extended periods of time--up to seven (7) days for occasional users and four (4) weeks or longer for chronic users
Observable Effects:	Red bloodshot glassy eyes (users often wear dark glasses and use eye drops to combat). Poor muscular control. Rambling, disconnected speech patterns. Euphoria--as laughing out of context. Getting "hung up" - i.e. going into the bathroom to comb your hair and coming out two hours later. Distinctive odor in air and/or on clothing.
Work Behavior:	Lack of attention, vision and auditory changes, and poor muscular control. Inability to respond to emergencies and sudden situational changes. Frequent sick-outs and mis-outs. Lackadaisical "I don't care" attitude about person and work. Chronic health problems for frequent users--persistent cough, fatigue, frequent sickness.
Material Indicators:	Baggies of green-brown vegetable matter; rolling papers; small pipes (for marijuana) and very small pipes (for hashish); "roach clips" to hold the burned end of the marijuana cigarette; "roaches" discarded on the floor or in ash trays; distinctive odor of marijuana in the air.
Slang Terms:	Dope, grass, reefer, weed, ganja, pot, etc.

Alcohol and Drug Educational Information (Continued)

Opioids (Morphine and Codeine - Narcotic Depressants)

Common Forms:	Street forms are pills, liquids and powders. Morphine is derived from opium. Opium dissolved in alcohol, containing 10% morphine, is legally available in many states as "paregoric."
How Used:	Morphine and codeine are widely used medicinally. Morphine is a naturally occurring alkaloid, and is also found in products containing poppy seeds. Heroin is a semi-synthetic derivative of morphine. Opium is usually smoked. Codeine is most commonly taken orally. Heroin and morphine are injected; powders can be snorted; cigarettes dipped in paregoric and smoked.
Desired Effect:	Most commonly effects include euphoria, relief from pain, and a feeling of dissociated well-being. Low maintenance doses allow the addict to function on a daily basis. The heroin user experiences a "rush" described as a very pleasurable whole body reaction lasting 5-10 minutes, followed by several hours of mental and physical relaxation.
Time in Body:	Single doses are usually detectable for 48-72 hours.
Observable Effects:	Pinpoint pupils. Sweating, nausea, vomiting in novice users. "Nodding off"--the head drooping toward the chest, then bobbing up. Overly calm, detached facial expression. Confusion, mental dullness and slurred speech. Needle marks over veins.
Work Behavior:	Increased sick-outs, mis-outs. Lack of interest in work, no attention to detail. Sharing of needles brings a high risk of contracting hepatitis and/or AIDS. High cost of the addiction may lead to borrowing money, stealing and selling (on or off the premises).
Material Indicators:	Foil or paper "bindles" for holding the drug. Charred spoons or bottle caps, used to cook the drug. Multiple burned matches used to cook the drug. Needles, syringes, eye droppers used for injection. Balloons or prophylactics used to hold drug. Bloody tissue papers, blood on shirt sleeves.
Slang Terms:	Heroin, dope, smack, shit, hard stuff, "H", china, monkey dust, china white, etc.

Phencyclidine (PCP)

Common Forms:	Pills, liquid, powder, and PCP cigarettes
How Used:	Usually smoked with tobacco or marijuana, but may be injected, swallowed, eaten or snorted.
Desired Effect:	Users report desirable feelings of immobility, numbness, and detachment. Other sought-after effects include feelings of strength, power, and invulnerability, a dream-like detachment from reality (often coupled with lack of coordination).
Time in Body:	Usually detectable 1- 8 days, but chronic users may test positive for several weeks following the last dose.
Observable Effects:	Low doses: Sedated, euphoric, uncoordinated behavior. Wide mood swings. Sparse and purposeless speech. Muscle rigidity and jerky eye movements (nystagmus).
High Doses:	Coma-like states with muscle rigidity and staring, half-closed eyes. Sudden stimuli may send the user into a psychotic state, with extreme agitation, violent behavior, abnormal strength, and inability to speak or comprehend.
Work Behavior:	Wide mood swings, unpredictable behavior, aggressive. Tremendous liability in the work force.
Material Indicators:	Cigarettes that look as if they have been wet. Crystals, liquids or powders in small vials. Folded aluminum foil or paper packets.
Slang Terms:	PCP, angel dust, hog, dust, DOA, shermans, sherms, peace pills, dummy

Exhibit C

Substance Abuse Resources

NATIONAL RESOURCES

A2Z Alcohol & Drug Abuse-Addiction	1-800-274-2042
Al-Anon/Alateen Family Group Headquarters	1-800-356-9996
Alcoholics Anonymous World Service	1-212-870-3400
American Council on Alcoholism Helpline	1-800-527-5344
800 Cocaine--An Information and Referral Hotline	1-800-262-2463
Nar-Anon Family Group Headquarters	1-310-547-5800
Narcotics Anonymous	1-818-773-9999
National Association of Alcoholism (NAADAC) www.naadac.org	1-800-548-0497
National Association of Addiction Treatment Professionals– www.naatp.org	1-717-581-1901
National Council on Alcoholism and Drug Dependence, Inc. www.ncadd.org	1-212-269-7797
Hope Line (24-hour affiliate referral)	1-800-NCA-CALL
Center for Substance Abuse Prevention's Workplace Hotline	1-800-WORKPLACE
National Clearinghouse for Alcohol & Drug Information	1-800-729-6686
Center for Substance Abuse Prevention's Drug Information, Treatment & referral Hotline	1-800-662-HELP
(Spanish-Espanol)	1-800-66-AYUDA

STATE RESOURCES

The Addiction Recovery Guide www.addictionrecoveryguide.org/resources/state/maryland	N/A

LOCAL RESOURCES

Carroll County Health Department - Behavioral Health-Substance Abuse Prevention Services cchd.maryland.gov/behavioral-health-alcohol-and-drug-use-prevention-services	410-876-4449

CITY EMPLOYEE ASSISTANCE PROGRAMS

Business Health Services Employee Assistance Program www.bhsonline.com	800-327-2251
Cigna Employee Assistance Program CignaBehavioral.com	877-622-4327

U.S. Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA)
49 CFR PART 382
CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY

For the

City of Westminster

Hereafter referred to as: "*City of Westminster" or* "*City"* Updated: April 1, 2020

This policy replaces the CDL Alcohol and Drug Testing Policy

SECTION A - GENERAL

This policy and 49 CFR Part 40 Regulations of the U.S. Department of Transportation Procedures For Transportation Workplace Drug And Alcohol Testing Programs and Urine Specimen Collection Guidelines, Office of Drug and Alcohol Policy and Compliance, U.S. Department of Transportation, are integral parts of this Policy and apply to all covered employees. They may be viewed at **http://www.dot.gov/odapc.** Collection procedures, laboratory procedures, MRO review, alcohol testing, record keeping and all other procedural requirements shall adhere to 49 CFR Part 40.

The City of Westminster shall test, in accordance with Federal regulations, employees required to have a Commercial Driver's License (CDL) for the use of controlled substances that violate law or Federal regulation and the misuse of alcohol.

PURPOSE *382.101*

The purpose of this policy, in addition to meeting Federal regulations, is to establish a program designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

APPLICABILITY *382.103*

(a) This policy applies to every person of the City of Westminster who operates a commercial motor vehicle in commerce in any State, and is subject to:
   (1) The commercial driver's license requirements of part 383;
   (2) All drivers operating commercial motor vehicles for the City; or
   (3) The commercial driver's license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this policy that apply to employers and the requirements in this policy that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

The COVERED EMPLOYEE CERTIFICATE OF RECEIPT contains the name, address, and phone number of the responsible individual(s). The CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY complies with requirements of the Department of Transportation regulations as set forth in 49 CFR § 382 and 49 CFR Part 40. The DER shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (random, post-accident, reasonable suspicion, etc.); maintaining a locked file system on all test results; and overseeing the referral of employees for evaluation and treatment. The City of Westminster shall ensure that all covered employees are aware of the provisions and

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

coverage of the City of Westminster's CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY and that all employees are notified prior to testing.

CITY OF WESTMINSTER SERVICE AGENT CONTACT INFORMATION

DESIGNATED EMPLOYER REPRESENTATIVE (DER)

TITLE: Director of Human Resources
ADDRESS: 56 West Main Street, Suite 1
Westminster, MD 21157
PHONE: 410-848-2702

ALTERNATE DESIGNATED EMPLOYER REPRESENTATIVE (DER)

TITLE: Safety/Risk Coordinator
ADDRESS: 56 West Main Street, Suite 1
Westminster, MD 21157
PHONE: 410-848-2202

MEDICAL REVIEW OFFICER (MRO)

NAME: Carroll Occupational Health
ADDRESS: 700-B Corporate Center Court, Suite A
Westminster, MD 21157
PHONE: 410-871-0470

LABORATORY

NAME: Clinical Reference Laboratory
ADDRESS: 8433 Quivira Road
Lenexa, KS 66215

SUBSTANCE ABUSE PROFESSIONAL (SAP)

NAME: Business Health Services
ADDRESS: 6225 Smith Ave, Suite 203
Baltimore, MD 21209
PHONE: 800-327-2251

CONSORTIUM/THIRD PARTY ADMINISTRATOR (C/TPA)

NAME: Carroll Occupational Health
ADDRESS: 700-B Corporate Center Court, Suite A
Westminster, MD 21157
PHONE: 410-871-0470

CITY OF WESTMINSTER'S INDEPENDENT AUTHORITY

This CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY sets forth the requirements of 49 CFR Parts 382 and 40. Those areas of the policy that appear in italic print reflect the City of Westminster's independent authority to require additional provisions with regard to drug and alcohol testing procedures. To the extent the City's state specific non-DOT City Authority Policy supplements do not conflict with applicable DOT Regulations and current agreements, it is to be followed. In the event that DOT Regulations are applicable to the driver's or applicant's particular situation or issue, the DOT Regulations pre-empt conflicting State Laws, the City's non-DOT Policies and all other agreements.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

PERIOD OF WORKDAY A DRIVER IS REQUIRED TO BE IN COMPLIANCE

Safety-Sensitive Functions as covered under 49 CFR Part 382: In accordance with 49 CFR 382 drivers who possess CDL licenses are subject to DOT regulated alcohol and drug testing at all times from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
(2) All time inspecting equipment as required by 49 CFR 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
(3) All time spent at the driving controls of a commercial motor vehicle in operation;
(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR 393.76);
(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, or remaining in readiness to operate the vehicle. or in giving or receiving receipts for shipments loaded or unloaded; and
(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

A driver is required to be in compliance with this policy during that period of the workday when they are on-duty performing *safety-sensitive functions (See Definitions).*

DRIVER FITNESS FOR DUTY *391.11*

DOT regulations provide that the City of Westminster as a DOT regulated employer makes the final determination of who is a qualified individual to drive a commercial motor vehicle. 49 CFR § 391.11(a). The City of Westminster shall not permit a person to drive a commercial motor vehicle unless the person meets all DOT minimum qualifications and such other more stringent qualifications and requirements relating to safety of operation and employee safety and health as it may decide in its judgment and discretion. The City of Westminster shall use the services of independent Certified Medical Examiners, Occupational Medicine Physicians, Medical Review Officers, as well as other medical and industry professionals to make its final fitness for duty determinations.

TESTING PROCEDURES *382.105*

The City of Westminster shall ensure that all alcohol or controlled substances testing conducted under this policy complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol or controlled substances testing are made applicable to The City of Westminster by 382.105.

DEFINITIONS *382.107*

Words or phrases used in this policy are defined in Sections 386.2, 390.5 and 40.3 of Federal regulations, except as provided herein.

<u>Actual knowledge for the purpose of Section B of this policy</u> means actual knowledge by the City of Westminster that a driver has used alcohol or controlled substances based on the City of Westminster's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 382.307.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this policy.

Alcohol use means the drinking or swallowing of any beverage, liquid mixture, or preparation, (including any medication), containing alcohol. *[Caution: Certain brands and types of cough medicines contain alcohol.]*

CFR means Code of Federal Regulations.
Commerce means:

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and
(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in (1) of this definition.

Commercial Driver' s license Drug an d Alcohol Clearinghouse (Clearinghouse) means the FMCSA database that subpart G of 49 CFR Part 382.701-727 requires employers and service agents to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations. Effective January 6, 2020, the FMCSA will establish a mandatory database and the following personal information collected and maintained under this part shall be reported to the Clearinghouse:

(1) A verified positive, adulterated, or substituted drug test result;
(2) An alcohol confirmation test with a concentration of 0.04 or higher;
(3) A refusal to submit to any test required by subpart C of this part;
(4) An employer's report of actual knowledge, as defined at § 382.107:
(5) On duty alcohol use pursuant to § 382.205;
(6) Pre-duty alcohol use pursuant to § 382.207;
(7) Alcohol use following an accident pursuant to § 382.209; and
(8) Controlled substance use pursuant to § 382.213;
(9) A substance abuse professional's (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
(10) A negative return-to-duty test; and
(11) An employer's report of completion of follow-up testing.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(1) Has gross combination weight rating of 26,001 or more pounds (11,794 or more kilograms) inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds (4,536 kilograms); or
(2) Has a gross vehicle weight rating of 26,001 or more pounds (11,794 or more kilograms); or
(3) Is designed to transport 16 or more passengers, including the driver; or
(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR part 172, Subpart F.

Confirmation (or confirmatory) drug test means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test means a second test performed on a urine specimen to further support a validity test result.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

Confirmed drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not “employers” for purposes of Federal regulations.

Controlled substances mean those substances identified in 40.85. As of January 1, 2018, the drugs tested for may include all or some of the following: (1) Amphetamines; (2) Cannabinoids; (3) Cocaine; (4) Phencyclidine (PCP); and (5) Opioids.

Designated employer representative (DER) is an individual identified by the City of Westminster as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the City. Service agents cannot serve as DERs.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
(2) Exclusions:
    i. Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
    ii. Tire disablement without other damage even if no spare tire is available.
    iii. Headlight or taillight damage.
    iv. Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653, and 654) in accordance with 49 CFR part 40.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, part time, regularly employed or temporary commercial motor vehicle drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

Employer means an entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this Federal regulation. The term, as used in this policy, refers to the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this policy and any applicable DOT agency regulations. Service agents are not employers for the purpose of Federal regulations.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Negative return-to-duty test means a return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02, as described in § 40.305.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Positive alcohol test means an alcohol test with an alcohol concentration of greater than or equal to 0.04.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

Refuse to submit (to an alcohol or controlled substances test) means that you as a driver:

(a) (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (see § 40.61(a));

(2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the testing site before the testing process commences (see § 40.63(c)) for a pre-employment test is not deemed to have refused to test;

(3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; Provided that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see § 40.63(c)) for a pre-employment test is not deemed to have refused to test;

(4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see § 40.67(l) and 40.69(g));

(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see § 40.193(d)(2));

(6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, Sec. § 40.197 (b));

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under Sec. § 40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or

(8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).

(9) For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.

(10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.

(11) Admit to the collector or MRO that you adulterated or substituted the specimen.

(12) For a breath alcohol test, refusing to sign the certification at Step 2 of the ATF 40.261 (a) (3).

(b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

(c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. 40.191

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at a City of Westminster's or shipper's plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the City of Westminster;
(2) All time inspecting equipment as required by 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
(3) All time spent at the driving controls of a commercial motor vehicle in operation;
(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 393.76);
(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

(1) In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.
(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Service agent means any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

Stand-down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

PREEMPTION OF STATE AND LOCAL LAWS *382.109*

(a) Except as provided in paragraph (b) of this section, the Federal regulation requiring this alcohol and controlled substances testing preempts any State or local law, rule, regulation, order to the extent that:
   (1) Compliance with both the State or local requirement and the Federal regulation is not possible; or
   (2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement of this Federal regulation.

(b) This policy, and the Federal regulation requiring it, shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, the City of Westminster, or the general public.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

OTHER REQUIREMENTS IMPOSED BY the City of Westminster *382.111*

Except as expressly provided in this policy, nothing in the Federal regulation 382 and 49 CFR part 40 shall be construed to affect the authority of the City of Westminster, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

REQUIREMENT FOR NOTICE *382.113*

Before performing an alcohol or controlled substances test under the Federal regulation, the City of Westminster shall notify a driver that the alcohol or controlled substances test is required by Federal regulation. The City of Westminster shall not falsely represent that a test is administered under Federal regulation.

STARTING DATE FOR TESTING PROGRAMS *382.115*

(a) All domestic-domiciled employers must implement the requirements of this policy the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of this policy on the date the employer begins commercial motor vehicle operations in the United States.

PUBLIC INTEREST EXCLUSION *382.117*

The City of Westminster shall not use the services of a service agent who is subject to a public interest exclusion (PIE) in accordance with 49 CFR part 40, Subpart R.

STAND-DOWN WAIVER PROVISION *382.119*

(a) The City of Westminster is prohibited from standing employees down, except consistent with a waiver from the Federal Motor Carrier Safety Administration as required under 382.119 of Federal regulations.

(b) If the City of Westminster seeks a waiver from the prohibition against standing down an employee before the MRO has completed the verification process, the City shall follow the procedures in 49 CFR 40.21. The City of Westminster must send a written request which includes all of the information required by that section to the Federal Motor Carrier Safety Administrator (or the Administrator's designee), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(c) The final decision whether to grant or deny the application for a waiver will be made by the Administrator or the Administrator's designee.

(d) After a decision is signed by the Administrator or the Administrator's designee, The City of Westminster will be sent a copy of the decision, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver.

(e) Questions regarding waiver applications should be directed to the Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366-5720.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

EMPLOYEE ADMISSION OF ALCOHOL AND CONTROLLED SUBSTANCE USE *382.121*

(a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this policy and 49 CFR part 40, provided that:
   (1) The admission is in accordance with the City of Westminster's written voluntary self-identification program or policy that meets the requirements of paragraph (b) of this section;
   (2) The driver does not self-identify in order to avoid testing under the requirements of this part;
   (3) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and
   (4) The driver does not perform a safety sensitive function until the City of Westminster is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

(b) A qualified voluntary self-identification program or policy must contain the following elements:
   (1) It prohibits the City of Westminster from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section;
   (2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem;
   (3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor;
   (4) It must ensure that:
      (i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or
      (ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty controlled substance test with a verified negative test result for controlled substances use; and
   (5) It may incorporate employee monitoring and include non-DOT follow-up testing.

DRIVER IDENTIFICATION *382.123*

(a) For each alcohol test performed, the City shall provide the driver's commercial driver's license number and State of issuance in Step 1, Section B of the Alcohol Testing Form (ATF).

(b) For each controlled substance test performed under this part, the City shall provide the following information, which must be recorded as follows:
   (1) The driver's commercial driver's license number and State of issuance in Step 1, section C of the Federal Drug Testing Custody and Control Form (CCF).
   (2) The employer's name and other identifying information required in Step 1, section A of the ATF.

EMPLOYEE ASSISTANCE PROGRAM

The City of Westminster's Employee Assistance Program (EAP) is a confidential program designed to assist in the identification and resolution of problems associated with employees impaired by alcohol or drugs, or other personal concerns that may adversely affect employee job performance.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

SECTION B - PROHIBITIONS

ALCOHOL CONCENTRATION *382.201*

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If the City of Westminster has actual knowledge that a driver has an alcohol concentration of 0.04 or greater, the driver will not be permitted to perform or continue to perform safety-sensitive functions.

ON-DUTY USE *382.205*

No driver shall use alcohol while performing safety-sensitive functions. If the City of Westminster has actual knowledge that a driver is using alcohol while performing safety-sensitive functions, that driver shall not be permitted to perform or continue to perform safety-sensitive functions.

PRE-DUTY USE *382.207*

No driver shall perform safety-sensitive functions within four (4) hours after using alcohol. If the City of Westminster has actual knowledge of a driver who has used alcohol within four (4) hours, that driver will not be permitted to perform or continue to perform safety-sensitive functions.

USE FOLLOWING AN ACCIDENT *382.209*

No driver required to take a post-accident alcohol test under 382.303 shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.

REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST 382.211

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under 382.303, a random alcohol or controlled substances test required under 382.305, a reasonable suspicion alcohol or controlled substances test required under 382.307, or a follow-up alcohol or controlled substances test required under 382.311. The City of Westminster shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

DISCLOSURE OF OFF-DUTY DUI AND DRUG OFFENSE ARREST AN/OR CONVICTION 382.111

Safety Rule requiring mandatory reporting by Drivers of off – duty DUI and Drug Offense Arrest and/or Conviction. In accordance with the authority granted to the City by the DOT in 49 CFR 382.111 to impose other requirements to prevent alcohol misuse by Drivers, it is mandatory that Drivers disclose to their supervisor by the end of the business day arrest and/or convictions for all alcohol and/or drug related offenses committed while operating any motor vehicle. This will allow the City to immediately remove the Driver from safety sensitive functions, Drivers who have engaged in off – duty unsafe behavior related to alcohol or drug misuse (which is directly related to their safety sensitive functions performed for the City) to make determinations as follows: 1) if the Driver is fit for duty; 2) if the Driver is still qualified under DOT regulations to operate a CMV for the City; 3) if the Driver is still insurable at standard rates under the City fleet policy; and 4) if the Driver can still meet the essential job functions for the position of Driver. It is an Essential Job Function of every DOT regulated Driver that they be qualified and licensed to operate a CMV without the use of a judicially ordered interlocking device, or similar device as part of a diversion or conviction for an alcohol related offence.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

PRE-DUTY DISCLOSURE OF ANY IMPAIRING EFFECT MEDICATION OR SUBSTANCES *382.213*

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in 382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) The City of Westminster, having actual knowledge that a driver has used a controlled substance, shall not permit the driver to perform or continue to perform a safety-sensitive function.

(c) The City of Westminster may require a driver to inform the City of any therapeutic drug use.

All drivers of the City of Westminster are required, as a safety rule and under DOT regulations, to pre-duty disclosure that they are taking ANY impairing affect therapeutic drug, prescription medication (including medical marijuana), over-the-counter medication, mind altering synthetic or designer drugs or substances which may have an effect on their ability to safely operate a commercial motor vehicle or the performance of safety-sensitive duties. It is an essential function of every driver's position at the City of Westminster to be able to work in a constant state of alertness and in a safe manner. If the fact that the driver is taking an impairing effect drug, medication or substance is not disclosed pre-duty by a driver, and the driver tests positive or is determined by the MRO to be a potential safety risk due to a drug, medication or substance, that driver will be subject to discipline, up to and including termination for violation of this safety rule. If disclosure is made, the City of Westminster, in accordance with its authority under 49 CFR Part 391.11(a), reserves the right to send the driver for a Fitness-for-Duty evaluation to evaluate the medication and its possible adverse effects on the driver's ability to safely operate a commercial motor vehicle or the performance of other safety-sensitive duties. In determining whether the employee has a legally valid prescription so as to constitute a legitimate medical explanation, consistent with the Controlled Substances Act (CSA), the MRO will use the CSA standard when conducting his medical review (49 CFR Part 40.137). The claimed use of products containing cannabidiol (CBD) will not be accepted by the City as a medical excuse for a positive THC (marijuana) test.

In advance of the operation of a commercial motor vehicle, or the performance of other safety-sensitive duties, or testing, drivers are strongly encouraged (and mandated by DOT Regulations) to have their own doctor make an individualized assessment of any safety related risks of the drug, medication or substance which they are taking, providing the doctor a copy of their job description or specific duties, and having the doctor render an opinion on the safety related risks. The driver need not disclose to their supervisor the drug, medication or substance, or the medical condition involved, to fulfill this pre-duty disclosure obligation of this safety policy, but may do so confidentially to the DER. All information provided will be kept separate from personnel files and in a confidential manner by the DER. The MRO will make the final determination on the driver's ability to safely operate a commercial motor vehicle or the safety related risks of any particular drug, medication or substance, although the City of Westminster shall make the final determination on whether the driver is qualified to drive/operate a commercial motor vehicle.

CONTROLLED SUBSTANCES TESTING *382.215*

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. The City of Westminster, having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances, shall not permit the driver to perform or continue to perform safety-sensitive functions. In accordance with 49 CFR Part 40.171, when the MRO has notified the driver that he or she has a verified positive drug test and/or refusal to test because of adulteration or substitution, the driver has 72 hours from the time of notification to request a test of the split specimen.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

EMPLOYER RESPONSIBILITIES *382.217*

No employer may allow, require, permit or authorize a driver to operate a commercial motor vehicle during any period in which an employer determines that a driver is not in compliance with the return-to-duty requirements in 49 CFR part 40, subpart O, after the occurrence of any of the following events:

(a) The driver receives a positive, adulterated, or substituted drug test result conducted under part 40;

(b) The driver receives an alcohol confirmation test result of 0.04 or higher alcohol concentration conducted under part 40;

(c) The driver refused to submit to a test for drugs or alcohol required under § 382; or

(d) The driver used alcohol prior to a post-accident alcohol test in violation of § 382.209.

CONSEQUENCES OF CONDUCT PROHIBITED BY SECTION B

Any driver who engages in conduct prohibited by Section B of this policy will be subject to disciplinary action up to and including termination.

SECTION C - TESTS REQUIRED

TESTS REQUIRED

Required testing includes pre-employment (controlled substances required, alcohol at option of the City of Westminster), post-accident, random, and reasonable suspicion. Return-to-duty and follow-up-testing is also required if the City of Westminster allows a "positive" test employee to return to a safety-sensitive function after the required evaluation by a Substance Abuse Professional and the required rehabilitation.

The City of Westminster RESERVES RIGHT TO CONDUCT NON-DOT DRUG AND ALCOHOL TESTING

In addition to drug and alcohol testing conducted by the City pursuant to 49 CFR Part 40 and 49 CFR Part 382, The City reserves the independent authority to screen and/or test employees under the City's Policy including, but not limited to, laboratory testing and point of collection test (POCT) devices utilizing alternative body specimens including hair, urine and oral fluid (saliva), for the detection of illegal drugs, prescription and over-the-counter medications or substances which have an impairing affect and/or alcohol, taken by those who are considered safety-sensitive employees, as may be permitted and/or restricted by applicable state or local laws or regulations. The term "illegal use of drugs" includes any mind altering synthetic or designer drugs as well as any controlled or scheduled substance not used in accordance with a health care provider's lawful prescription for the user. These collections will be performed in addition to, and not as a substitute for, DOT regulated tests and these urine specimens will not be poured from or taken from the same specimen collected for a DOT urine test or alcohol test [40.13] and will not be conducted using DOT forms [40.47, 40.227].

PRE-EMPLOYMENT *382.301*

(a) Prior to the first time a driver performs safety-sensitive functions for the City of Westminster, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the City of Westminster uses the exception in paragraph (b) of this section. The City of Westminster shall not allow a driver, who the City of Westminster intends to hire or use, to perform safety-sensitive functions unless the City of Westminster has received a controlled substances test result from the MRO or C/TPA indicating a verified

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

negative test result for that driver. *The City of Westminster shall require a re-collection of a urine specimen on any pre-employment, return-to-duty and follow- up drug test if the result is negative-dilute. The MRO has authority to direct the re-collection be observed. If the second test result is also negative-dilute, the City of Westminster shall accept the result as a negative test.*

(b) The City of Westminster is not required to administer a controlled substances test required by paragraph (a) of this section if:
   (1) The driver has participated in a controlled substances testing program that meets the requirements of this policy within the previous 30 days; and
   (2) While participating in that program, either--
      (i) Was tested for controlled substances within the past 6 months (from the date of application with the City of Westminster), or
      (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the City of Westminster); and
   (3) The City of Westminster ensures that no prior employer of the driver of whom the City of Westminster has knowledge has records of a violation of this policy or the controlled substances use rule of another DOT agency within the previous six months.

(c) (1) If the City of Westminster exercises the exception in paragraph (b) of this section, the City of Westminster shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:
      (i) Name(s) and address(es) of the program(s).
      (ii) Verification that the driver participates or participated in the program(s).
      (iii) Verification that the program(s) conforms to part 40 of Federal regulations.
      (iv) Verification that the driver is qualified under the rules of this policy, including that the driver has not refused to be tested for controlled substances.
      (v) The date the driver was last tested for controlled substances.
      (vi) The results of any tests taken within the previous six months and any other violations of Section B of this policy.
   (2) If the City of Westminster uses, but does not employ a driver more than once a year to operate commercial motor vehicles, the City must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with 382.401. If the City of Westminster cannot verify that the driver is participating in a controlled substances testing program in accordance with this policy and part 40 of Federal regulations, the City of Westminster shall conduct a pre- employment controlled substances test.

(d) The City of Westminster may, but is not required to, conduct pre-employment alcohol testing under this policy. If the City of Westminster chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:
   (1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
   (2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).
   (3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
   (4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40 of Federal regulation.
   (5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

the employee's test indicates an alcohol concentration of less than 0.04.

POST-ACCIDENT *382.303*

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the City of Westminster shall test for alcohol for each of its surviving drivers:
   (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
   (2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
      (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
      (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the City of Westminster shall test for controlled substances for each of its surviving drivers:
   (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
   (2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
      (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
      (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section:

Type of accident involved	Citation issued to the CMV driver	Test must be performed by the City of Westminster
Human fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

(d) (1) Alcohol tests. If a test required by this section is not administered within two hours following the accident, the City of Westminster shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the City of Westminster shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.
   (2) Controlled substance tests. If a test required by this section is not administered within 32 hours following the accident, the City of Westminster shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

(e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the City of Westminster to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(f) The City of Westminster shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(g) (1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the City of Westminster.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the City of Westminster.

(h) Exception. This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(i) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 571.3) by the City of Westminster unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 177.823.

RANDOM *382.305*

(a) The City of Westminster shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b) (1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 25 percent of the average number of driver positions.

(c) (1) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

(2) Each driver selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.

(3) Each driver selected for testing shall be tested during the selection period.

(d) To calculate the total number of covered drivers eligible for random testing throughout the year, the City of Westminster, must add the total number of covered drivers eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in the City of Westminster's random testing pool, and all covered drivers must be in the random pool. If the City of Westminster conducts random testing more often than once per

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

month (e.g., daily, weekly, bi-weekly) the City of Westminster does not need to compute this total number of covered driver's rate more than on a once per month basis.

(e) The City of Westminster may use a service agent (e.g., a C/TPA) to perform random selections and covered drivers may be part of a larger random testing pool of covered employees. However, the City of Westminster must ensure that the service agent is testing at the appropriate percentage established for FMCSA and that only covered employees are in the random testing pool.

(f) (1) The City of Westminster shall ensure that random alcohol and controlled substances tests conducted under this policy are unannounced.
(2) The City of Westminster shall ensure that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

(g) The City of Westminster shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the City of Westminster shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(h) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(i) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the City of Westminster, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(j) If the City of Westminster is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the City of Westminster may:
a. Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or
b. Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the City of Westminster is subject.

REASONABLE SUSPICION *382.307*

(a) The City of Westminster shall require a driver to submit to an alcohol test when City of Westminster has reasonable suspicion to believe that the driver has violated the prohibitions of Section B of this policy concerning alcohol. The City of Westminster's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) The City of Westminster shall require a driver to submit to a controlled substances test when there is reasonable suspicion to believe that the driver has violated the prohibitions of Section B of this policy concerning controlled substances. The City of Westminster's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or an official of the City of Westminster who is trained in accordance with 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver. *If the employee insists on driving, the proper local enforcement authority should be notified that an employee, who we believe may be under the influence of a drug or alcohol, is leaving the City premises driving a motor vehicle.*

(d) Alcohol testing is authorized by DOT/FMCSA regulations only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with the Federal regulation. A driver may be directed by the City of Westminster to only undergo reasonable suspicion alcohol testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e) (1) If an alcohol test required by DOT/FMCSA regulations is not administered within two (2) hours following the determination under paragraph (a) of this section, the City of Westminster shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by DOT/FMCSA regulations is not administered within eight (8) hours following the determination under paragraph (a) of this section, the City of Westminster shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under DOT/FMCSA regulations, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall the City of Westminster permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four (24) hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this policy concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of this section, the City of Westminster shall take no action under this policy against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit the City of Westminster with independent authority of DOT/FMCSA regulations from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or an official of the City of Westminster who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

RETURN-TO-DUTY *382.309*

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, Subpart O, including that such tests will be collected under direct observation.

FOLLOW-UP *382.311*

The requirements for follow-up testing must be performed in accordance with 49 CFR part 40, Subpart O, including that such tests will be collected under direct observation.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

SECTION D - HANDLING OF TEST RESULTS, RECORD RETENTION AND CONFIDENTIALITY

RETENTION OF RECORDS *382.401*

(a) General requirement. The City of Westminster shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) Period of retention. The City of Westminster shall maintain the records in accordance with the following schedule:
   (1) *Five years*. The following records shall be maintained for a minimum of five years:
      (i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,
      (ii) Records of driver verified positive controlled substances test results,
      (iii) Documentation of refusals to take required alcohol and/or controlled substances tests,
      (iv) Driver evaluation and referrals,
      (v) Calibration documentation,
      (vi) Records related to the administration of the alcohol and controlled substances testing programs,
      (vii) Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations, and
      (viii) A copy of each annual calendar year summary required by 382.403.
   (2) *Two years.* Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).
   (3) *One year.* Records of negative and canceled controlled substances test results (as defined in part 40 of Federal regulations) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.
   (4) *Indefinite period*. Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the City of Westminster while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) Types of records. The following specific records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of Federal regulations and this policy. If the record is required to be prepared, it must be maintained.
   (1) Records related to the collection process:
      (i) Collection logbooks, if used,
      (ii) Documents relating to the random selection process,
      (iii) Calibration documentation for evidential breath testing devices,
      (iv) Documentation of breath alcohol technician training,
      (v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests,
      (vi) Documents generated in connection with decisions on post-accident tests,
      (vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing and
      (viii) A copy of each annual calendar year summary as required by 382.403.
   (2) Records related to a driver's test results:
      (i) The City of Westminster's copy of the alcohol test form, including the results of the test,
      (ii) The City of Westminster's copy of the controlled substances test chain of custody and control form,
      (iii) Documents sent by the MRO to the City of Westminster, including those required by part 40, Subpart G,
      (iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

required by this policy and

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this policy.

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the City of Westminster:

(A) Must obtain in connection with the exception contained in 382.301 of this policy, and

(B) Must obtain as required by 382.413.

(3) Records related to other violations of this policy.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substances use awareness, including a copy of the City of Westminster's policy on alcohol misuse and controlled substances use,

(ii) Documentation of compliance with requirements of 382.601, including the driver's signed receipt of education materials,

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;

(iv) Documentation of training for breath alcohol technicians as required by 40.213(a), and

(v) Certification that any training conducted under these Federal Regulations complies with requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, and consortia and/or with a C/TPA,

(ii) Names and positions of officials and their role in the City of Westminster's alcohol and controlled substances testing program(s),

(iii) Semi-annual laboratory statistical summaries of urinalysis required by 40.111 (a) of Federal regulations and

(iv) The City of Westminster's alcohol and controlled substances testing policy and procedures.

(d) Location of records. All records required by this policy shall be maintained as required by 390.31 and shall be made available for inspection at the City of Westminster's principal place of business within two business days after a request has been made by an authorized representative of the FMCSA.

REPORTING OF RESULTS IN A MANAGEMENT INFORMATION SYSTEM *382.403*

(a) The City of Westminster shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the City of Westminster or any of its drivers.

(b) If the City of Westminster is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report The City of Westminster's annual calendar year summary information, Westminster shall prepare and submit the report to the FMCSA by March 15 of that year. The City of Westminster shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. The City of Westminster must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at Sec. 40.26 and appendix H to part 40).

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

The City of Westminster may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on the electronic version of the form, see: **http://www.fmcsa.dot.gov/safetyprogs/drugs/engtesting.htm**. You must use the form at appendix H to this part. You may also view and download the updated (1.01.2018) instructions at the DOT's website: (https://www.transportation.gov/odapc). You must submit the MIS report in accordance with rule requirements (e.g., dates for submission, selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

(c) When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. The City of Westminster shall ensure the accuracy and timeliness of each report submitted by the City of Westminster or a consortium.

(d) If the City of Westminster has a covered employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for the City of Westminster), then that employee shall be counted only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. The City of Westminster may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (e.g., Consortia/Third party administrator as defined in 49 CFR 382.107) may prepare the MIS report on behalf of the City of Westminster. However, a City official (e.g., designated employer representative) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

ACCESS TO FACILITIES AND RECORDS *382.405*

(a) Except as required by law or expressly authorized or required, the City of Westminster shall not release driver information that is contained in records required to be maintained under 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his/her alcohol or controlled substances tests. The City of Westminster will promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) The City of Westminster shall permit access to all facilities utilized in complying with the requirements of this policy to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the City of Westminster or any of its drivers.

(d) The City of Westminster and each service agent who maintains records for an employer, must make available copies of all results for DOT alcohol and/or controlled substances testing conducted by the City and any other information pertaining to the City's alcohol misuse and/or controlled substances use prevention program when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the City of Westminster or any of its drivers.

(e) When requested by the National Transportation Safety Board as a part of a crash investigation:
   (i) The City of Westminster must disclose information related to the City of Westminster's administration of a post-accident alcohol and/or a controlled substances test administered following the crash under investigation; and
   (ii) FMCSA will provide access to information in the Clearinghouse (once established) concerning drivers who are involved with the crash under investigation.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

(f) When requested by the National Transportation Safety Board as part of an accident investigation, the City of Westminster shall disclose information related to the City of Westminster's administration of a post-accident alcohol and/or controlled substances test administered following the accident under investigation.

(g) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(h) The City of Westminster may disclose information required to be maintained under this policy pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results) of this policy (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought).

(i) The City of Westminster shall release information regarding a driver's records as directed by the specific written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's specific written consent as outlined in 49 CFR part 40.321(b).

MEDICAL REVIEW OFFICER NOTIFICATIONS TO the City of Westminster *382.407*

The medical review officer shall report the results of controlled substances tests to the City of Westminster in accordance with the requirements of 49 CFR part 40, Subpart G.

MEDICAL REVIEW OFFICER RECORD RETENTION FOR CONTROLLED SUBSTANCES *382.409*

(a) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of five (5) years for verified positive controlled substances test results.

(b) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum or one (1) year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer (MRO as defined in § 40.3) or a consortium/third party administrator (C/TPA as defined in 382.107), and no MRO or C/TPA may release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a MRO or a C/TPA from releasing to the employer, the Clearinghouse (once established), or to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances and alcohol testing program under this part, the information delineated in part 40, subpart G.

EMPLOYER NOTIFICATIONS *382.411*

(a) The City of Westminster shall notify a driver of the results of a pre-employment controlled substances test conducted under this policy, if the driver applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The City of Westminster shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this policy if the test results are verified positive. The City of Westminster shall also inform the driver which controlled substance or substances were verified as positive.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

(b) The designated employer representative (DER) shall make reasonable efforts to contact and request each driver who submitted a specimen under this policy, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated employer representative (DER) shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 24 hours.

INQUIRIES FOR ALCOHOL AND CONTROLLED SUBSTANCES INFORMATION FROM PREVIOUS EMPLOYERS *382.413*

(a) The City of Westminster must request alcohol and controlled substances information from previous employers in accordance with the requirements of § 40.25, except that the City must request information from all DOT- regulated employers that employed the driver within the previous 3 years and the scope of the information requested must date back 3 years.

(b) As of January 6, 2023, employers must use the Drug and Alcohol Clearinghouse in accordance with §382.701(a) to comply with the requirements of § 40.25 of this title with respect to FMCSA-regulated employers. **Exception**: When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the previous employer's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5).

(c) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT Agency other than FMCSA, the City must request the alcohol and controlled substances information required under this section and § 40.25 directly from those employers regulated by a DOT Agency other than FMCSA.

NOTIFICATION TO EMPLOYERS OF A CONTROLLED SUBSTANCES OR ALCOHOL TESTING PROGRAM VIOLATION *382.415*

Each person holding a commercial driver's license and subject to the DOT controlled substances and alcohol testing requirements under § 382 who has violated the alcohol and controlled substances prohibitions under part 40 or under § 382 without complying with the requirements of part 40, subpart O, must notify in writing all current employers of such violation(s). The driver is not required to provide notification to the employer that administered the test or documented the circumstances that gave rise to the violation. The notification must be made before the end of the business day following the day the employee received notice of the violation, or prior to performing any safety-sensitive function, whichever comes first.

SECTION E - CONSEQUENCES FOR DRIVERS ENGAGING IN SUBSTANCE USE-RELATED CONDUCT

REMOVAL FROM SAFETY-SENSITIVE FUNCTION *382.501*

(a) Except as provided in Section F of this policy, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by Section B of this policy or an alcohol or controlled substances rule of another DOT agency.

(b) The City of Westminster shall not permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the City of Westminster has determined that the driver has violated this policy.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

(c) For the purposes of DOT/FMCSA regulations, commercial motor vehicle means a commercial motor vehicle in commerce as defined in 382.107 and a commercial motor vehicle in interstate commerce as defined in part 390.

REQUIRED EVALUATION AND TESTING *382.503*

No driver who has engaged in conduct prohibited by Section B of this policy shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR part 40, Subpart O. The City of Westminster shall not permit a driver who has engaged in conduct prohibited by Section B of this policy to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR part 40, Subpart O.

OTHER ALCOHOL-RELATED CONDUCT *382.505*

(a) No driver tested under the provisions of Section C of this policy who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for the City of Westminster, including driving a commercial motor vehicle, nor shall the City of Westminster permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, the City of Westminster shall not take any action under this policy against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit the City of Westminster with authority independent of this policy from taking any action otherwise consistent with law.

The use or possession of alcoholic beverages while on the City of Westminster's property, or in any of the City of Westminster's vehicles, or on the City of Westminster's time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.

Employees who are not at work, but who could be called out are expected to be fit for duty upon reporting for work. If an employee is under the influence of alcohol, the employee must notify the City of Westminster's personnel when contacted. Failure to advise the City of Westminster of alcohol consumption may result in disciplinary action. If a covered employee is perceived to be under the influence of alcohol when reporting to work after being called in, the employee's supervisor must be notified.

The supervisor must objectively observe the employee's behavior and if possible, substantiate the behavior with a second supervisor. Supervisors must have received training in alcohol and/or substance abuse detection. The supervisor must follow procedures outlined in the policy. If a determination to test for reasonable suspicion is made, the employee is immediately removed from safety-sensitive duties and the DER is contacted.

PENALTIES 382.507

The City of Westminster and/or driver who violates the FMCSA requirements of § 382 and/or 49 CFR part 40 shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. Section 521(b).

SECTION F – ALCOHOL MISUSE AND CONTROLLED SUBSTANCES USE INFORMATION, TRAINING, AND REFERRAL

The City of Westminster's OBLIGATION TO PROMULGATE A POLICY ON THE MISUSE OF ALCOHOL AND USE OF CONTROLLED SUBSTANCES. *382.601*

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

(a) *General requirements.* The City of Westminster shall provide educational materials that explain the requirements of this policy and the City of Westminster's policies and procedures with respect to meeting the FMCSA alcohol and drug testing requirements.
   (1) The City of Westminster shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this policy and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.
   (2) The City of Westminster shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:
   (1) The identity of the person designated by the City of Westminster to answer driver questions about the materials; *(COVERED EMPLOYEE CERTIFICATE OF RECEIPT)*
   (2) The categories of drivers who are subject to the provisions of this policy; *(APPLICABILITY)*
   (3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with the policy; *(PERIOD OF THE WORK DAY A DRIVER IS REQUIRED TO BE IN COMPLIANCE)*
   (4) Specific information concerning driver conduct that is prohibited by this policy; *(SECTION B - PROHIBITIONS)*
   (5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this policy including post-accident testing under 382.303(d); *(SECTION C - TESTS REQUIRED)*
   (6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by 382.303(d); *(49 CFR part 40)*
   (7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this policy; *(REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST)*
   (8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences; *(DEFINITIONS)*
   (9) The consequences for drivers found to have violated Section B of this policy, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under 49 CFR part 40, Subpart O; *(CERTIFICATE OF RECEIPT, CONSEQUENCES OF PROHIBITED CONDUCT; and CONSEQUENCES OF CONDUCT PROHIBITED BY SECTION B, and SECTION E)*
   (10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less that 0.04; *(OTHER ALCOHOL-RELATED CONDUCT 382.505)*
   (11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management;

(c) The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse (once established):
   (1) A verified positive, adulterated, or substituted drug test result;
   (2) An alcohol confirmation test with a concentration of 0.04 or higher;
   (3) A refusal to submit to any test required by subpart C;
   (4) An employer's report of actual knowledge, as defined at § 382.107:
   (5) On-duty alcohol use pursuant to § 382.205;

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

(6) Pre-duty alcohol use pursuant to § 382.207;
(7) Alcohol use following an accident pursuant to § 382.209; and
(8) Controlled substance use pursuant to § 382.213;
(9) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
(10) A negative return-to-duty test; and
(11) An employer's report of completion of follow-up testing.

(d) *Optional provision.* The materials supplied to drivers may also include information on the City of Westminster's additional policies with respect to the use or possession of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the City of Westminster's authority independent of Federal regulation. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(e) *Certificate of receipt.* The City of Westminster shall ensure that each driver is required to sign a statement certifying that he/she has received a copy of these materials described in this section. The City of Westminster shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

TRAINING FOR SUPERVISORS *382.603*

The City of Westminster shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

REFERRAL, EVALUATION, AND TREATMENT *382.605*

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.

SECTION G – REQUIREMENTS AND PROCEDURES FOR IMPLEMENTATION OF THE COMMERCIAL DRIVER'S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE

The purpose of the City of Westminster Policy update in advance of the Compliance Date of January 6, 2020 as mandated by § 382.601: 1) is part of the City's efforts to meet its *Employer Obligation to Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substance*; 2) to publish educational materials to drivers about the Clearinghouse and other regulatory changes contained in the Final Rule issued December 5, 2016; and 3) to notify drivers that drug and alcohol test information will be reported to the Clearinghouse beginning January 6, 2020 so as to encourage drivers to seek substance abuse treatment if they currently have a problem with the misuse of alcohol and/or use of controlled substance(s).

DRUG AND ALCOHOL CLEARINGHOUSE *382.701*

(a) *Pre-employment query required*.
(1) Employers must not employ a driver subject to controlled substances and alcohol testing to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance, in violation of § 382.213.

(2) The City of Westminster must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

(b) *Annual query required*.

(1) The City of Westminster must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under 382, to determine whether information exists in the Clearinghouse about those employees.

(2) In lieu of a full query, as described in paragraph (a)(2) of 382.701, the City of Westminster may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the City of Westminster whether there is information about the individual driver in the Clearinghouse, but will not release that information to the City of Westminster. The individual driver may give consent to conduct limited queries that is effective for more than one year.

(3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of 382.701, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of 382.701.

(c) *Employer notification*. If any information described in paragraph (a) of 382.701 is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.

(d) *Prohibition*. No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance in violation of §382.213, except where a query of the Clearinghouse demonstrates:

(1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.

(2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with §40.307 and specified in the SAP report required by § 40.311, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow- up testing process associated with the testing violation.

(e) *Recordkeeping required*. Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

DRIVER CONSENT TO PERMIT ACCESS TO INFORMATION IN THE CLEARINGHOUSE *382.703*

(a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.

(b) Before the City of Westminster may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:
  (1) A verified positive, adulterated, or substituted controlled substances test result;
  (2) An alcohol confirmation test with a concentration of 0.04 or higher;
  (3) A refusal to submit to a test in violation of § 382.211;
  (4) An employer's report of actual knowledge, as defined at § 382.107, of:
    (i) On duty alcohol use pursuant to § 382.205;
    (ii) Pre-duty alcohol use pursuant to § 382.207;
    (iii) Alcohol use following an accident pursuant to § 382.209; and
    (iv) Controlled substance use pursuant to § 382.213;
  (5) A SAP report of the successful completion of the return-to-duty process;
  (6) A negative return-to-duty test; and
  (7) An employer's report of completion of follow-up testing.

(c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of 382.703.

(d) A driver granting consent under 382.703 must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with § 382.701(a)(2) or (b)(3).

(e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with § 382.701(c).

REPORTING TO THE CLEARINGHOUSE *382.705*

(a) *MROs*.
  (1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:
    (i) Verified positive, adulterated, or substituted controlled substances test results;
    (ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).
  (2) MROs must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:
    (i) Reason for the test;
    (ii) Federal Drug Testing Custody and Control Form specimen ID number;
    (iii) Driver's name, date of birth, and CDL number and State of issuance;
    (iv) Employer's name, address, and USDOT number, if applicable;
    (v) Date of the test;
    (vi) Date of the verified result; and
    (vii) *Test result*. The test result must be one of the following:
      (A) Positive (including the controlled substance(s) identified);
      (B) Refusal to test: adulterated;
      (C) Refusal to test: substituted; or

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

(D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with § 40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.

(3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.

(b) *Employers*.

(1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:

(i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;

(ii) A negative return-to-duty test result;

(iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;

(iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and

(v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title.

(2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:

(i) Reason for the test;

(ii) Driver's name, date of birth, and CDL number and State of issuance;

(iii) Employer name, address, and USDOT number;

(iv) Date of the test;

(v) Date the result was reported; and

(vi) *Test result*. The test result must be one of the following:

(A) Negative (only required for return-to-duty tests administered in accordance with § 382.309);.

(B) Positive; or

(C) Refusal to take a test.

(3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:

(i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;

(ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);

(iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and

(iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.

(4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at § 382.107, of:

(i) On-duty alcohol use pursuant to § 382.205;

(ii) Pre-duty alcohol use pursuant to § 382.207;

(iii) Alcohol use following an accident pursuant to § 382.209; and

(iv) Controlled substance use pursuant to § 382.213.

(5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

(i) Driver's name, date of birth, CDL number and State of issuance;
(ii) Employer name, address, and USDOT number, if applicable;
(iii) Date the employer obtained actual knowledge of the violation;
(iv) Witnesses to the violation, if any, including contact information;
(v) Description of the violation;
(vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to § 382.121), correspondence, or other documentation; and
(vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.

(6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.

(c) *C/TPAs*. Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: an employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of 382.705.

(d) *SAPs*.
(1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:
(i) SAPs name, address, and telephone number;
(ii) Driver's name, date of birth, and CDL number and State of issuance;
(iii) Date of the initial substance-abuse-professional assessment; and
(iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under 382.

(2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment, and must report the information required by paragraph (d)(1)(iv) of 382.703 by the close of the business day following the determination that the driver has completed the return-to-duty process.

(e) *Reporting truthfully and accurately*. Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.

Reporting Entities and Circumstances	
Reporting Entity	**When Information Will Be Reported to Clearinghouse**
Prospective/Current Employer of CDL Driver	An alcohol confirmation test with a concentration of 0.04 or higher Refusal to test (alcohol) as specified in 49 CFR 40.261 Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191 Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. Negative return-to-duty test results (drug and alcohol testing, as applicable) Completion of follow-up testing

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

Service Agent acting on behalf of Current Employer of CDL Driver	An alcohol confirmation test with a concentration of 0.04 or higher Refusal to test (alcohol) as specified in 49 CFR 40.261 Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191 Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. Negative return-to-duty test results (drug and alcohol testing, as applicable) Completion of follow-up testing
MRO	Verified positive, adulterated, or substituted drug test result Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191
SAP	Identification of driver and date the initial assessment was initiated Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing

NOTICE TO DRIVERS OF ENTRY, REVISION, REMOVAL, OR RELEASE OF INFORMATION 382.707

(a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.

(b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.

(c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

DRIVERS' ACCESS TO INFORMATION IN THE CLEARINGHOUSE *382.709*

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

CLEARINGHOUSE REGISTRATION *382.711*

(a) *Clearinghouse registration required*. Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.

(b) *Employers.*
  (1) Employer Clearinghouse registration must include:
    (i) Name, address, and telephone number;
    (ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and
    (iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.
  (2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.
  (3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

Employers must update any changes to this information within 10 days.

(c) *MROs and SAPs*. Each MRO or SAP must provide the following to apply for Clearinghouse registration:
   (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;
   (2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and
   (3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

(d) C/TPAs and other service agents. Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:
   (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and
   (2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.
   (3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of 382.711 annually.

DURATION, CANCELLATION, AND REVOCATION OF ACCESS *382.713*

(a) *Term*. Clearinghouse registration is valid for 5 years, unless cancelled or revoked.

(b) *Cancellation.* FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.

(c) *Revocation*. FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

AUTHORIZATION TO ENTER INFORMATION INTO THE CLEARINGHOUSE *382.717*

(a) *C/TPAs*. No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.

(b) *SAPs*. A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

PROCEDURES FOR CORRECTING INFORMATION IN THE DATABASE 382.17

(a) Petitions limited to inaccurately reported information.

   (1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.
   (2) *Exceptions*.
      (i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

(ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in § 382.705(b)(5).

(iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in § 382.705(b)(3).

(b) *Petition*. Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:

(1) The petitioner's name, address, telephone number, and CDL number and State of issuance;

(2) Detailed description of the basis for the allegation that the information is not accurate; and

(3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.

(c) *Submission of petition*. The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE, Washington, D.C. 20590.

(d) *Notice of decision*. Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.

(e) *Request for expedited treatment*.

(1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety- sensitive functions. This request may be included in the original petition or as a separate document.

(2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.

(f) *Administrative review*.

(1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.

(2) The request must prominently state at the top of the document: "Administrative Review of Drug and Alcohol Clearinghouse Decision" and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

(3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.

(4) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.

(g) *Subsequent notification to employers*. When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

AVAILABILITY AND REMOVAL OF INFORMATION *382.719*

(a) Driver information not available. Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:
   (1) The SAP reports to the Clearinghouse the information required in § 382.705(d);
   (2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;
   (3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title; and
   (4) Five years have passed since the date of the violation determination.

(b) Driver information remains available. Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.

(c) *Exceptions*.
   (1) Within 2 business days of granting a request for removal pursuant to § 382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.
   (2) Information about a particular driver's drug or alcohol violation may be removed in accordance with §382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.

(d) *Driver information remains available*. Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

FEES *382.721*

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. ***Exception***: No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

UNAUTHORIZED ACCESS OR USE PROHIBITED *382.723*

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.

(c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at § 382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

ACCESS BY STATE LICENSING AUTHORITIES *382.725*

(a) In order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

(d) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

PENALTIES *382.727*

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

INVESTIGATION AND INQUIRIES *391.23*

(a) As of January 6, 2023, employers subject to § 382.701(a) of § 382 must use the Drug and Alcohol Clearinghouse to comply with the requirements of this section with respect to FMCSA-regulated employers.
   (i) *Exceptions*.
      (A) If an applicant who is subject to follow-up testing has not successfully completed all follow-up tests, the employer must request the applicant's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5) of Part 40.
      (B) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT mode other than FMCSA, the employer must request alcohol and controlled substances information required under this section directly from those employers regulated by a DOT mode other than FMCSA.
   (ii) [*Reserved*]

(b) (1) A prospective motor carrier employer must provide to the previous employer the driver's consent meeting the requirements of § 40.321(b) of Part 40 for the release of the information in paragraph (e) of 391.23. If the driver refuses to provide this consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.
   (2) If a driver refuses to grant consent for the prospective motor carrier employer to query the Drug and Alcohol Clearinghouse in accordance with paragraph (e)(4) of 391.23, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle.

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

Appendix A

City of Westminster
Commercial Motor Vehicle Driver's
Certificate of Compliance with DOT Cell-Phone/Texting Bans

MOTOR CARRIERS: The restrictions in 49 CFR Part 392 on using a mobile telephone or texting while driving apply to every operator of a "commercial motor vehicle" as defined in Section 390.5, including interstate vehicles weighing or rated at 10,001 pounds or more, vehicles placarded for hazardous materials, and certain vehicles designed or used for more than 8 passengers (including the driver). In-state operations of vehicles placarded for hazardous materials are also subject to the restrictions. Other in-state-only operations may also be subject, depending on state rules.

DRIVERS: Part 392 of the Federal Motor Carrier Safety Regulations contains restrictions on texting and the use of hand-held mobile telephones while driving a commercial motor vehicle (CMV), including the following:

- **Texting ban (392.80):** You may not manually enter text into or read text from an electronic device while driving a CMV. This includes e-mailing, text messaging, using the internet, pressing more than one button to start or end a phone call, or any other form of text retrieval or entry for communication purposes.

- **Hand-held cell-phone ban (392.82):** You are prohibited from using a hand- held cell phone while driving a CMV. This includes talking on a phone while holding it in your hand (including push-to-talk), pressing more than a single button to dial or answer a cell phone, or leaving your normal, seated driving position to reach for a cell phone.

Except as prohibited under the City policy, you are allowed to use a CB radio, a navigation system, a two-way radio, a music player, or a fleet management system for purposes other than texting. Texting, hand-held cell-phone use and Bluetooth are **only** allowed if you need to contact emergency services or if you have stopped in a safe location off the road.

Penalties (383.51, 391.15, 49 CFR 386): CDL and non-CDL drivers can be disqualified for 60 up to 120 days and/or face fines of up to $2,750 for each violation. The City can be fined up to $11,000 for each violation.

It is understood that the above information is being provided to the employee in an effort by the City of Westminster to show good faith efforts to achieve compliance with the above-cited regulations. (49 CFR § 386.81)

© 2019 Constangy, Brooks, Smith & Prophete LLP, All Rights Reserved

To: Mayor and Common Council

From: Barbara B. Matthews, City Administrator

Date: March 3, 2020

Re: Approval – Modification #7 to Contract with Gant Brunnett Architects – 45 West Main Renovation Project

Background
Gant Brunnett Architects serves as the project architect for the 45 West Main Renovation Project. This location will house the City's administrative offices following completion of the project.

The City's contract with Gant Brunnett Architects incorporates AIA Document B101 – Standard Form of Agreement between Architect and Owner, which outlines the services to be provided by the firm. Any services not set forth in the contract are deemed to be additional services and are addressed through modifications to the contract between the City and Gant Brunnett Architects.

Agreement Modification #7
Proposed Agreement Modification #7 would provide for additional services for interior design, specifically assistance with furniture selection, purchase, and deployment.

As discussed with the Mayor and Common Council on November 11, 2019, the City has made virtually no investment in office furnishings for many years. Many of the existing furnishings in the administrative offices show considerable wear and some damage. Relocating furniture that is in poor condition and/or outdated in appearance to a newly renovated space will diminish the overall professional appearance of the new offices at 45 West Main Street. Another consideration is the downtime/business disruption associated with the relocation and set up of existing furniture. Finally, damaged and deteriorated furniture may not survive relocation well. Disassembly and reassembly may also stress pieces.

City staff lacks experience in interior design matters, and requested a proposal from Gant Brunnett Architects to assist it with furniture selections and procurement. Services that would be provided under Agreement Modification #7 include the following:

- An inventory of the City's existing furniture and recommendations on components that can be re-purposed and what needs to be purchased new;
- Recommendations for new furniture selections, including colors, fabrics, and functional features;
- Identification of government discounts available to the City;
- Preparation of an itemized listing of new furniture for the City to utilize in the procurement process; and,
- Verification that delivered furniture meets specifications.

Work would be performed on a lump-sum basis in the amount of $35,200.00.

November 11, 2019 Meeting Follow-Up
When this matter was discussed on November 11, 2019, Councilmember Chiavacci requested that staff investigate whether there were local firms that could provide the desired interior design services. Executive Assistant Samantha Schlitzer conducted a general Google search for both "commercial interior design" and "commercial furniture" and used the map feature to determine which firms were nearby.

Relative to interior design services, Ms. Schlitzer was unable to identify a firm that would meet the City's needs; firms in the immediate nearby area focused on residential or small business solutions. The nearest commercial furniture dealers were Douron, based in Owings Mills, and Contract Furniture Options, located in Bethesda.

Project Funding
Funding for the work that would be performed under Agreement Modification #7 is part of the overall project budget of $5,395,798.

Recommendation
Staff recommends that the Common Council authorize the Mayor to execute Agreement Modification #7 to the City's contract with Gant Brunnett Architects, in the amount of $35,200.00.

Attachment
- Proposed Agreement Modification #7 to Contract with Gant Brunnett Architects

cc: Tammy M. Palmer, Director of Finance & Administrative Services

gba

Modification to Agreement Between Owner and Architect

Project: City of Westminster Administration Building
45 West Main Street
Renovations and Alterations

Agreement Modification #7
Additional Services for Interior Design- Furniture selections

The Standard Form of Agreement Between Owner and Architect, AIA form B101 (the Agreement) executed between Gant Brunnett, Architects, Inc. (Architect) and the City of Westminster (Owner) dated January 10, 2018 is amended herein to incorporate interior design services as described below:

- The Architect will inventory existing furniture and make recommendations on components that can be re-purposed in the newly renovated building.
- The Architect will meet with the Owner to discuss/determine furniture and shelving requirements.
- The Architect will present concepts for various styles and arrangements for new furniture that are appropriate for the Owner's operations.
- The Architect will present final furniture selections using catalog images, fabric swatches, and other means, in sufficient detail to allow the Owner the opportunity to provide the Architect with direction on the preferred furniture. Floor plans that illustrate the furniture arrangement will accompany the furniture product literature.
- The Architect will investigate government discounts that are available to the Owner.
- The Architect will produce an itemized listing of new furniture for the Owner to utilize in procurement of the furniture.
- The Architect will visit the site and verify for the Owner that the furniture components meet specifications and are placed in the proper location.

Ms. Connie Kumor, a registered Architect with extensive experience in furniture selections and procurement, will be the main point of contact representing the Architect for this interior design effort. It is estimated that she will expend approximately 320 man-hours performing the scope of work enumerated above. Ms. Kumor's billing rate is $110/hour.

Compensation shall be based upon a lump sum, stipulated fee of Thirty Five Thousand Two Hundred and 00/100 dollars ($35,200.00).

Original Contract Amount:	$ 269,845.00
Prior Modifications	163,665.00
This Modification #7	35,200.00
Total Revised Contract Amount	$ 468,710.00

All terms and conditions of the original Agreement remain.

This modification being agreed upon on _____ by:
(date)

Architect	Owner
John Brunnett, President Gant Brunnett, Architects, Inc.	Joe Dominick, Mayor City of Westminster

To: Mayor and Common Council

From: Barbara B. Matthews, City Administrator

Date: March 4, 2020

Re: Approval – Workplace Civility Policy

Background
In the latter part of 2019, Councilmember Gilbert, who serves as the Chair of the Common Council's Personnel Committee, recommended to her colleagues that the City enact a Workplace Civility Policy. Staff subsequently performed research and worked with the Mayor and members of the Personnel Committee to finalize a policy.

A copy of the proposed Workplace Civility Policy is attached for your review and consideration. Enactment of this policy is intended to formally convey the Mayor and Common Council's expectation that all City staff members treat each other with courtesy and civility regardless of position or status. Disrespectful and uncivil behavior towards another person will not be tolerated within Westminster government; the proposed policy outlines how complaints will be investigated, and violations of policy will be addressed from a disciplinary standpoint.

Once enacted, the Workplace Civility Policy will be issued to all City employees and will be made a part of the City's Employee Handbook.

Recommendation
Staff recommends that the Mayor and Common Council approve the Workplace Civility Policy for distribution to employees and placement in the Employee Handbook.

Attachment
- Proposed Workplace Civility Policy

cc: Darlene Childs, Director of Human Resources

Workplace Civility Policy

It is the intention of the City of Westminster to cultivate an environment in which all people behave in a manner that engenders mutual respect, and treat each other with courtesy and civility regardless of position or status. Disrespectful and uncivil behavior towards another person will not be tolerated.

Employees of the City of Westminster will treat each other and members of the public with respect. Every employee of the City of Westminster will be held accountable for creating a welcoming, safe, and civil workplace for all.

The City's culture is one where employees are required to demonstrate respect for each other, and we accept our individual differences. The City's workplace should permit everyone to maximize his or her potential. For purposes of this policy, conduct and behaviors contributing to an uncivil environment include, but are not limited to, the following:

- Insults and name calling;
- Using profanity or directing vulgar, obscene, or profane gestures or words at another individual;
- Belittling others because of their language skills or word choice;
- Taunting, jeering, inciting others to taunt or jeer at an individual; deliberately provoking others to behave in an uncivil manner;
- Yelling at another individual;
- Ill-considered accusations of impropriety; for instance, calling someone a liar, or accusing him/her of slander or libel;
- Using derogatory language towards others or, in general, referring to groups such as social classes, nationalities, ethnic groups, religious groups, or others in a derogatory manner;
- Repeatedly interrupting another person who is speaking;
- Gesturing in a manner that puts another in fear for his/her personal safety;
- Invading the personal space of an individual after being requested to move away or leave;
- Physically blocking an individual's exit from a room or location;
- Remaining in an employee's work area after the employee has requested one to leave; or,
- Violating the privacy of another individual's belongings (except for lawful searches).

This policy is not intended to address:

- A single incident of unreasonable behavior;
- Disciplinary action taken in accordance with applicable law, regulation, or policy;
- Routine coaching and counseling, including feedback about and correction of work performance or conduct;
- Individual differences in style of personal expression that may lead to conflict, provided that the expression is not uncivil; and,
- Differences of opinion on work-related concerns.

The policy is not intended to impair the exercise of management's prerogative to appoint, promote, transfer, or reassign an employee; to direct or assign work; or, to determine or alter the methods and means by which City functions will be carried out.

Reporting a Complaint

From and after the date of adoption of this policy, an employee who feels that he/she has been treated in an uncivil manner, or who has witnessed a violation against another employee, may file a complaint in writing to the Director of Human Resources within 30 days after the employee knows, or reasonably should know, of the alleged violation.

In the case of a complaint against the Director of Human Resources, the complaint should be submitted to the City Administrator. A complaint regarding the City Administrator should be directed to the Mayor, who will use such procedures as he or she deems appropriate to investigate the complaint and make a determination regarding any action to be taken in connection therewith.

After the complaint has been received:

- Within 30 days of receiving the complaint, the Director of Human Resources will investigate the allegations or have the allegations investigated by a third party. Notification that an investigation has been initiated will be made to the employee and to the subject employee's department director or to the City Administrator in the case of a complaint against a person reporting directly to the City Administrator.
- Upon completion of the investigation, the Director of Human Resources shall notify the complainant that the investigation has been completed.
- The result of the investigation shall be submitted to the subject employee's department director or to the City Administrator.
- The department director or the City Administrator shall determine any disciplinary action to be undertaken for the subordinate employee in coordination with the Director of Human Resources.
- Any disciplinary action taken with respect to another employee as a result of the complaint will not be disclosed to the complainant, as disciplinary actions are considered confidential.
- A decision made as a result of an investigation is not subject to the City's Grievance Policy except by an individual who has been disciplined as a consequence of the decision.

Retaliation

This policy prohibits retaliation against an employee who files a complaint of uncivil behavior or assists in the investigation of a complaint of uncivil behavior. Retaliation in violation of this policy may result in discipline, up to and including termination. An employee who files a complaint of uncivil behavior or assists in the investigation of a complaint of uncivil behavior will not be adversely affected in terms and conditions of employment, nor discriminated against or discharged because of the complaint, except that an employee may be subject to discipline for lodging an unfounded complaint for malicious or otherwise improper purposes.

This policy is intended to promote mutual respect, civility, and orderly conduct among City employees. It applies to all regular, temporary, seasonal, and contractual employees. This policy is not intended to deprive any person of his or her right to freedom of expression, but only to maintain a professional workplace.

To: Mayor and Common Council

From: Barbara B. Matthews, City Administrator

Date: March 6, 2020

Re: Approval – Warner Construction Contract Change Order No. 1

Background

As the interior demolition work progressed at 45 West Main Street, the 2-story, south wall of the main entrance foyer was exposed, revealing a large, vertical duct that consumed most of the wall construction. The duct is no longer needed; once it is removed, there will be an opening left that represents about 75% of the area of the wall.

The existing construction is concrete block. It is not a load bearing wall, but the large opening left by the removal of the duct will need to be addressed. The best option for the long range use of the building is to simply remove the block wall in its entirety. This will allow the planned second floor deck infill to run uninterrupted, continuously across the second floor expanded space that is programmed for new offices.

Tearing down the block wall as part of this project is extremely economical considering the equipment and manpower is at hand. The replacement of the block construction with stud walls creates much greater flexibility for alterations in the future. The cost of the preferred construction approach to address the matter is $6,656.10.

Recommendation

Staff recommends that the City authorize Warner Construction to perform this work through the approval of Change Order No. 1 to the City's contract with Warner Construction.

Attachment

- Proposed Change Order No. 1

CHANGE ORDER #1

Date: March 3, 2020

PROJECT:		ARCHITECT:
Name	Westminster Administration Building	Gant Brunnett Architects
Address	45 W Main Street, Westminster, MD 21157	15 W. Mulberry Street
Date of Contract:	11/25/2019	Baltimore, Maryland 21201

OWNER		CONTRACTOR:
Name	Mayor & Common Council of Westminster	Warner Construction
Address	56 W Main Street	1530 Tilco Drive, Suite A
Address	Westminster, MD 21157	Frederick, MD 21704

THE AGREEMENT BETWEEN OWNER AND CONTRACTOR IS AMENDED AS FOLLOWS:

Provide all materials, labor, equipment and services necessary and incidental to RFP #2 - CMU Vestibule Wall (Option #1-Demo CMU/Build New Stud Wall) all as further described in the Contractor's proposed change order attached herewith. The Contractor's compensation for this Change Order includes the costs for all collateral expenses that are the result of implementing this change in the scope of contract work. These collateral expenses include, but are not limited to, supervision, additional time to complete the entire project, temporary facilities and utilities, and adjustments to the timing or sequencing of other work impacted this change.

The original Contract Sum was	$4,435,000.00
The Contract Sum will be increased by this Change Order in the amount of	$6,656.10
The new Contract Sum, including this Change Order, will be	$4,441,656.10

The Contract Time for completion is unchanged by this change order.

The Date for Completion of all contract work is to remain as November 1, 2020.

OWNER	SIGNATURE	Mayor Joe Dominick	DATE
			3/5/2020
CONTRACTOR	SIGNATURE	Matt Louden - President	DATE
			3.3.2020
ARCHITECT	SIGNATURE	John Brunnett - President	DATE

1530 Tilco Drive, Suite A
Frederick, MD 21704
Ph (301)696-0525 Fax (301)696-0530

Change Request

To: City Of Westminster
56 West Main Street
Westminster, MD 21157

Number: 1
Date: 2/21/20
Job: 19-10-0230 Westminster Admin. Building
Phone: 301-696-0525

Description: RFP #2 Option 1-Demo CMU/Build new stud wall

We are pleased to offer the following pricing to make the following changes:

At Vestibule 100 (main front entrance)

A. Demolish, in it's entirety, CMU wall and veneer
B. Construct new wall type A8 from finished floor to underside of deck above both first and second floors (1 hour rated drywall partition)

The total amount to provide this work is $6,656.10
(Please refer to attached sheet for details.)

The schedule is not affected by this change.

This proposal is valid if accepted within 30 days.

If you have any questions, please contact me at (301)696-0525.

Submitted by: Jake Fields
Warner Construction

Approved by: _____

Date: _____

1530 Tilco Drive, Suite A
Frederick, MD 21704
Ph (301)696-0525 Fax (301)696-0530

Change Request 1 Price Breakdown
Continuation Sheet

Description: RFP #2 Option 1-Demo CMU/Build new stud wall

Description	Hours	Rate	Labor	Material	Equipment	Subcontract	Other	Price
Demolition						$2,926.00		$2,926.00
Drywall						$3,125.00		$3,125.00

		Subtotal:	**$6,051.00**
Mark Up	$6,051.00	10.00%	$605.10
		Total:	**$6,656.10**

To: Mayor and Common Council

From: Jeffery D. Glass, Director of Public Works

Date: March 5, 2020

Re: Approval - HRI, Inc. Contract Change Order #2

Background

In early 2019, the Mayor and Common Council awarded a construction contract to HRI, Inc. for the Wastewater Treatment Plant ENR and Biosolids Upgrade Project. The City contracted with GHD for ongoing engineering services during construction. By separate contract, the City retained GHD to provide construction management and inspection services for the duration of the Project.

Work related to Programming and Process Control System Development was not included in the bid specifications for the Project. The intention of the Public Works staff at that time was to procure these services through the Design Engineer (GHD), based on the firm's familiarity with the existing process control system and intended modes of automatic operation of the new ENR processes.

In 2019, the City requested a cost and proposed contract amendment from GHD for the described task. The Maryland Department of the Environment (MDE) determined GHD's proposal to be ineligible for State cost sharing, as the City had not obtained competitive bids for the work in question. Additionally, MDE considered the task as additional engineering services if performed by GHD, and the City was already at the percentage cap for project engineering services.

Through continued conversation with MDE, it was determined that the Programming and Process Control System Development could be cost share eligible if the work was performed by the general contractor and submitted as a change order to the construction contract. Accordingly, HRI Inc. provided a Proposed Change Order (PCO) in the amount of $674,000 for the additional work, compared to GHD's proposed cost of $475,000.

In 2020, GHD and City staff again approached MDE to request reconsideration of its prior decision that State cost sharing would not be provided if the Programming and Process Control System Development was performed by GHD. MDE remained steadfast in its earlier position that it would not participate in the cost of the work if performed by GHD.

Attached is proposed Change Order #2 to the City's contract with HRI, Inc. and associated supporting documentation. With the State cost share eligibility of 53.65% applied to HRI's PCO of $674,000, the City's share of the Programming and Process Control System Development will be $312,399.

It should be noted that the work outlined in Change Order #2 is time sensitive. If approval of Change Order #2 occurs prior to March 20, 2020, the work will not cause delay of contract completion or cost over runs associated with such delays as identified in the change order.

In addition, the City may incur additional costs associated with the project engineer's coordination and contractor management effort that was included in GHD's proposed contract amendment for Programming and Process Control System Development. GHD has not provided the City with a detailed proposal regarding its claim for additional compensation, but has provided a cost estimate of approximately $60,000. The City Attorney is reviewing this matter.

Recommendation

Staff recommends that the Common Council authorize the Mayor to execute Change Order 2 in the amount of $674,000 to the City's contract with HRI, Inc. for Programming and Process Control System Development.

cc: Barbara B. Matthews, City Administrator
Tammy M. Palmer, Director of Finance & Administrative Services

Change Order

No. 02

Date of Issuance: February 26, 2020 Effective Date: February 26, 2020

Project: Westminster WWTP ENR & Biosolids Upgrade	Owner: City of Westminster, Maryland	Owner's Contract No.: S-08-04
Contract: Westminster WWTP ENR & Biosolids Upgrade		Date of Contract: October 26, 2018
Contractor: HRI Inc		Engineer's Project No.: 8614921

The Contract Documents are modified as follows upon execution of this Change Order:

Description: PCO No. 09 - HRI Programming Services

Attachments (list documents supporting change):
PCO - 09 Memo, RFP - 002

CHANGE IN CONTRACT PRICE:

Original Contract Price:

$ 61,429,842.00

Increase from previously approved Change Orders No. N/A to No. 01 :

$ 338,664.00

Contract Price prior to this Change Order:

$ 61,773,450.00

Increase of this Change Order:

$ $674,000.00

Contract Price incorporating this Change Order:

$ $62,447,450.00

CHANGE IN CONTRACT TIMES:

Original Contract Times: ☐ Working days ☒ Calendar days
Substantial completion: June 26, 2022
Ready for final payment : September 24, 2022

Increase from previously approved Change Orders No.____ to No.____:
Substantial completion (days): N/A
Ready for final payment (days): N/A

Contract Times prior to this Change Order:
Substantial completion (date): June 26, 2022
Ready for final payment (date): September 24, 2022

Increase of this Change Order:
Substantial completion (days): Zero
Ready for final payment (days): Zero

Contract Times with all approved Change Orders:
Substantial completion June 26, 2022
Ready for final payment September 24, 2022

RECOMMENDED:
By: [signature]
Engineer (Authorized Signature)
Date: 02/28/2020

ACCEPTED:
By: _____
Owner (Authorized Signature)
Date: _____

ACCEPTED:
By: [signature]
Contractor (Authorized Signature)
Date: 3-4-20

Approved by Funding Agency (if applicable):

_____ Date: _____

Memorandum

February 26, 2019

To	Travis Boyd, HRI Inc		
Copy to	File		
From	Madeline J. Selick MJS	Tel	240-206-0492
Subject	PCO No. 09 – Programming	Job no.	86-14921

GHD has reviewed HRI's proposal for programming services to be conducted for the project submitted by the Contractor on January 3, 2020. The PCO amount of $674,000.00 has been approved. This amount will be applied to Change Order 02.

Please let us know if you have any questions.

G:\86\14921\Construction\Work Changes\Change Orders\Change Order No. 02 - Programming\PCO 009 - Programming acceptance.docx

GHD
Hampton Oaks Business Park 5904 Hampton Oaks Parkway Suite F Tampa Florida 33610 United States
T 1 813 971 3882 **F** 1 813 971 1862 **W** www.ghd.com

HRI, INC.

January 3, 2020

Mr. Gregory Jablonski
GHD
16701 Melford Boulevard Suite 330
Bowie, Maryland 20715

Re: Westminster WWTP ENR and Biosolids Upgrade
RFP-002: PLC Programming/Process Control System Development

Dear Mr. Jablonski,

Per GHD's request, HRI, INC. is pleased to offer the Quote for the mentioned RFP in the amount of $674,000.00 (Six Hundred – Seventy Four Thousand Dollars & Zero Cents). We trust you will find our request acceptable and issue a formal Change Order to the Contract for the amount mentioned above.

Please note that time is of the essence in regards to a formal decision whether the RFP has been accepted or denied. In order to not impact the progress schedule, HRI, INC. needs a response no later than January 17, 2020. In the event this deadline is not met, additional Contractual Time & Cost could be requested by HRI, INC.

If the City elects to Self-Perform Reactor 1's Temporary Programming as required to meet the intent of the Design, HRI, INC. wouldn't need a response to their Formal RFP until March 20th, 2020. Please note that if the City Self-Performs this specific work, there would be no cost reduction provided on the formal RFP due to the same efforts required for the remaining Reactors.

Also, please be aware that if this Quote is not accepted and the referenced Specifications provided in the RFP are incorporated in the Construction Documents, HRI, INC. reserves their right for the potential increases to Contract Time and Cost, regardless of whom is providing the Programming/Process Control System Development scope of work.

Please contact me or my office with any questions regarding this notice.

Regards,

Travis Boyd
Senior Project Manager

1750 West College Avenue | State College, PA 16801 | T 814.238.5071 | F 814.238.0131
www.hriinc.com

4. CONSULTANTS	NAME	DESCRIPTION OF WORK	COST

5. FEE STRUCTURE	NAME	COST	MARK UP %	SUBTOTAL
A. Contractor				
1. Direct Labor & Materials:		$ 202,587.82	15.0%	$ 232,975.99
2. Sales Tax:		$ 3,161.23	0.0%	$ 3,161.23
3. Sup'l Costs:		$ -	0.0%	$ -
4. Warranty Cost:		$ 6,802.63	0.0%	$ 6,802.63
5. Rental Equip:		$ 24,166.47	15.0%	$ 27,791.44
B. Subcontractors:		$ 378,215.00	5.0%	$ 397,125.75
				$ -
C. Bonds and Insurance		$ 614,933.15	1%	$ 6,149.33
TOTAL COST OF THIS CHANGE PROPOSAL (All deductions shown in parentheses):			TOTAL	**$ 674,006**

EXTENSION OF CONTRACT TIME:

As part of this Change Proposal, the Contractor requests a contract time extension of 0 calendar (0 working) days, if approved by 1/17/2020

If Change Proposal is not approved by 1/17/2020 a day for day extension of the contract is required until approval has been received.

If City elects to self perform R1, a decision wont be required until March 20, 2020

RECORD DOCUMENTS: As part of this Change Proposal, the Contractor shall provide applicable record drawing information affected by this change.

Signed: *Travis Boyd*

Title: Senior Project Manager Date: 01/06/20

Contractor: HRI, Inc

RECOMMENDATION by ENGINEER: (Forward to Owner for Review)

Signature of Engineer:_____ Date: _____

ACCEPTANCE BY OWNER: (return to engineer for processing)

Signature of Owner's Authorized Representative:_____ Date: _____

_____Engineer to prepare necessary change order_____ Engineer to Re-negotiate change proposal as noted above_____Other as above

OWNER:	CONTRACTOR:	PROJECT
ENGINEER:	FIELD:	NO.:
ARCHITECT:	OTHER:	DATE:

Section 17991 Process Control System PCS Diagnostics
Section 17999 Process Control System Auxiliary Systems
Section 17999A Process Control System Gas Detection

Programming as Specified - As applicable to PLC's itemized below, Panel OIT's on applicable PLC Panels itemized below and Workstations itemized below

Item	Quantity	Description
1	Lot	Complete and Annotated PLC Logic, Complete and Annotated Supervisory Software Development, Specific Ancillary Software Programming, Preliminary Testing, Startup/Commissioning, Software Training per specifications and clarifications and exclusions detailed herein. This applies to the following PLC Cabinets, furnished by the System Integrator: PLC-DFF (Denitrification Facility) PLC-CHB (Chemical Building) PLC-RSP (Return Sludge Pumping Station) PLC-DBR (Digester Blower Building) PLC-ELB (Electrical Building) PLC-SPB (Solids Processing Building) PLC-STF (Septage Treatment Facility) PLC-UWB (Utility Water Building) PLC-BLB (Blower Building) PLC-CTR (Control Building) This applies to Workstations No. 1, 2, & 3 and related programming OIT/HMI/Historian Software furnished by Contractor as part of a Bid Allowance
2	Lot	Integrate data obtained from each OEM system into the plant's new supervisory application (Item 1) for the following OEM PLC's Denitrification Filters Sludge Drying System Sludge Dewatering System Utility Water System Dust Collection System Reactors Process Air (Turbo Blowers) Sanitary Pumping Station Septage Screening Septage Grit System Septage Screw Press Methanol Fill Solids Odor Control

	Descrition	PM	Super	D&M	PE	Safety	Contract Admin	Notes
Contracts, Sub Start up, Accounting, not releating to field work	Change Order Construction & Documentation	20						
	SOV's Update	4						
	Tracking of Change Order & verifing QTY	36						(3yrs x 12months)
	Coordiantion with Subs, HRI, City & Engineer		40		40			
	Coordination with Subs-safe starts					4		
	Safety Inspections					20		
	Updating Internal Budgets						4	
	Contract Adjustments & Tracking Invoicing						4	
Submittals	17101-1.04-A1 - Quals	1			2			
	17101-1.04-A2 - Code Review	1			2			
	17101-1.04-A3 - Graphics	1			2			
	17101-1.04-B1 - O&Ms (3) iterations	3			6			
	17101-1.04-C1 - AsBuilts	1			2			
	17101-1.04-C2 - Control Narrative	1			2			
	17101-1.04-C3 - Program submission	1			2			
	17500-1.03-A1 -Quals	1			2			
	17500-1.03-A2 - Shop Drawings	1			2			
	17500-1.03-A3 - HMI Application Software	1			2			
	17500-1.03-A4 - Scada Configuration Plan	1			2			
	17500-1.03-A5 - Asset List	1			2			
	17500-1.03-A6 - HMI Screen Planning	1			2			
	17500-1.03-A7 - HMI Screen Submittals	1			2			
	17500-1.03-A8 - Alarm Management	1			2			
	17500-1.03-A9 - Trend Group Planning	1			2			
	17500-1.03-A10 - Windows & HMI Security	1			2			
	17500-1.03-A11 - Network & IP Address	1			2			
	17500-1.03-B1-O&M (3) iterations	3			6			
	17500-1.03-B2 - Control Narrative	1			2			
	17500-1.03-C1 - As Builts	1			2			
	Reactor 1	10	2		2			PE's time is for video training
	Reactor 2	10	2		2			Super & PM is for Coordination efforts, notification that systems are available,
	Reactor 3	10	2		2			
	Reactor 4	10	2		2			

Class	Hours	Rate	Value
PM	793	$ 105.45	$ 83,621.85
Super	182	$ 104.56	$ 19,029.92
D&M			$ 20,000.00
PE	478	$ 87.65	$ 41,896.70
Safety	24	$ 104.56	$ 2,509.44
Contract Admin	12	$ 25.87	$ 310.44
TOTAL			$ 167,368.35